



COLONY AND PROTECTORATE OF KENYA

**LEGISLATIVE COUNCIL
DEBATES
OFFICIAL REPORT**

**11th COUNCIL INAUGURATED
OCTOBER, 1956**

VOLUME LXXXVI.

1960

FOURTH SESSION

(Continued)

21st July, 1960, to 22nd December, 1960

List of Members of the Legislative Council

Speaker:

*THE HON. HUMPHREY SLADE.

Chairman of Committees and Deputy Speaker:

*THE HON. J. J. M. NYAGAH.

Ministers:

- THE CHIEF SECRETARY (The Hon. W. F. Coultis, C.M.G., M.B.E.).
- *THE MINISTER FOR LEGAL AFFAIRS (The Hon. E. N. Griffith-Jones, C.M.G., Q.C.).
- *THE MINISTER FOR FINANCE AND DEVELOPMENT (The Hon. K. W. S. Mackenzie, C.M.G.).
- THE TEMPORARY MINISTER FOR INTERNAL SECURITY AND DEFENCE (The Hon. G. J. Ellerton, M.B.E.).
- THE TEMPORARY MINISTER FOR EDUCATION (The Hon. D. S. Miller, C.B.E.).
- THE MINISTER FOR AGRICULTURE, ANIMAL HUSBANDRY AND WATER RESOURCES (The Hon. B. R. McKenzie, D.S.O., D.F.C.).
- THE MINISTER FOR COMMERCE AND INDUSTRY (The Hon. J. G. Kiano, Ph.D.).*
- THE MINISTER FOR HEALTH AND WELFARE (The Hon. J. N. Muimi).
- THE MINISTER FOR HOUSING, COMMON SERVICES, PROBATION AND APPROVED SCHOOLS (The Hon. M. S. Amalemba).
- THE MINISTER FOR INFORMATION AND BROADCASTING (The Hon. N. F. Harris).
- THE MINISTER FOR LABOUR, SOCIAL SECURITY AND ADULT EDUCATION (The Hon. R. G. Ngala).
- THE MINISTER FOR LOCAL GOVERNMENT AND LANDS (The Hon. W. B. Havlock).
- THE MINISTER FOR TOURISM, GAME, FORESTS AND FISHERIES (The Hon. W. E. Crosskill).
- THE MINISTER FOR WORKS (The Hon. I. E. Nathoo).
- THE MINISTER WITHOUT PORTFOLIO (The Hon. C. B. Madan, Q.C.).

Assistant Ministers:

- THE ASSISTANT MINISTER FOR EDUCATION (The Hon. Wanyutu Waweru, M.B.E.).
- THE ASSISTANT MINISTER FOR TOURISM, GAME, FORESTS AND FISHERIES (The Hon. Sheikh Mohamed Ali Said el Mandry).
- THE ASSISTANT MINISTER FOR AGRICULTURE, ANIMAL HUSBANDRY AND WATER RESOURCES (The Hon. T. Towett).

Constituency Elected Members:

European—

- THE HON. R. S. ALEXANDER (Nairobi West).
- THE HON. F. W. G. BOMPAS, E.D. (Kiambu).
- *GROUP CAPTAIN THE HON. L. R. BRIGGS (Mount Kenya).
- THE HON. S. V. COOKE (Coast).
- †THE HON. W. E. CROSSKILL (Mau).
- *MAJOR THE HON. F. W. J. DAY (Aberdare).
- †THE HON. N. F. HARRIS (Nairobi South).
- AIR COMMODORE THE HON. E. L. HOWARD-WILLIAMS, M.C. (Nairobi North).
- THE HON. MRS. E. D. HUGHES, M.B.E. (Uasin Gishu).
- THE HON. SIR CHARLES MARKHAM, BT. (Ukamba).
- THE HON. J. R. MAXWELL, C.M.G. (Trans Nzoia).
- MAJOR THE HON. B. P. ROBERTS (Rift Valley).
- THE HON. MRS. A. R. SHAW, O.B.E. (Nyanza).
- THE HON. C. G. USHER, M.C. (Mombasa).

LIST OF MEMBERS OF THE LEGISLATIVE COUNCIL—(Contd.)

African—

- THE HON. S. O. AYODO (Nyanza South).
 THE HON. F. J. KHAMISI (Mombasa Area).
 THE HON. D. I. KIAMBA (Machakos).
 †THE HON. J. G. KIANO, P.I.D. (Central Province South).
 THE HON. B. MATE (Central Province North).
 THE HON. T. J. MBOYA (Nairobi Area).
 THE HON. D. T. ARAP Moi (North Rift).
 †THE HON. J. N. MUMI (Kitui).
 †THE HON. M. MULIRO (Nyanza North).
 †THE HON. R. G. NGALA (Coast Rural).
 †THE HON. J. J. M. NYAGAH (Nyeri and Embu).
 THE HON. A. OGINOA ODINGA (Nyanza Central).
 THE HON. J. K. OLE TIPIS (Central Rift).
 †THE HON. T. TOWETT (Southern Area).

Asian—

- THE HON. S. G. HASSAN, M.B.E. (East Electoral Area).
 THE HON. A. B. JAMIDAR (Central Electoral Area).
 THE HON. J. C. M. NAZARETH, Q.C. (Western Electoral Area).
 THE HON. A. J. PANDYA (Eastern Electoral Area).
 THE HON. K. D. TRAVADI (Central Electoral Area).
 THE HON. ZAFRUD-DEEN (West Electoral Area).

Arab—

- THE HON. SHEIKH MAHMOOD S. MACKAWI.
 THE HON. SHARIF M. A. SHATRY.

Specially Elected Members:

- †THE HON. M. S. AMALEMBA.
 THE HON. M. BLUNDELL, M.B.E.
 †THE HON. SHEIKH MOHAMED ALI SAID EL MANDRY.
 †THE HON. W. B. HAVELLOCK.
 THE HON. C. B. MADAN, Q.C.
 THE HON. N. S. MANGAT, Q.C.
 †THE HON. B. R. MCKENZIE, D.S.O., D.F.C.
 THE HON. J. M. MUCHURA.
 †THE HON. I. E. NATHOO.
 THE HON. N. G. NOOME.
 †THE HON. H. SLADE.
 †THE HON. WANYUTU WAWERU, M.B.E.

Nominated Members:

- THE HON. K. V. ADALIA, M.B.E., M.B.B.S.
 †THE HON. S. H. AKRAM.
 †THE HON. L. D. A. BARON, A.F.C.
 THE HON. K. BECHGAARD, Q.C.
 THE HON. D. L. BLUNT, C.M.G.
 †THE HON. J. H. BUTTER, M.B.E. (Secretary to the Treasury).
 †THE HON. D. W. CONROY, C.M.G., O.B.E., T.D., Q.C., (Solicitor-General).
 THE HON. M. H. COWIE, C.B.E., E.D. (Director of the Royal National Parks).
 THE HON. AHMED FARAH, B.E.M. (Northern Province).
 THE HON. MRS. J. T. GECAGA.
 †THE HON. W. D. GREGO (Assistant Director of Education) (Temporary).
 COMMANDER THE HON. A. B. GOORD, D.S.C., R.I.N. (RTD).
 THE HON. R. I. GUTHRIE.
 CAPTAIN THE HON. C. W. A. G. HANLEY, O.B.E., R.N.
 THE HON. H. G. S. HARRISON, M.B.E.
 THE HON. R. O. HENNINGS, C.M.G. (Deputy Chief Secretary).
 THE HON. A. W. HUNTER.
 THE HON. A. H. ISMAIL, M.R.C.S.
 COLONEL THE HON. H. R. JACKMAN.
 THE HON. E. T. JONES.

LIST OF MEMBERS OF THE LEGISLATIVE COUNCIL—(Contd.)

Nominated Members—(Contd.)

- THE HON. J. K. KERASO.
 THE HON. J. A. R. KING, A.F.C.
 THE HON. J. A. LUSENO.
 THE HON. R. E. LUYT, C.M.G., D.C.M. (Permanent Secretary, Ministry of Labour).
 THE HON. BALDEV SAHAI MOHINDRA, O.B.E.
 †THE HON. SHEIKH S. M. MUHAMMAD, M.B.E. (Liwali, Coast).
 THE HON. W. OLE NTIMAMA.
 THE HON. SIR EBOO FIRBAH, O.B.E.
 †THE HON. E. P. RIGBY, M.B.E. (Assistant Director of Medical Services).
 THE HON. P. J. ROGERS, C.B.E.
 THE HON. C. W. RUBIA.
 THE HON. KIRPAL SINGH SAGOO.
 THE HON. SHERIFF A. SALIM.
 THE HON. P. H. SMITH.
 THE HON. R. J. M. SWYNNERTON, C.M.G., O.B.E., M.C. (Director of Agriculture).
 THE HON. G. A. TYSON, C.M.G.
 THE HON. R. E. WAINWRIGHT, C.M.G. (Chief Commissioner).

- THE HON. THE EARL OF PORTSMOUTH.
 THE HON. SIR ALFRED VINCENT.

Acting Clerk of the Council:

J. R. NIMMO.

Clerk Assistant:

H. THOMAS.

Serjeant-at-Arms:

MAJOR M. G. ELIOT.

Assistant Serjeant-at-Arms:

J. H. KIRK.

Speaker's Secretary:

MRS. J. FRYER.

Hansard Editor:

MRS. J. RAW.

Reporters:

D. BUCK.

MISS M. P. GUNTER.

MISS J. M. ATKINS.

* Speaker.

† Chairman of Committees and Deputy Speaker.

‡ Also included in the list of Ministers or list of Assistant Ministers.

§ Arab Adviser to His Excellency the Governor.

¶ Appointed Speaker 25-10-60. (Mr. D. W. Conroy acted as Speaker up to 24-10-60.)

‡ Appointed Chairman of Committees and Deputy Speaker 25-10-60 vice Mr. Conroy resigned.

* Acting Chief Secretary appointments:—

Mr. Griffith-Jones from 20-10-60 to 23-11-60.

Mr. K. W. S. MacKenzie from 17-12-60 to 25-12-60.

* Temporary Minister for Legal Affairs appointments:—

Mr. Conroy from 21-6-60 to 17-10-60; from 20-10-60 to 23-11-60 and from 13-12-60 to 15-12-60.

Mr. Guthrie from 16-12-60 to 25-12-60.

* Temporary Minister for Finance:—

Mr. Butler from 2-7-60 to 31-10-60.

* With effect from 21-9-60 vice the Minister, Mr. A. C. C. Swann, C.M.G., O.B.E., on vacation leave.

* With effect from 28-9-60 vice the Minister, Mr. W. A. C. Mathieson, C.M.G., M.B.E., resigned.

* Vacancy created on 15-11-60 consequent upon death of Group Captain Briggs.

* Mr. J. M. Benn appointed Temporary Member for Aberdeen on 5-10-60 vice Major Day absent from Colony. Vacancy created on 22-11-60 caused by resignation of Major Day.

* Mr. Wafala Wabuge, Temporary Member for Nyanza North from 19-10-60 to 14-11-60 vice Mr. Muliro absent from the Colony.

* With effect from 25-10-60 vice Mr. A. H. Nurmohamed resigned on appointment to Council of State on 5-8-60.

* Temporary Member with effect from 13-12-60 vice Mr. Butler absent from the Colony.

* Temporary Member with effect from 24-10-60 vice Mr. A. M. F. Webb (Acting Solicitor-General) absent from the Colony.

* Temporary Member with effect from 11-12-60 vice Mr. K. Bechgaard, Q.C., absent from the Colony.

* Temporary Member with effect from 3-11-60 vice Dr. A. J. Walker resigned.



COLONY AND PROTECTORATE OF KENYA

LEGISLATIVE COUNCIL DEBATES

ELEVENTH COUNCIL

FOURTH SESSION—(Continued)

Wednesday, 20th July, 1960

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

[Mr. Deputy Speaker (Mr. Conroy) in the Chair]

PRAYERS

COMMUNICATION FROM THE CHAIR

ASSENT TO BILLS

The Deputy Speaker (Mr. Conroy): The following communication has been received from His Excellency the Governor:—

Sir,

I am directed to inform you that His Excellency the Governor has assented to the following Bills, which were passed by the Legislative Council in May and June, 1960:—

No.	Title	Passed Thrd Reading	Date of Assent
13.	The Specific Loan (International Bank for Reconstruction and Development) Ordinance, 1960	17-5-60	17-5-60
14.	The Traffic (Amendment) Ordinance, 1960	1-6-60	6-6-60
15.	The Consolidated Fund (No. 2) Ordinance, 1960	7-6-60	13-6-60
16.	The Law Reform (Miscellaneous Provisions) (Amendment) Ordinance, 1960	1-6-60	13-6-60
17.	The Debts (Summary Recovery) (Amendment) Ordinance, 1960	1-6-60	13-6-60
18.	The Customs Tariff (Dumping and Subsidies) Ordinance, 1960	3-6-60	13-6-60
19.	The Appropriation Ordinance, 1960	3-6-60	13-6-60
20.	The Lake Victoria Fisheries (Reapplication of Laws) Ordinance, 1960	9-6-60	13-6-60
21.	The Central Housing Board (Vesting of Loans) Ordinance, 1960	9-6-60	13-6-60
22.	The Guarantee (High Commission Posts and Telecommunications Loan) Ordinance, 1960	9-6-60	13-6-60

The King's African Rifles (Reserve of Officers) Bill, 1960, which was passed by the Legislative Council on the 1st day of June, 1960, has been reserved by His Excellency the Governor for the signification of Her Majesty's pleasure.

The following Bills have also been assented to by His Excellency the Governor:—

No.	Title	Passed Thrd Reading	Date of Assent
23.	The Prevention of Crime (Amendment) Ordinance, 1960	14-6-60	1-7-60
24.	The Finance Ordinance, 1960	14-6-60	1-7-60
25.	The Local Authorities Provident Fund Ordinance, 1960	16-6-60	1-7-60
26.	The Coffee Ordinance, 1960	16-6-60	1-7-60
27.	The Books and Newspapers Ordinance, 1960	9-6-60	1-7-60

Her Majesty the Queen has been pleased to assent to the Hindu Marriage and Divorce Ordinance, 1960, which was passed by the Legislative Council on 24th March, 1960.

ADMINISTRATION OF OATH

The Oath of Allegiance was administered to the following Member:—

Harishankar Dayabhai Trivedi.

PAPERS LAID

The following Papers were laid on the Table:—

East African Airways Corporation Report and Accounts for the year ended 31st December, 1959.

East African Agriculture and Forestry Research Organization, Record of Research for period 1st January to 31st December, 1959.

(By the Chief Secretary (Mr. Coutts))

Estimates of Expenditure of the Colony and Protectorate of Kenya for the year ending 30th June, 1961. (Passed by the Legislative Council on 2nd June, 1960.)

Development Estimates for the year 1960-61. (Passed by the Legislative Council on 2nd June, 1960.)

(By the Temporary Minister for Finance and Development (Mr. Butler))

Higher Education Loans Fund: Annual Report and Balance Sheet, 1959.

Examinations (Local Entry Fees) (Amendment) Regulations, 1960.

The Education (Issue of Teachers' Certificates in Schools for Africans) (Amendment) Rules, 1960.

The Education (Examinations for African Teachers' Certificates) (Revocation) Regulations, 1960.

(By the Minister for Education (Mr. Mathieson))

The Gold Mines Development Loans Ordinance, 1952. Balance Sheet as at 31st March, 1960.

(By the Minister for Commerce and Industry (Dr. Kiano))

The Fish Protection (Lake Victoria) Rules, 1960.

The Fort Jesus Royal National Park Regulations, 1960.

(By the Minister for Tourism, Game, Forests and Fisheries (Mr. Crosskill))

NOTICES OF MOTION

SUSPENSION OF STANDING ORDERS

The Chief Secretary (Mr. Coultas): Mr. Deputy Speaker, Sir, I beg to give notice of the following Motion:—

THAT Standing Orders be suspended to the extent necessary to enable Government business to be taken on Friday, 22nd July, 1960.

EVICTON OF TENANTS (CONTROL) (MOMBASA) ORDINANCE EXTENSION

The Minister without Portfolio (Mr. Madan): Mr. Deputy Speaker, Sir, I beg to give notice of the following Motion:—

THAT the Eviction of Tenants (Control) (Mombasa) Ordinance, 1956, be extended to 31st December, 1962.

UP-GRADING OF ALL POLICE RANKS

Mr. Commodore Howard-Williams: I beg to give notice of the following Motion:—

THAT this House approves the immediate up-grading of all ranks in the Police, so that they may receive pay commensurate with their dignity and duty.

ORAL ANSWERS TO QUESTIONS

QUESTION No. 127

Mr. Odaga asked the Minister for Local Government and Lands does the Government

propose to dissolve the present African District Council of Central Nyanza in order to replace it by an elected council and, if so, when?

The Minister for Local Government and Lands (Mr. Havelock): The Government has no intention of dissolving the Central Nyanza African District Council at present, but as I have stated more than once in this House the future constitutions of all local authorities are now under review.

Mr. Odaga: Mr. Deputy Speaker, Sir, arising from the reply, will the Minister let us know definitely the time when the review will take place? We only hear indefinitely that it will be given consideration.

Sir Charles Markham: Speak up!

The Minister for Local Government and Lands (Mr. Havelock): I did not quite catch the hon. Member's question, Sir, but I think he wanted me to give a definite time when the Local Authorities Constitution would be reviewed. They are now being reviewed, Sir, and, as I have said, with a sense of urgency.

QUESTION No. 128

Mr. Tyson asked the Minister for Labour, Social Security and Adult Education why no provision was included in the present Supplementary Estimates for obtaining the necessary data to carry out the recommendations of the Social Security Committee, particularly in view of his remarks in the debate on 26th May, 1960?

The Minister for Labour, Social Security and Adult Education (Mr. Ngala): Mr. Deputy Speaker, Sir, no supplementary provision was required for the financial year 1959/60 as a start could be made with existing staff on the further investigations which are necessary to bring the matter to decision.

Mr. Tyson: Arising out of that reply, Sir, the Minister on 26th May said he was setting in action to bring up to date all our facts and figures relating to this subject; what I have asked is, why did he not make application to the Minister for Finance for the funds necessary to carry out what he said he was going to do?

The Minister for Labour, Social Security and Adult Education (Mr. Ngala): Mr. Deputy Speaker, Sir, I have just said that the necessary preliminary work is already in hand and it is going on now and there was no need to ask for extra supplementary estimates because what is available now can carry out the investigation to a decision.

Mr. Tyson: Arising out of that reply, I hope the Minister appreciates the importance of this from the point of view of unemployment.

The Minister for Labour, Social Security and Adult Education (Mr. Ngala): I very much appreciate the importance of this matter as I indicated when I was giving my speech, and in case of any further financial need I feel that the present preliminary work must be completed before additional expenditure can be assessed and considered.

Mr. Slade: Mr. Deputy Speaker, Sir, can the Minister confirm that this further investigation is now in hand—actually under way at present?

The Minister for Labour, Social Security and Adult Education (Mr. Ngala): Yes, Sir.

QUESTION No. 129

Mr. Trivedi (Temporary Member for Central Electoral Area) (on behalf of Mr. Travadi) asked the Minister for Internal Security and Defence:—

(a) Would the Minister state how many applications for the withdrawal of private firearms from the Central Arms Store have been received since 30th September, 1958?

(b) Would the Minister state how many such applications were granted and how many refused and give the break-down by races of those figures?

(c) What conditions must an applicant comply with in order to secure the withdrawal of his firearm from the custody of the police?

The Minister for Internal Security and Defence (Mr. Swann): Statistics on the matters raised in the first two parts of the question are not maintained, but Members may be interested to know that 4,386 firearms have been withdrawn from the police arms store since 30th September, 1958.

The law regarding the granting of a firearms certificate, the possession of which enables a firearm to be withdrawn from the police arms store, are contained in section 5 (a) of the Firearms Ordinance, 1953.

Mr. Dhandell: Mr. Deputy Speaker, arising out of that question, could the hon. Minister give us the number of arms which have been lost in the same period?

The Minister for Internal Security and Defence (Mr. Swann): I can certainly find that out for the hon. Member.

QUESTION No. 135

Mr. Nyagah asked the Minister for Education:—

(a) What is Government's policy with regard to the re-employment and reinstatement of the ex-detained teachers?

(b) How many such teachers have been re-employed and reinstated?

(c) Is Government aware that their present discriminatory method of reabsorbing these teachers appears unjust and is depriving them of an opportunity of making their professional contribution to the welfare of the country?

The Minister for Education (Mr. Mathieson): The cases of all such ex-teachers who apply for permission to resume teaching are carefully considered and of 47 applications so far received 45 are now re-employed. I know of nothing discriminatory in this procedure.

Mr. Nyagah: Mr. Deputy Speaker, Sir, arising out of his reply, is the Minister aware that the teachers are being discriminated against by not being re-employed after coming from detention camps like the other members of the public?

The Minister for Education (Mr. Mathieson): I am not so aware, Mr. Deputy Speaker.

Mr. Nyagah: Mr. Deputy Speaker, Sir, will the Minister try and find out the facts?

The Minister for Education (Mr. Mathieson): My supplementary reply, Mr. Deputy Speaker, was based on a close examination of the facts.

QUESTION No. 136

Mr. Nyagah asked the Minister for Education, will the Government consider paying responsibility allowances to African headmasters?

The Minister for Education (Mr. Mathieson): Mr. Deputy Speaker, Sir, I beg to reply. Allowances for headmasters of schools will certainly be a feature of the Burnham-type salary structure which the Government hopes to introduce for the teaching profession.

QUESTION No. 137

Mr. Nyagah asked the Minister for Education, is Government aware of the great dissatisfaction caused to women teachers by the A.T.S. salary scales which discriminate against them in favour of their fellow men teachers holding similar qualifications and doing similar jobs?

The Minister for Education (Mr. Mathieson): Mr. Deputy Speaker, I give a rather lengthy reply to this question. No, Sir.

Mr. Nyagah: Mr. Deputy Speaker, Sir, would the Minister be prepared to meet a delegation of women teachers?

The Minister for Education (Mr. Mathieson): I would certainly be prepared to meet a delegation of women teachers. In fact, a very short time ago I met a delegation of the Kenya National Union of Teachers which was strongly reinforced by a woman representative, and this matter was not then raised.

QUESTION No. 138

Mr. Nyagah asked the Minister for Health and Welfare, would the Minister state whether he is able to dispel the rumour that his Ministry proposes to set up a new category of staff nurses specially for the K.R.N.s?

The Minister for Health and Welfare (Mr. Mumi): Mr. Deputy Speaker, Sir, I beg to reply. There is no intention to set up a new category of staff nurse especially for K.R.N.s.

QUESTION No. 132

Mr. Ayodo (on behalf of Mr. Mboya) asked the Chief Secretary if he is aware that certain chiefs in the Mwca Division have issued standing orders as follows:—

"Chiefs' Standing Orders—Mwca Division
9 (e) Native Authority Ordinance

Any song which praises Kenyatta or any of the *Mau Mau* leaders or the *Mau Mau* movement, or which calls for the release of Kenyatta or which threatens any chief, headman or other member of the Government or any loyal supporters of the Government is prohibited as conduct likely to cause a breach of the peace.

Under section 9 (p), Native Authority Ordinance

The holding of meetings of any number of persons exceeding ten is forbidden, other than for purposes of a religious service of registered denomination, or a meeting for which a licence has been obtained from the police inspector or district officer. A standing licence will be issued on application by the district officer authorizing gatherings for adult literacy, youth clubs or women *maendeleo*. Such applications should specify the time, place and days for such gatherings and include the name of the individual who will be in charge in every case."

The Chief Secretary (Mr. Coutts): Mr. Deputy Speaker, Sir, I beg to reply. Yes, Sir.

QUESTION No. 133

Mr. Ayodo (on behalf of Mr. Mboya) asked the Minister for Education, would the Minister state why the Kisii Secondary School was closed and what steps have been taken to reopen it without harm to the students?

The Minister for Education (Mr. Mathieson): The school was closed for disciplinary reasons. It reopened on Monday, 18th July.

Mr. Ayodo: Mr. Deputy Speaker, may I know whether the views and the allegations of the public on this question have been considered? Have all or any of the allegations by members of the public been considered in making enquiries into the causes of the strike?

The Minister for Education (Mr. Mathieson): Mr. Deputy Speaker, I have not available to me any concise expressions of the views of the public in this matter, but I have certainly taken full consideration of the advice offered by the hon. Member, some of which I have taken.

Mr. Ayodo: If these views have been considered, to what extent has that been done? May I know why that has not been made known?

The Minister for Education (Mr. Mathieson): I do not consider, Mr. Deputy Speaker, that a strike in a secondary school is necessarily a matter for a Press release.

Mr. Ayodo: Mr. Deputy Speaker, may I know whether the Minister agrees that he has been seen by myself on this question and was quietly very co-operative in the hope that this would be settled, but that all my help was ignored. What could we do after that?

The Minister for Education (Mr. Mathieson): I have already paid tribute to the helpful and co-operative attitude of the hon. Member.

Mr. Nyagah: Mr. Deputy Speaker, Sir, would the Minister answer the second part of this question?

The Minister for Education (Mr. Mathieson): I have already answered it, Sir.

Mr. arap Mok: Mr. Deputy Speaker, would the Minister set up a commission to find out what are the causes of strikes which have taken place in many of the African secondary schools?

The Deputy Speaker (Mr. Conroy): That is going a long way away from the original question.

Mr. Nyagah: Is the Minister aware that the answer to the question is unsatisfactory?

The Minister for Education (Mr. Mathieson): No, Sir.

Sir Charles Markham: Would, Sir, the Minister explain, is it very usual in parts of the civilized world to have strikes in schools?

Mr. Ayodo: Mr. Deputy Speaker, I think the question has been answered unsatisfactorily because there is a lot of harm to the students. For example—

The Deputy Speaker (Mr. Conroy): Order, order! You are not allowed to make a speech; you may ask supplementary questions which arise out of the answer to your original question.

Mr. Ayodo: May I know, Mr. Deputy Speaker, whether the Minister is aware that about 100 students have not been called back, and that they may be considered only for next term?

The Minister for Education (Mr. Mathieson): Mr. Deputy Speaker, the hon. Member referred to harm to the students. I personally would classify any harm which arose as a self-inflicted wound.

Mr. Ayodo: May I know, Mr. Deputy Speaker, whether the part of some of the senior people concerned in this is considered at all because some of this harm, some of the blame could be laid on some of these people, or on teachers for that matter?

Hon. Members: Answer!

QUESTION No. 134

Mr. Ayodo (on behalf of Mr. Mboya) asked the Minister for Education:—

(1) What are the terms or contract under which students are accepted to the various Government technical and trades schools in Kenya?

(2) If he is aware that dissatisfaction exists among these students regarding their conditions and the disciplinary conditions applied in these schools and would he state what channels exist for students to air their grievances?

(3) To state what facilities exist to help students who complete their studies to find suitable jobs?

The Minister for Education (Mr. Mathieson): Mr. Deputy Speaker, I must apologize to the House for a somewhat lengthy answer since the question, in fact, comprises quite a large number of questions. In answer to the first part of the question, before the Apprenticeship Ordinance came into force, students were accepted as indentured apprentices bound to the Director of Education. As from the January, 1961, intake, however, this will no longer be possible under the terms of the Ordinance, and students will simply be pupils as at any other school.

In reply to the second part of the question, I am not aware of any general dissatisfaction about conditions of training or about discipline. Complaints at schools are channelled through prefects to a Senior Assistant Technical Instructor, and thence, if necessary, to the Principal. In serious cases the matter may be referred to the Director of Education.

In reply to the third part of the question, the majority of ex-apprentices are found suitable employment as a result of direct negotiations between the principals and various employers. In addition, a return of school leavers is sent each year to the Labour Commissioner, the local Labour Officer and any prospective employers of trained artisans known to the school.

BILLS

FIRST READINGS

The Exchequer and Audit (Amendment) Bill, 1960

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

The Paymaster-General Bill, 1960

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

The African's Arms (Amendment) Bill, 1960

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

MOTION

KENYA MEAT COMMISSION LOAN GUARANTEE

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): Mr. Deputy Speaker, Sir, I beg to move:—

THAT this Council notes that Government proposes to guarantee a loan of £150,000 to be made by the Guardian Assurance Company, Ltd., to the Kenya Meat Commission.

Mr. Deputy Speaker, when my hon. friend, the Minister for Finance and Development gave notice of this Motion on 22nd June, he gave the figure of £125,000. The amount stated to be guaranteed should, I am afraid, have read £150,000, and hon. Members will note that this is the sum stated in the Motion which I have just read out.

On 21st October, 1952, Legislative Council was informed by the then Minister for Finance that a debenture would be executed by the Commission in favour of Government, charging with repayment of advances all and sundry, the assets of the Commission. Since then legal advice has been received that a debenture is not necessary, and

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that section 11 of the Kenya Meat Commission Ordinance gives the Government full security for advances made to the Commission by providing that all such advances become a liability of the Commission and they are free of charge on its assets. The position has now been clarified by an exchange of letters in which the advances were restated, and the Commission's attention drawn to the provision of this section of the Ordinance.

Mr. Deputy Speaker, for those hon. Members who are interested, this loan of £150,000 will be repaid in 30 equal instalments over 15 years commencing on 1st July, 1963, and the rate of interest will be 6½ per cent. This money is necessary to go ahead with increases to the factory at Athi River to absorb the extra number of cattle which are coming forward to that meat factory. These cattle, in the main, are mainly coming forward from African land units, the African Livestock Marketing Organization and a certain proportion from the European areas.

I beg to move.

The Chief Secretary (Mr. Coutts) seconded.

Question proposed.

Mr. Tyson: Mr. Deputy Speaker, referring to the explanation given by the Minister for Agriculture, is there any reason why the terms which he has mentioned should not be included in this Motion? As it stands it merely says that the Government is going to guarantee a loan of £150,000. Should we not be told, or should it not be embodied in this resolution, the terms on which it is to be paid, the rate of interest and how the loan is to be repaid?

Mr. Blundell: Mr. Deputy Speaker, I would like the hon. Minister when he is replying to make more clear to the House what will be the end result of the Motion which he has moved in this regard. As I see it, after the completion of the payments by the Meat Commission to the Guardian Assurance Company, the assets will become the clear assets of the Kenya Meat Commission. I would like to know what is the position of the existing assets in the Meat Commission when the Meat Commission has finished the payment of its loans to the Government arising out of the original amount of some £300,000 that was advanced. I thought that the hon. Minister was having discussions with the Kenya Meat Commission to decide what would be the position of the Meat Commission at the end of the financial operation. Unless the initial repayments of the £300,000 are cleared in regard to the objective of the Meat Commission, then it seems to me that the position will arise whereby the Meat Commission in itself owns some of its

assets by reason of repayment, and the Government of this country will hold the balance of the assets by reason of the fact that the Meat Commission is paying the Government under the original terms of the loan the amounts outstanding yearly, and I would like the hon. Minister to explain to the House what is his objective, or has he been able to reach an objective, in regard to the ownership of the Kenya Meat Commission when the whole of the finance which was originally loaned for the project, has been liquidated?

Sir Charles Markham: Mr. Deputy Speaker, in supporting what my hon. friend the Specially Elected Member has said, I would like to draw the attention of the Minister to the evidence that was given before the Public Accounts Committee this year. At that time, Sir, the Accounting Officer gave certain information to the Committee regarding the ownership of the Commission as a result, I think, of questioning from myself. He, in another capacity, is able to answer from the other side of the Council. But it does seem to me, Sir, to be a most peculiar Resolution of Government asking this Council to guarantee an overdraft of money back to the Government. Normally, Sir, I would have thought that this would have appeared in the normal Estimates each year.

We were given a categorical statement, and perhaps the Minister will confirm it today, that there was no intention of handing back to the producers the assets of the Kenya Meat Commission, both at Athi River, Mombasa, and elsewhere—in other words that it has now become a Government monopoly. Therefore, we are lending money here to a Government guaranteed by a Government. I do think, Sir, that this position should be clarified before this Council accepts this Resolution.

My second point, Sir, is this, that my hon. friend and Nominated Member, Mr. Tyson, raised a point regarding a detail which should have been contained in the Resolution. Well, Sir, we had a case not long ago where this Council was asked to guarantee a sum of money for some scheme or other and we were given an assurance by the then Minister of Finance that when we were asked as a Council to agree to the Government guaranteeing overdrafts full conditions would be contained in the Resolution. That was to avoid misunderstanding of what this House would be actually committing the Colony's finances to. I would suggest that until we can get a satisfactory reply on both those points, that is, the point raised by my hon. friend the Nominated Member and also the point raised from this side of the Council, it would be unwise for this Council to accept the Resolution.

Mr. Slade: Mr. Deputy Speaker, I would just like to draw attention to the form of this Motion which does seem to me rather unsuitable, particularly for this kind of Motion. We, in this Council, are not being asked to approve the proposed guarantee of the loan of £150,000, but we are simply being asked to note that the Government proposes to do this. The effect of that is that whether we do or do not note it the Government proposes to do it. I would have thought that the appropriate form of this Motion would be for the Council to approve the proposal of the Government to guarantee this loan. I raise this, Sir, not only with reference to this particular Motion, but also to what appears to be becoming a more and more common practice, that the Government comes before this Council and asks us simply to note something or other. I do think that the Government should be asking us to agree or to disagree.

Mr. Odinga: Mr. Deputy Speaker, I think that I heard some points raised but I am very pleased that one of the hon. Members from this side has mentioned them. There were some of those points which were asked in the Public Accounts Committee where we said that we guaranteed a certain loan but there was no arrangement for the repayment of that loan: it was just left indefinitely.

Now, here again there is something which is worrying me. Supposing that this is business—it is not something which you give to somebody for nothing—and that I was asked to guarantee a loan for somebody, I would also definitely expect to get something out of it, because the Government is guaranteeing this loan. If it is the case that the Kenya Meat Commission fails to pay this loan then the owners of the loan will jump on the Government to repay the loan, and therefore if these people are going to pay 6½ per cent then I am sure that this 6½ per cent should be considered as to whether the Government should not get a part of it for guaranteeing the loan. That has not been so, and I hope that when the Minister stands up to reply he will probably clarify that and make it clear; because if that is not the case then later on we shall really reconsider our position before we guarantee any loan of such kind which puts responsibility unnecessarily upon us.

With these few remarks, Mr. Deputy Speaker, I beg to support.

Mr. Bompas: Mr. Deputy Speaker, one is inclined to wonder whether the Member who has just sat down would not be a very hard parent. As I see it, surely the Kenya Meat Commission is a baby of the Kenya Government, whether we like it or not.

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): It is a big baby!

Mr. Bompas: I am told it is a big baby. That being so, Sir, I do suggest to the hon. Member who has just sat down that if he did guarantee a loan for one of his babies he would perhaps be rather hard-hearted if he insisted on getting something out of the transaction for himself.

The Temporary Minister for Finance and Development (Mr. Butter): Mr. Deputy Speaker, I rise to deal with one or two of the financial points which have been made by hon. Members.

The hon. Nominated Member, Mr. Tyson, suggested that the terms of the loan should have been included in the substantive Motion before the House. I do not think, Sir, that it has been our custom in the past to give details of the nature of guaranteed loans. I do not think that we did so on the recent occasion when, with support from all sides of the House, we guaranteed a loan for the United Kenya Club. In fact on that occasion we could not have given details as to the terms because I do not think they had been finally settled with the borrowers. The terms are a matter between, in this case, the Meat Commission and the insurance company, and the Government will of course make sure that the terms are reasonable and that the loan is within the capacity of the Meat Commission to repay.

Mr. Tyson: On a point of explanation, Mr. Deputy Speaker, when the question of the loan to the United Kenya Club was under consideration the Minister gave an undertaking, if my recollection is correct, that the terms of repayment and interest and so on would be clearly set out and agreed.

Mr. Blundell: I would thank the hon. Member for giving way, but I would like to put to the hon. Member that surely this House might not wish to guarantee those loans if it felt that the terms were onerous. Surely in putting the thing to this House we have a right to know the terms, because without that information how do we know whether we are wise to support the loan.

The Temporary Minister for Finance and Development (Mr. Butter): Mr. Deputy Speaker, Sir, what I said was that on all occasions it was not possible, at the time a guarantee Motion of this kind was taken, to inform the House of the terms of the loan. On this particular occasion the hon. Minister has already informed the House of the terms of the loan so I do not therefore think that that particular point arises.

A further financial point was raised by a number of speakers, in particular the hon. Specially Elected Member, Mr. Slade, who queried the form of the Motion, which is that the Council

[The Temporary Minister for Finance and Development]

notes that the Government proposes to guarantee a loan. This is the form of Motion that we have adopted on many previous occasions and has behind it a constitutional reason. The Government, as a Government, has the power to enter into an agreement of this nature and to bind the Government by signature of the appropriate Minister on the document. But it is of course desirable, and in fact it is a practice which we have always adopted, to bring such matters to the notice of the House because in the event of the guarantee being called on at that time the House would be asked to vote the necessary money so that the guarantee given by the Government could be honoured. But there is no strictly legal or constitutional reason why, when the Government in exercise of proper powers does give a guarantee of this nature, such guarantees should be specifically authorized by this Council.

The hon. Specially Elected Member, Mr. Blundell, asked what would happen when the advances made by the Government to the Kenya Meat Commission were repaid and he suggested that this loan that was now being guaranteed might work its way back to the Government by reducing the advances of some £800,000 made by the Government to the Kenya Meat Commission.

Mr. Blundell: I think the hon. Member for giving way. The point I was trying to establish was, as the Motion is now drafted, the assets at the end of the liquidation of the loan will become the Kenya Meat Commission's and I think the hon. Member will agree with me that under the arrangements which the Kenya Meat Commission are now making for the repayment of the original loan the end asset will become the Government's.

The Temporary Minister for Finance and Development (Mr. Butler): Mr. Deputy Speaker, I was going on to explain that the hon. Specially Elected Member must, I think, have forgotten the arrangements that were made with the Kenya Meat Commission when he was the Minister for Agriculture. The total amount of money advanced to the Kenya Meat Commission by the Government is some £857,000. The Meat Commission is required to pay interest on those sums advanced but it is not required, so long as the present policy continues, to repay the amount to the Government. The Ordinance governing the position is the Kenya Meat Commission Ordinance and that provides that the money advanced to the Commission from the Treasury shall be a first charge on the property, assets, revenues and sinking fund reserve and stabilization funds

of the Commission, and that is the present position. Each year we vote to the Kenya Meat Commission the sum of £37,500 to enable the Meat Commission to repay one of its other borrowers, but the Meat Commission is not making any repayment on loan monies that have been advanced by the Government.

The hon. Member for Ukamba suggested that the Minister for Finance had given an assurance to the Council concerning a statement that would be made of the Government's position with regard to guarantees whenever a Motion of this nature was moved. The actual assurance given, and it has been honoured on previous occasions and will be honoured now, is that the Council would be informed of the total amount of money which the Government had guaranteed at the time each Motion was moved. The total liability at today's date is £6,717,000. I do not think, Sir, that there were any other financial points raised.

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): Mr. Deputy Speaker, I would like to tell hon. Members opposite that there is a new Kenya Meat Commission Ordinance now on the stocks and most of the pertinent matters which were raised by hon. Members opposite will be taken care of in that Ordinance, and I hope that the Ordinance will not be long in forthcoming so that we will be able to debate it in this House.

On the question raised by my hon. friend the Member for Nyanza Central, if he wishes Government to make on this, it would mean that the price of meat to the consumer throughout the Colony would be put up.

Mr. Deputy Speaker, I think most of the other points which the hon. Specially Elected Member and the hon. Member for Ukambani have been answered by my colleague the hon. Minister for Finance.

Sir Charles Markham: No.

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): If they have not then I am quite prepared to answer them, and I have made a note of them, when we discuss the new Ordinance.

I would like just to point out in case the hon. Nominated Member, Mr. Tyson, was out when I spoke that I did say that the rate of interest would be 6½ per cent per annum and that the £150,000 would be repayable in 30 equal instalments over 15 years commencing on 1st July, 1963.

Mr. Deputy Speaker, I beg to move.

MOTION

EXCLUSIVE TRADING LICENCE (TOBACCO LEAF)

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): Mr. Deputy Speaker, I beg to move:—

THAT this Council approves the surrender by the East African Tobacco Company Limited of the exclusive trading licence issued to it on 29th August, 1958, by the Governor in Council of Ministers, under the provisions of section 5 of the Marketing of African Produce Ordinance, and the grant in its place of an exclusive trading licence for a period of seven years for the purchase of tobacco leaf in the following areas:—

- Those portions of the Embu, Fort Hall and Nyeri Districts within a radius of 15 miles from Sagana Railway Station.
- That portion of the Kitui District within a radius of ten miles from Kitui Township.
- That portion of the Embu District within a radius of ten miles of the East African Tobacco Company's factory at Ena River.

Mr. Deputy Speaker, the object of these amendments is to confine the operation of the licence, so far as these two or three areas are concerned, to those parts in which Virginia flue-cured tobacco can be grown and so to permit the development of Turkish tobacco outside those parts. These proposed alterations in the terms of the licence have the full consent and agreement of the company concerned.

Mr. Deputy Speaker, I feel that this is a non-contentious Motion and that I need not speak any further to it other than to ask Council's support.

The Minister for Internal Security and Defence (Mr. Swann) seconded.

Question proposed.

The question was put and carried.

INTERRUPTION OF BUSINESS

The Chief Secretary (Mr. Coutts): Mr. Deputy Speaker, Sir, in view of the fact that it is essential that the Government should make a statement on land at approximately 3.30 p.m. and in order to allow that to be taken at the same time as the statement is made in the House of Commons, I would suggest that the House do now adjourn until approximately 4.40 p.m., at which time the Minister for Lands could then start making his speech prior to making the statement to which I

The Deputy Speaker (Mr. Conroy): This is a procedure which we have followed in the past on similar occasions and if it is the wish of the House I will now interrupt business until 4.40 p.m.

The House adjourned at five minutes past Four o'clock.

The House resumed at forty minutes past Four o'clock.

MOTION

LAND TENURE

The Minister for Local Government and Lands (Mr. Havelock): Mr. Deputy Speaker, I beg to move:—

THAT this Council takes note of Sessional Paper No. 10 of 1958/59 and Sessional Paper No. 6 of 1959/60 "Land Tenure and Control Outside the Native Lands".

When I laid Sessional Paper No. 6 of 1959/60 I made, with your permission, Sir, a statement to the effect that this Paper is the result of examination by Government of the comments and criticisms by various bodies on Sessional Paper No. 10 of 1958/59 on the same subject. Sessional Paper No. 10 of 1958/59 was laid on the Table of this House on 13th October, 1959, and in his speech from the Chair on 10th November, 1959, His Excellency the Governor stated that although notice of a Motion to debate the Paper would be given, it was not the Government's intention to debate it until ample opportunity had been given to interested bodies to make clear to Government their views on the Government's proposals.

During the course of the debate on the speech from the Chair, a number of Members expressed opinions on the Sessional Paper and will no doubt express them again where they differ from the recommendations which have now been made in Sessional Paper No. 6 of 1959/60. However, I wish, at this stage to refer only to the speech of the then Minister responsible for lands in which he reminded Members that representations from interested bodies would only prove to be constructive if they were confined within the broad limits of objectives which the Government had set before it in Sessional Paper No. 10. In his speech at the Kenya National Farmers' Union Conference on 12th November, 1959, His Excellency the Governor alluded to Sessional Paper No. 10 and said that the Government would need the best advice which the farming community could give on the working out of the details and went on to say that the Union would wish to have time to go back to its local branches in order to have an opportunity of giving the

[The Minister for Local Government and Lands] agronomic and economic aspects of the Government's proposals. It is in the light of His Excellency the Governor's speeches from the Chair of this House and to the Kenya National Farmers' Union Conference and of my predecessor's remarks in this House on 17th November, 1959, that the comments received on the original Sessional Paper have been examined by the Government.

If Members will refer to Sessional Paper No. 6 of 1959/60, they will see that paragraphs 4-35 replace the original paragraphs 18-51 in Sessional Paper No. 10 and I propose, therefore, to deal with the latter as amended by Sessional Paper No. 6 of 1959/60 explaining, where necessary, why the Government has changed its original proposals.

Some criticism has been directed at the statement in the first paragraph to the effect that "It is the declared policy of the Government to ensure that the basis of tenure and management of agricultural land will be similar throughout Kenya regardless of race or tribe as far as local economic and agronomic factors will permit". It has been stated that the Government's proposals do not, in fact, follow this declared policy. I cannot do better in a few words than to quote my predecessor's remarks, to which I have already referred, when he said, "The first principle is that in a unified approach to the problem we should aim at getting the tenure and management of such land on a comparable basis in the Colony and also promote a growing similarity in the methods and machinery for the control of land transactions in all agricultural areas". He went on to say, "It would, I think, be unrealistic for us to expect to be able to impose an identical pattern at the outset in all areas since we must have regard both to history and to prevailing and differing circumstances. So what we aim at is a convergence of policy and practice in these fields". Paragraphs 3-17 of the Sessional Paper set out the present procedure and I would like to refer to those paragraphs dealing with tenure, and in particular to freehold. Criticism has been levelled at the Government on the grounds that by giving the farmers an option to convert to freehold they are perpetuating differing systems of tenure, and the argument has been advanced that for that reason all leasehold agricultural land should be automatically converted to freehold at little or no expense. Apart from freehold grants made under the Crown Lands Ordinance, 1902, there are two other types of freehold title in existence in the Colony and Protectorate at the present time. The Land Titles Ordinance provides for recognition and registration of a freehold title to land in the coastal strip where persons already had such

rights before the British Government concluded its agreement with the Sultan of Zanzibar in 1895. Similarly in the Native Lands where the Native Lands Registration Ordinance has been applied, the grant of a title in freehold is a recognition that the rights held by the owners of the land correspond to freehold. That has not been the case elsewhere.

As hon. Members will know, the Crown Lands Ordinance, 1915, provides that for the purposes of the rent payable under a lease for agricultural purposes, the term is divided into periods. The first period should have expired in 1945, 30 years after the introduction of the Ordinance, but it was clearly impossible for the necessary work of revaluation to be carried out during the war, and the date was successively postponed until 1960 when the first period expires. I shall shortly introduce legislation to amend the Ordinance to provide that the 30-year interval between revisions shall be maintained and the second and third periods will expire on 31st December, 1960, and 2020 respectively. The Ordinance provides that the rent for the second period, that is the period commencing on 1st January, 1961, shall be 1 per cent of the unimproved value of the land in the year 1960. My Ministry's valuers have been engaged on this task since 1953 and, in accordance with the provisions of the Ordinance, lessees will be notified towards the end of this year the value placed on their land and the annual rent which will be payable. I realize that there is particular interest at the moment as to the level of valuation that will be placed on farms in view of the rather unsettled conditions. Naturally, I can give no specific indication until the valuers have completed their task. They will soon be consulting the advisory panels, but I can say two things. Firstly, that the values will be below those which might be established for 1959 during which year there were some land transactions which can form a basis of valuation. And secondly, that in some instances the new rent based on unimproved value may well be less than the present rent charged at a flat sum per acre. The types of farm in this latter category where the rent may be less will be few and will not be high potential land. The Ordinance at present provides that within one month the lessee can notify the Commissioner that he objects to the valuation, but I shall invite the House to approve an amendment to the Ordinance extending the period for objections to be lodged to three months.

In considering the terms on which conversion to freehold should be permitted the Government had to take into account the fact that it would be abandoning for all time the revenue which otherwise would be derived from agricultural rents. After most careful consideration, it has

[The Minister for Local Government and Lands] been considered that the capital sum which it would be reasonable for the Crown to receive would be 18 years' purchase of the rent which becomes payable on 1st January, 1961. It may interest the House to note that the Member for the Coast when speaking in this House in November of last year mentioned that under the Irish Land Acts tenants purchased land from their landlords on the basis of 18 years' purchase; although I should perhaps add that present-day actuarial considerations and not the Irish Land Acts have determined the figure which the Government proposes.

The original Sessional Paper provided that the lessee would be given three years in which to opt to convert to freehold, but it has been represented, and the Government accepts, that this is too short a time and the period has therefore been extended to five years. I would at this stage like to refer to suggestions made in certain quarters that the farmer is being asked to buy a pig in a poke and that the leaseholder is being asked to pay for his freehold a sum to be assessed after his consent has been obtained. That is, of course, incorrect. As I have stated, the value to be placed on the land will be notified to lessees before the end of the year and the farmer is given five years from 1st January, 1961, to decide whether or not he wishes to purchase his freehold. If he proposes to object to the valuation, then he can wait until the matter has been referred to arbitration before deciding whether or not to convert, because it is unlikely in the extreme that arbitration proceedings will still be going on after the five-year option period has expired.

Sessional Paper No. 6 makes certain modifications in the proposals for the conversion to freehold tenure. Whereas under Sessional Paper No. 10 the purchase price could be paid either in a lump sum or over a period of ten years it has now been decided that payment can be made over a period of 20 years, interest being charged at 6½ per cent per annum. I do not think that anyone could quarrel with these repayment terms which will avoid the necessity for the farmer to make inroads into available capital which might be better spent on development. A further modification concerns the issue of title. Whereas under the earlier proposals the title would not be issued until payment had been completed in full, it is now proposed that in the case of titles which are unencumbered the title holder will be entitled to convert his leasehold to freehold immediately on payment of the first instalment of the purchase price. Where the existing title is encumbered, the title holder may elect to convert on a similar basis, providing that the existing encumbrancer's

consent is obtained. In either case, the Crown will have a statutory charge which will take priority over any existing encumbrances. Statutory provision will be made for the new title to be subject to the existing encumbrances in order to avoid the expense with which the title holder would otherwise be involved in discharging them and in creating fresh charges against the new title.

Whilst we are on the subject of the financial implications of conversions, I would draw attention to the fact that the new grants made upon conversion to freehold will be exempted from the payment of stamp duty.

The paragraphs in the Sessional Paper dealing with default without consent are, I think, self-explanatory and unexceptional. There is an important change in respect of entry and resumption powers of the Crown. Under Sessional Paper No. 10 of 1958/59 the Crown retained those powers which are prescribed in the Crown Lands Ordinance in respect of the new freehold title. In the Report of the Lancaster House Conference, however, the following passage appears under the heading of "Safeguards":—

"In this section of the constitution, Her Majesty's Government consider it important to include protection for property rights. Only by this means will it be possible to maintain confidence and to encourage development and investment, including the attraction of overseas capital, not only in the immediate future but also in the long term. Accordingly, Her Majesty's Government think it right to include provisions founded on the principle that, there should be no expropriation of property except to fulfil contractual or other legal obligations upon the owner, or for purposes to the benefit of the country (due regard being paid to human needs and individual hardship, confidence and stability, and advantage to the country's economy). Full and fair compensation should be given to the owner of any property expropriated; together with the right of recourse to the Courts (including the normal channels of appeal) for the judicial determination of his rights, and of the amount of compensation to be paid to him."

The Government consider that it would be inconsistent with this principle laid down in the Lancaster House Conference Report for the Crown to retain its right of resumption of land and it is proposed, therefore, that as stated in paragraph 11 of Sessional Paper No. 6 that the only powers in this nature to be retained shall be those whereby the Governor in Council may enter upon land and set up poles and carry electric light lines across the land or lay sewers.

[The Minister for Local Government and Lands] water pipes or electric lines therein without paying compensation for the land which will, of course, be restored to its previous condition, and make good all damage. All land required for public works in the future will be acquired under the Land Acquisition Act, 1894, of India, and compensation for the land and for improvements will be paid for as provided in that Act.

Before going on to the control machinery, there are two further aspects of the conversion of freehold on which I would like to touch. The first is with regard to change of user. Bearing in mind that the conversion to freehold is in respect only of agricultural land and is based on an agricultural rent, owners requiring a change of user to some other purpose, for example, residential or industrial development, will be required to surrender that portion of the land to the Crown who will make a re-grant on leasehold terms at a new rental and subject to conditions appropriate to the new use.

The second point concerns new grants of Crown land and here we have reconsidered the proposals made under Sessional Paper No. 10. The original proposals provided for a short lease with an option to convert, such an option only being exercisable after initial development conditions had been carried out. It was evident on re-examination that certain difficulties would arise from such a procedure, particularly where the lessee did not exercise his option, but had carried out certain development on the land. The Government proposes, therefore, that the system described in paragraph 16 of Sessional Paper No. 6 be adopted, which provides for an initial lease, the term of which will be co-terminous with the period during which the grantee is required to carry out specified development conditions. When that development has been carried out the grant in freehold will be issued. The Governor will have powers to extend these periods if for valid reasons the grantee is unable to carry out the development conditions in the time prescribed, but if the lessee fails to carry out the development during the original period or extended period which may be granted by the Governor, the lease will automatically determine.

Now, Sir, I should like to turn to that part of the Sessional Paper which deals with the control of subdivision and land transactions. The most important change which the Government has made in this part of the Paper is that subdivision now come within the purview of the control machinery. Under the proposed town and country planning legislation which I shall bring before the House this year, land will be zoned for particular purposes, including agriculture.

Every application for the subdivision of land zoned for agriculture will be examined in the first instance by the appropriate divisional board and either recommended to the planning authority for approval or refused. In the event of refusal the application will be subject to an appeal to a regional board, whose decision may be the subject of a further appeal to the board of appeal composed of Ministers appointed by the Governor at his discretion.

As stated in the original Sessional Paper, paragraph 17, the Government's proposals for control were intended to ensure that the determining considerations governing the ownership or occupation of land would be those of the economic use of land, sound agricultural development and good husbandry only. The Government considers that divisional boards should be given the power to refuse any subdivision which in their opinion is inconsistent with these aims.

The Land Control (Native Lands) Ordinance, 1959, establishes divisional and provincial boards for the control of transactions in land, the title of which is registered under the Native Lands Registration Ordinance, 1959. It is proposed that the Highlands Board and the Land Control Board shall be replaced by a system of divisional and regional boards which will in the first instance, in order to gain experience of their working, be limited to land in the Highlands comprising holdings of 20 acres and above, except land zoned for purposes other than agriculture. The boards will also have control over the disposal of land under 20 acres which the Minister for Agriculture may, under the Agricultural Ordinance, designate as agricultural land.

Hon. Members will realize that this is an important provision, especially in view of the policy of encouraging more intensive agricultural development on smaller holdings than are now generally farmed in the Highlands area. It is also the Government's intention that the machinery of control should eventually be more widely allied to all agricultural land in the Colony.

Since, as I have just said, the proposed boards will be concerned with the economic use of land, sound agricultural development and good husbandry the Government considers that they should be closely associated with the Board of Agriculture and its committees and sub-committees which have a statutory duty to advise the Minister for Agriculture, and I would mention in passing that the efficacy of the existing machinery of agricultural committees has been endorsed by the McGillivray Committee.

[The Minister for Local Government and Lands]

Before going on to the composition and duties of the board I would again refer to the remarks of my predecessor which I quoted at the beginning of this speech, namely that it would be unrealistic for us to expect to be able to impose an identical pattern at the outset but that we should aim at convergence of the policy and practice in the native lands and outside the native lands in those fields. The Government considers that although the machinery provided in the Land Control (Native Lands) Ordinance is suitable in those areas, it would be inappropriate outside the native lands where an entirely different pattern of farming exists. For example, although divisional boards in the native lands might appear at first sight to have wider powers than those we propose to confer on the boards outside the native lands, they are subject to any general or special attention of a provincial board, whilst provincial boards are themselves subject to any general or special direction of the Governor acting after consultation with the native lands trust board.

The Governor's powers in the case of divisional boards outside the native lands are limited to a direction as to classes of cases in which consent is to be withheld. He is not enabled to direct either provincial or divisional boards at any particular case or cases or class of case shall be approved. And herein lies I think an important difference. I am sure that all hon. Members will agree that such differences are necessary at present and that there is a strong case for special protection in certain African areas against unscrupulous exploitation of unsophisticated African tribes and people—naturally do not refer to any hon. Members of this House as being unsophisticated.

Since our original proposals were published the Government has received a variety of views as to the composition of divisional and regional boards, ranging from a proposal that they should be subcommittees of local authorities, to the opposite extreme, that they should be the subject of a special election. Bearing in mind, however, the functions of the boards and the main determining considerations to which I have already referred, the Government considers that its present proposals are fair and reasonable. It will be seen that the majority of members of divisional boards will be chairmen or members of agricultural committees and subcommittees. A district commissioner and an agricultural officer and, where thought necessary, a veterinary officer will be the only Government members, but an additional two members will be nominated by the county or counties concerned in view of the powers now to be granted to the boards to consider subdivisions. This representation is fully

justified as subdivisional schemes may place increased and expensive responsibilities on local authorities. The boards will elect their own chairmen and will have power to co-opt additional members who, it is suggested, will not have voting powers. The divisional board will have power to (a) give its consent, subject to any direction of the Governor, as to classes of cases in which consent is to be withheld to transactions in land and where application is referred to it by the Commissioner of Lands to transactions involving shares; (b) refuse to give its consent to transactions in land or shares when in its opinion (1) the applicant already has sufficient land or interest therein or shares in a company or companies having an interest in land, or (2) the area of land is such as to be unlikely to be economic for the intended purpose, or (3) the terms and conditions of the proposed transaction are onerous, or (4) the information before the board including any proposals for developing submitted by the applicant indicates that the proposed transferee is unlikely for any reason to be a good farmer of the holding; (c) recommend to the appropriate planning authority applications for the subdivision of agricultural land; (d) refuse to give its consent to any subdivision of agricultural land; (e) examine and refer for decision to a regional board any application for consent to a transaction; (f) advise on such matters relating to transactions in land as may be referred to it.

As hon. Members will notice, the powers have been expanded in what I have read to include as we consider the necessary powers of control over subdivision, and an appeal will lie to regional boards against a refusal to give its consent. The Government has considered most carefully what control should be exercised over share and mortgage transactions. With regard to the former, it is not considered practicable to control effectively share transactions in public companies. So far as private companies are concerned, however, there is the danger of speculative transactions and such transactions will therefore be submitted initially to the Commissioner of Lands who will, subject to any special or general directions by the Governor, either approve them or, where in his opinion the transfer or accumulation of transfers might effect a change in control of the company, submit the transactions to the appropriate divisional board. The normal channels of appeal will be open to Africans against refusal to approve the transaction.

So far as mortgage transactions are concerned, the Government considers, after very careful examination, that it would be neither effective nor desirable to exercise any control at the time of the contract, but that provision should be made to

[The Minister for Local Government and Lands] ensure that a mortgagee can only exercise his powers of sale or foreclosure or his power to appoint a receiver and manager after obtaining consent through the control machinery.

The original proposals for regional boards provided that the majority would be appointed by the Minister for Lands from a panel submitted by the Board of Agriculture. After receiving a number of representations on the composition of these boards, which included suggestions that they should be abolished altogether or that they should be presided over by a Justice of the Supreme Court, the Government considers that a regional board should consist of two persons appointed by the Commissioner of Lands, three persons nominated by the Board of Agriculture, and one person nominated by the County Executive Committee of the Executive Committee of the Association of Local Authorities of Kenya. No person who is a member of a divisional board will be eligible for membership of a regional board. It is felt that it would be wrong to have members of divisional boards on what is in fact the Appeal Body from the divisional boards. The duties and functions of the board will be to decide appeals against a refusal of a divisional board, to consent to a subdivisional proposal, or to land or share transactions, or to give its consent. In addition, it can refuse to give its consent to any transaction or application on those grounds on which a divisional board may also refuse consent. Except where the parties to a proposed transfer are of different races, the decision of the regional board will be final. In the case of parties of different races, however, there will be an appeal to the Governor. In the sections of the Sessional Paper dealing with control, I come to the Central Land Advisory Board. The only change in Sessional Paper No. 6 is that the number of members from each race are now specified and consist of six Africans, six Asians, including Arab representatives, and six Europeans, with the Minister for Lands as Chairman and the Commissioner of Lands as Deputy Chairman. Its functions are set out in paragraphs 33 and 34 of Sessional Paper No. 6 and I would draw particular attention to two of them. The first is that the board will not, as has been assumed by some bodies, concern itself only with agricultural land outside the Native Lands, but will exercise its functions of advising the Governor on land policy in respect of all land in the Colony, which will include the Native Lands, municipalities and townships. The second function will be to advise the Governor, at his request, in relation to appeals made to him. I would emphasize the advisory functions of the board in this respect. The decision in respect of an appeal does not rest with the board

but with the Governor, who will be free to consult any member or members as he sees fit, but he will be required to obtain the advice of those members of the board who belong to the same race as the parties concerned in the appeal.

Members will have noted that paragraphs 49-51 of the original Sessional Paper provided for control over inter-racial transfers of freehold wherein the freehold interest would be vested in a land trust corporation. The East Africa Royal Commission in Chapter 36 of its Report dealing with the tenure and disposition of land commented at paragraph 36 that there should be control to ensure that transfers should take the form of leases only and that reversionary rights should remain with the seller. There has, of course, been a considerable change in the climate of public opinion since the Report was published, but there still remained a feeling that in some way the freehold in European land should remain with the European, and that of African land with the African. This was considered by the Government, which felt that it would be impracticable to carry out the Royal Commission's recommendation that the reversionary rights should remain with the seller, but in keeping with that recommendation and with what were thought to be the wishes of the communities mainly concerned, a system was evolved to which I have referred above. In the light of representations which it has received, the Government has, on reconsideration, now accepted that the original proposals will inhibit rather than encourage inter-racial transfers; they have therefore been withdrawn.

I now come to the provisions regarding racially restrictive covenants and conditions. The Government has, since 1st June, 1958, included in all new grants of land in municipalities, townships and trading centres, a condition that the grantee shall not impose on any dealings in the land restrictions against the ownership or occupation thereof by members of a particular race. The only exceptions to this policy have been where grants were issued in consequence of a surrender and regrant in areas where the Crown had established a building scheme. To constitute a building scheme there must be a common landowner, a defined area laid out for sale or lease of plots subject to restrictive covenants, and evidence that the landowner and purchasers or lessees intend that the covenants be for the benefit of all. It is not, however, the intention of the Government to enforce any racially restrictive covenant or condition imposed by it in any grant or lease of Crown land or to which it may otherwise have become a party. Moreover, it proposes to take steps to prevent the effective imposition of racially restrictive covenants or conditions by private persons in the future, save where the land is

[The Minister for Local Government and Lands] already comprised within existing building schemes containing racial restrictions or in the case of grant made in consequence of a surrender of title containing a racial restriction. The legislation will be drafted to give retrospective effect from the date on which Sessional Paper No. 10 of 1958/59 was laid before the Legislative Council.

The Government has considered most carefully whether all existing racially restricted covenants or conditions should be rendered unenforceable by the enactment of legislation for this purpose, but has decided that it should not be introduced. This matter raises the most important issue of the sanctity of private contracts, and it is felt that the maintenance of this principle overrides all other considerations. This decision has been reiterated many times in this House, and I feel sure that those Members who have been critical of the Government's policy. In the past will agree that the present proposals represent an important, effective and positive step in the right direction.

Attached to Sessional Paper No. 10 of 1958/59 were appendices giving very brief details of complementary legislation which would need to be introduced. I have already mentioned that I shall be bringing before the House a Town and Country Planning Bill before the end of this year. This has been modified with regard to subdivisions to bring it in line with the proposals contained in Sessional Paper No. 6 of 1959/60. The amendments to the Agricultural Ordinance, 1955, and an Agricultural Landlords and Tenants Bill fall within the portfolio of my hon. friend the Minister for Agriculture. I understand that he will be introducing them into this House, a Bill to amend the Agricultural Ordinance and the drafting of an Agricultural Landlords and Tenants Ordinance is at present in the hands of a committee sitting under the able chairmanship of the hon. Specially Elected Member, Mr. Slade.

Sir, I now want to turn to more general questions. The two Sessional Papers which are the subject of this debate reflect a new land policy outside the native lands, which the Government sponsors, and which is one of the most important and significant changes in Kenya's history. The proposals in these Papers will allow for a completely new approach towards our primary task of developing our major economic asset. No longer will our agricultural land be subject to racial allocation, but it will be available for proper and intensive development by farmers of any race, provided that such individuals have the capacity and the means to fulfil this great responsibility. In particular, the adoption and implementation of this policy will enable the re-

settlement and land development schemes, on which my hon. friend the Minister for Agriculture has been working, to be put into effect. The Minister for Agriculture will give this House more details of the type of schemes he has in mind and the sums of money that will be available. It is sufficient for me to say that the finance that is now in sight as a result of our joint visit to the United Kingdom lately should be very adequate to achieve two things. Firstly, it should allow the Government to relieve some of the population pressure in certain parts of the native lands, and, secondly, it should inject into the agricultural industry generally sufficient finance to renew confidence in that industry, and to maintain reasonable land values.

The policy reflected in these Papers is the result of a considerable period of discussion and re-thinking, especially on the part of the European community. Whenever revolutionary measures are introduced it is usually possible to trace the source to a few imaginative, far-sighted people, who have stepped out ahead of the majority, and have preached an unpopular gospel at the risk of their careers, their reputations, and their immediate personal comfort. The Government is convinced that this new policy is right, and I have no hesitation in giving full credit for this culmination of a long and harassing campaign to Mr. Michael Blundell and his colleagues, who first advocated a new approach to the policy of land tenure in Kenya. I am also convinced that the great majority of Europeans in Kenya today recognize the rightness of the new approach, although there may be difference in the detail of control, which no doubt will be made clear in this debate.

As I have said, this new policy will allow for numbers of farmers other than Europeans to be settled in what are known now as the European Highlands, and this will result in further intensive, but controlled, development in those areas which will be greatly to the benefit of the country generally. In saying this I do not want to be misunderstood, and I must make it quite clear that, the basis of the success of this new development goes back into history. It is the efforts, the courage and the determination of the European farmers, both in the present and in the past, that has made it possible for the Government to consider more intensive development and resettlement today. One does not want to strike a too personal note in a debate like this, but I have either followed or participated in the development of agriculture in Kenya for over 30 years. I have been through the slump, I have seen the ravages of the locusts, the destruction of hundreds of thousands of acres of coffee by C.B.D. I have experienced the disaster of foot-and-mouth, and I have also seen

[The Minister for Local Government and Lands] the dogged determination to meet and overcome these and other plagues, and the result of that determination in gradually increasing yields and improving quality which has indeed been the basis of Kenya's expanding economy.

None should forget what we owe to these enterprising and courageous people, and in this new era when all will be able to benefit directly from their trials and hardships, all should be grateful and be mindful of their example.

When I say that I do not point fingers at any person or race. No one with any sense of reality will think that everything will be easy in this new phase. It will not be easy for an African to make a success of a comparatively large farm in the settled areas; conditions will be different from those he is used to. It will not be easy for Europeans to adjust themselves to the "new look". We will all be pioneers again, but it will be worth it. This new policy is the portal to a new Kenya where farmers of all races will be able to work as good neighbours, helping each other and increasing the prosperity of the nation. This is something that has never yet been done in Africa. Some people think it is impossible. We can do it, but mostly it will be through our own efforts. We will have help from outside, we have many friends who wish us well, and will help us, but primarily ours is the responsibility. Although there are tragic happenings taking place today in some parts of this Continent, nothing has shocked me more than the policy of despair that has been preached of late from so many platforms. Looking back on the difficult past and the way the pioneers of all races overcame what seemed almost insuperable obstacles, I will not acknowledge that the spirit of Kenya has been so sapped that the future can only be one of gloom. This new policy can be made to work giving immediate and long-term advantages to all races and tribes.

There is one factor that has caused considerable concern in the minds of many people of all races, and that is the security of title to land. I fully recognize the tribal and racial emotion that is generated when title and land claims are discussed, but it seemed to me and to the Government that a declaration of policy would have to be made before large sums of money were spent on resettling people on the land. This was one of the matters which the Minister for Agriculture and I went to London to discuss. We recognized that a measure of land reform was necessary so that the state of some of the over-populated areas and the landless could be ameliorated. It must also be recognized, of course, that settling a number of families on new land is not, and never

will be, the whole answer to this problem. In no country in the world that I know of does every citizen own a piece of land, and it is quite impracticable in Kenya. Paid employment will have to be found for many either within a more intensively developed agriculture or in commerce and industry. But it is recognized that action must be taken now to help the areas which are in the most difficulty. This was another matter which my colleague and I discussed in London, and the Minister for Agriculture will be giving more details of the result in this debate.

But before such reforms and resettlement can take place the land legislation has to be amended on the principles suggested in these papers, and it is also necessary, if these land reform and resettlement schemes are to be of permanent value, that not only present landowners, but also those to be resettled are assured that their titles and occupancy are secure. It is logical, therefore, that the clarification of position regarding title and security of tenure is a prerequisite to the introduction of the new policy and the land reforms and development that will stem from it. I can assure the House that Her Majesty's Government fully recognizes the importance and the urgency of this. They also recognize the difficulties, especially for African Elected Members, in making any statements on land, especially with a general election looming ahead. The position, however, is critical. There is no doubt that agricultural development has slowed down in the last few months, and in some cases it has ceased. This will have an almost immediate effect on our economy. It will lead, not only in the long term, but now, to less Government capital development and so to more unemployment; to less Government revenue and so to a contraction of services, the first of which to suffer will naturally be social services. This creates a vicious circle of loss of confidence, less investment, less revenue, more unemployment, more misery, more instability and so on, and it must not be allowed to happen.

I repeat Her Majesty's Government fully recognizes the importance and urgency of this matter, and for this reason the Secretary of State for the Colonies has today given the following reply to a question in the House of Commons. I will read it.

"Her Majesty's Government have been in close touch with the Governor and his advisers on the security of title to land and on general land policy in Kenya.

Her Majesty's Government regard the future security of title to land as a matter of vital importance. They have already had discussions

[The Minister for Local Government and Lands] with Ministers of the Kenya Government about the best method of ensuring such security and considerable work has already been done. As soon as detailed proposals have been prepared further discussions will take place with the Governor and his Ministers with a view to a final statement being made.

Her Majesty's Government are convinced that the principles in Sessional Paper No. 10 of 1958/59 and No. 6 of 1959/60 represent the right way forward in land policy since they would put land tenure on a proper basis, and enable the development and resettlement schemes mentioned in the Lancaster House Conference Report to begin. These matters are clearly of the greatest importance. For this reason it is proposed that after the debate on the Sessional Papers (in the Kenya Legislature) the necessary legislation will, subject to Her Majesty's pleasure, be enacted by Order in Council."

That is the end of the statement.

Sir, I would like to expand a little on the Secretary of State's statement. Firstly, when I was in London I was authorized by the Secretary of State to say that it was his intention that the examination mentioned by the Secretary of State would take place at the highest level. It has now been confirmed that this will be so, and I am authorized to add that the highest level of legal advice will be available to the Secretary of State and his colleagues. I suggest to this House that no better proof of determination to solve this problem of security of title could be given by Her Majesty's Government than the Secretary of State's statement which I have read coupled with the authorized explanation that I have given.

I would point out, too, that the Governor and his Ministers will be further consulted when this high level examination has been made. In this regard I can assure the House that there will be no procrastination and these further consultations will not be unduly delayed. Hon. Members should note that another extremely important point arises from the statement. Her Majesty's Government feels that general land policy in Kenya is so vital that they themselves will take the responsibility to enact the main provisions of such policy through an Order in Council. We must be realists and admit that there are many varying views in this country and in this House on land. I suggest that the Secretary of State in his statement is making it clear that being convinced of the rightness of an economic rather than a racial approach to this problem he is determined that these principles will be adopted and is not prepared to yield

to racial pressures whether they be generated in London or here. On the other hand hon. Members should not miss the significance of the words "after the debate on the Sessional Papers" which show that Her Majesty's Government will take into consideration all the points raised from different sides of this House before enacting the legislation. I must also add and repeat that this House will have full opportunity to discuss a number of details which will result from the adoption of the new policy when consequential legislation comes before this House in the form of amendments to the Crown Lands Ordinance, the Agricultural Ordinance, the Agricultural Landlord and Tenants Bill, and the Town and Country Planning Bill.

Sir, in the last few months there have been many organizations and parties formed and they have adopted some land policy or other as main planks in their platforms. Many meetings have been held and many speeches made. I believe the people of the country have become more and more confused. During this time of statement and counter statement on land policy the Government has been quietly but determinedly planning for the future. I think it would be fair to say that the attitude of the Government towards this problem is based on two principles. Firstly, the main one underlying these two Sessional Papers that land should be regarded as an economic asset and developed as such on a non-racial basis; and secondly that the Government will do all it can to help everyone who is determined to stay in Kenya and to face and overcome the problems of the future.

These Sessional Papers and the agricultural schemes which can begin with the adoption of the new policy, and which will be outlined by my hon. friend the Minister for Agriculture, cannot be considered as a complete land policy for Kenya. They are merely a "beginning". In the development and expansion of this land policy, and in the implementation of settlement schemes, the African people will, of course, be closely associated now and more so in the future. The Sessional Papers are indeed closely connected with the result of the Lancaster House Conference although as I have said the seed of the new policy was sown long before.

Lancaster House confirmed the policy and gave it breadth. Some have decried the spirit of Lancaster House. I do not. What was born there and is still alive—it may be a sickly but it is one that can still grow strong and healthy—was the realization that it is Kenya that counts and not races nor tribes. Kenya will suffer and therefore so will we if we talk of and plan for this purely racial unity, be it black, white or brown.

[The Minister for Local Government and Lands] We see emanations of this in many directions and what are the almost immediate results. They encourage distrust and suspicion. They can never flourish because at their heart is a canker of selfish sectionalism.

Sir, in the sphere of Land Policy therefore today the Government offer to this House and to the people of Kenya a different approach. These Papers are the key to a non-racial, non-tribal development of our main asset. All ideas and plans for land reform and development depend on our citizens' attitude to this vital move on the chequered board of Kenya's agricultural land. We cannot afford to hesitate or delay and I am sure that this Motion will obtain the support of the majority of this House who are, I know, men and women of goodwill towards each other and to Kenya.

I beg to move.

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): Mr. Deputy Speaker, Sir, I rise to second this Motion which has been so ably moved by my hon. friend the Minister for Lands. He has presented hon. Members with a very clear exposition of the Sessional Papers and of the machinery which the Government proposes to set up for the implementation of its own land policy. I would like now, Mr. Deputy Speaker, to carry the theme developed by my hon. friend one stage further, and to present to the House the agricultural aspect of the land picture. The hon. Member referred to the Sessional Papers as being the key to a non-racial and non-tribal development of our main asset, land. I now propose to turn the key and open the door and give to the House an outline of plans which the Government has prepared for the implementation of Kenya's land policy in its agricultural aspects.

In the preparation of these plans the Government has been guided by three main considerations: first, Mr. Deputy Speaker, the fundamental importance of retaining and developing our main national asset, the land, on an economic basis throughout the Colony. Secondly, the importance of creating a situation in which farmers of all races will have confidence in the future of the agricultural industry in this country, and in which the overwhelming majority of farmers of the European and Asian communities will wish to remain in this country and to continue to make the irreplaceable contribution which they now give to our economy. Thirdly, the necessity of taking effective and extensive measures to relieve the social problems created by pressure on the land in certain areas.

With these factors in mind, the Government has prepared a three-year land development plan which embraces five main schemes, and I would like, Mr. Deputy Speaker, to outline to the House each of these in turn.

Firstly, the scheme which has hitherto been known as the small farm settlement scheme and which I should like to designate as the Government yeoman settlement scheme. I gave a summary of the principles underlying this scheme during the Budget Debate, but in order to give Members a complete picture today I would like to summarize once again the main features: These are as follows: (1) These schemes will be non-racial. They will be open to persons of any race who have a reasonable knowledge of farming or who are prepared to undergo a period of training, and who possess a minimum capital of approximately £200. In practice, there can be little doubt that the vast majority of people who will benefit from these schemes will be Africans. (2) Existing farms which are purchased for subdivision will be divided into holdings which will take into account the following factors: (a) the economic potentialities of the land; and (b) the personal capacity and capital available to those who are known to be likely applicants for the subdivisions. There will therefore be considerable diversity in the sizes of these holdings. (3) A yardstick will be laid down for the minimum size of any holding and this yardstick will be taken into consideration by divisional boards, which were mentioned by my hon. colleague, when considering subdivisional plans put before them. It has been agreed that the yardstick should be a holding capable of producing a minimum cash surplus of £250 after meeting subsistence requirements and after covering financial commitments on borrowed capital and/or rent. This will mean that the gross return will be in the region of £350 to £600. (4) The scheme will embrace three categories of farmers: (a) owners, who will be persons of known farming ability having sufficient capital to buy their holding outright and who thereafter will be in a position to obtain their future capital needs from either the Land Bank or the Board of Agriculture, or both, perhaps; (b) assisted owners, who will be required to have not less than 10 per cent of the initial purchase price of the farm, and further personal capital amounting to not less than 50 per cent of the total estimated investment; (c) tenants, who will be persons having lesser capital resources and who will be given tenancies on 40-year agreements which will include an option to purchase. Tenants will be encouraged to become assisted owners as soon as their financial position makes this practicable. (5) Mr. Deputy Speaker, adequate field services will be maintained by the Departments of Agriculture and Veterinary Services. In general these services will

[The Minister for Agriculture, Animal Husbandry and Water Resources]

be a charge on Government revenue and not on the settlers. (6) The establishment of a sound economic structure of small farms will require substantial expenditure on water supplies. The capital cost of this will be met from loan funds which will be recovered over a period of years by means of water rates charged, in general, to the farmers concerned. (7) Mr. Deputy Speaker, it is doubtful whether the costs of surveys, roads of access, soil conservation work, etc., can be met in full by farmers themselves and it is proposed that these costs should be paid for at subsidized rates which will be arranged in the interest of the long-term economic value of the whole project to the economy of the country.

These Government sponsored yeoman settlement schemes will be financed in two ways. Money for the purchase of farms will come from the loan of £3.15 million, on which the House has already been informed. This loan is conditional on the participation of international finance. Development by owners, assisted owners and tenants will be financed by development loans from the £5,000,000 for which application has been made to international sources. If this loan is secured expenditure on yeoman settlement will total just over £8,000,000 in the next three years. We would hope to secure further funds for this purpose in the following three-year period.

It is envisaged that at the stage when the settler has paid 40 per cent of the value of the land an application could be made to the Land Bank to take over the amount owed by the assisted owner.

I would like to stress, Sir, that these yeoman schemes will be and must be economic ones. They must be economic in order to conform with the conditions under which we will be borrowing money to carry them out. But this is not, of course, the important reason, which is that the country cannot afford to stagnate on production. Our whole future development in all spheres—educational, medical, communications and others—depends on increasing our agricultural productivity and therefore in dealing with good and fertile land our plans must provide for increased productivity from it.

The second type of settlement scheme, Mr. Deputy Speaker, which we envisage, is very similar to the first in concept, but with this essential difference: it will be organized and, in the early stages, financed from private and commercial sources and not by Government. This type of scheme I would like to call the private yeoman settlement scheme. Under schemes of this type private and commercial concerns, who will in

some cases be the present owners, will prepare and submit subdivisional and development plans. These plans, Sir, will, in the first place, be submitted to the proposed Settlement Authority (which I shall be describing to the House later in my speech) which will ensure that the plan fits in with the overall development plan operated by the Authority. The Settlement Authority will be concerned in two ways. Firstly, it will wish to safeguard tenants against exploitation. Secondly, it will no doubt wish to consult the tribe or tribes principally affected by the particular scheme proposed.

Once the Settlement Authority has given its approval in principle the plans will be referred to the divisional board which will be dealing with all applications for transfer of ownership and subdivision under the procedure laid down in the Sessional Papers before the House. Once the application has gone through the control machinery, it will again come before the Settlement Authority which will be responsible for giving its final approval.

It is proposed, Mr. Deputy Speaker, that the basis of these private schemes will be a system of tenant-purchase. In some cases the Land Bank might be prepared to assist them by the provision of development loans, but in general it is intended that this type of scheme should be financed by private and commercial capital.

Once again I must emphasize that this type of scheme must be economic and the main criterion to be applied will be increased productivity of our land. Hon. Members will no doubt be interested to know that schemes of this type have already been put forward to me by private individuals and by commercial companies, and I am confident that considerable development can take place along these lines.

Closely connected with these privately sponsored schemes is the third prong in our land development programme—namely the Land Bank. As I stated, Mr. Deputy Speaker, during the Budget debate, the Government intends to change the status of the Land Bank into that of a more broadly based organization independent of the Government. If this change is made, we are advised that we shall be able to attract £3,000,000 over the next few years from international sources to be handled by the Bank in furtherance of settlement schemes.

As I have said, it is expected that £3,000,000 might be required by the Land Bank in the next few years. But I must here sound a note of warning to all hon. Members. Success or failure in attracting outside capital for agricultural development is going to depend on the degree of confidence which exists in the future of our country. We are not dealing here

[The Minister for Agriculture, Animal Husbandry and Water Resources] with capital investment for industry which, however vital to the economy, may seem remote to the small farmer, but we are dealing with capital directly required to ensure a decent living for thousands and thousands of smallholders. The future of these small farmers, Mr. Deputy Speaker, is therefore more closely tied with establishment of confidence than they may appreciate.

Now the fourth type of settlement we propose to carry out is the continuation of assisted owner and tenant schemes of the kind now handled by the European Agricultural Settlement Board for the larger farming units, the essential difference from the present set-up being that these schemes will in future be for all races in all areas, and that they will be administered by the new Settlement Authority.

I now come to the fifth major scheme in the programme for the implementation of our land policy. This is a new and far-reaching development of the greatest importance. Hon. Members will be aware of the Government's concern for the solution of problems arising from pressures on the land in certain areas of the Colony. In the settlement plans which I have already outlined this afternoon we are in general aiming to cater for the needs and aspirations of the kind of farmer who has already made some contribution to the economy of the country, either, Mr. Deputy Speaker, in the field of agriculture or in other employment, who has some standing in the community and who now seeks an opportunity further to improve his position by acquiring his own land or land of higher potential than his present holding and to be aided with finance for the development. But we must not ignore the needs of others who, possibly through no fault of their own, have not succeeded in establishing a position in life, who possibly have no land at all or at best a small strip which is barely capable of providing even subsistence for the man and his family; and who finally probably possesses neither the skill nor the education, nor the inclination for an urban life. We all know, Mr. Deputy Speaker, only too well that a large class of this type of person exists in the Colony today. They present an urgent problem which is primarily a social one, but which also inevitably impinges on security. The Government does not consider that its land programme would be complete unless it included a scheme of land reform which is capable of making a significant contribution towards the solution of this very grave problem.

These matters were discussed by my hon. friend the Minister for Lands and myself with Her Majesty's Government during our recent visit

to the United Kingdom; and the case which we then presented was received with the utmost consideration and sympathy. As the result of these discussions, the Government has decided to launch a new type of settlement scheme which I would like to call "The Peasant Settlement Scheme". Under this scheme we intend to obtain around 60,000 acres for the settlement of about 4,500 families each year. With approximately five people to a family, this is a figure of over 20,000 human beings. In the first three-year period we hope to accommodate a total of 10,000/15,000 families.

We have several kinds of land in mind for peasant settlement of this type, both within and without the Highlands. It would, for obvious reasons, Mr. Deputy Speaker, be unwise to indicate at this stage exactly which areas chosen will have to be related to the needs of those parts of the Colony where pressure on the land is most acute; and that selection of land to be purchased should be determined accordingly. We estimate that a total of £3,000,000 will be needed for this scheme in the first three years. Money for the start of this scheme will be found from the balance of Kenya's C.D. & W. allocation which it had previously intended to reserve for the 1963/66 planning period. Arising out of the discussions we have had with Her Majesty's Government we hope that the balance will be found for the remaining period.

Mr. Deputy Speaker, the standard we propose to aim at on these peasant settlement schemes is support for the farmer's family at a reasonable standard of living and a cash income in addition. The size of the individual holdings will be determined accordingly. Settlement on scheme areas would, of course, be organized by the Settlement Authority with the assistance of the Department of Agriculture who would carry the scheme as far as the stage reached in land consolidation programmes now being carried out in the African areas, namely, demarcation of boundaries and the issue of a farm layout.

Before I leave the subject of this new type of peasant settlement scheme, I would like to add this: should private concerns wish to operate this type of scheme—and we have already had application to go ahead with schemes very much along these lines—in the same way as I have described in respect of the yeoman settlement schemes, their doing so would, of course, be subject to the approval in the first instance, of the Settlement Authority and of the divisional boards in each case.

Finally I must make it clear that agriculture cannot accept full responsibility for absorbing all the unemployed in the Colony. This must largely be a matter for urban industry and this will once

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again depend on the future of capital investment in our country. But agricultural industries can make a significant contribution to the solution of the problem. I might particularly mention the tea companies which, if all goes well, will be expanding at the rate of 2,000 acres of planting a year. This expansion will require an appreciable labour force, employed—as we found out on a visit of some Members of this House to the tea areas last week-end—at good wages and in excellent conditions. But again I must emphasize that this expansion cannot be expected to take place unless the investors have a measure of confidence in the stability of our country.

The total financial requirement for all the schemes I have outlined is around £14,000,000 in three years of which £6,000,000 would be needed for land purchase. Once again, I must stress—I do not think that I can do so too often, Mr. Deputy Speaker—that we have a reasonable assurance of meeting all our requirements only if a reasonable measure of confidence in the future stability of this Colony is held by potential investors. In other words, the carrying out of these schemes on which the future well-being of so many thousands of our population depends is tied to the stability of Kenya.

There is one other aspect on which I should give a word of warning to hon. Members. The sums to which I have referred are a lot of money and the resources of my Ministry will be strained to the utmost in ensuring that it is expended in a controlled and orderly manner. The picture, Mr. Deputy Speaker, which I am trying to paint of the Government's proposals to sustain the agricultural economy would not be complete without reference to the African areas where an enormous potential still lies virtually untapped. It should hardly be necessary for me to say that Government's plan for agricultural development is an overall one and provides for maintenance and expansion of the agricultural economy throughout the Colony and not merely in the Highlands.

In the African areas we are moving satisfactorily forward with the Swynnerton Plan for cash crop development. It would not be appropriate in terms of this debate to go into details of these plans, but I should perhaps remind hon. Members of the £2,000,000 International Bank loan recently approved by the House for furtherance of the Swynnerton Plan which has enabled the Government to provide £1,000,000 for loans to African farmers, co-operative societies and statutory boards and further the allocation of £1,000,000 to development of produce roads.

I should also add that our proposals for the establishment of a Tea Authority for the development of tea on small holdings are also in a very advanced stage. The establishment of this Tea Authority will depend on an application for finance of over £1,000,000 which has been made to the Colonial Development Corporation for the development of tea in the field. Further money, Mr. Deputy Speaker, will be required for tea factories. Expansion of other cash crops is being accelerated where marketing opportunities exist.

Now, Sir, the implementation of the land settlement and reform plans which I have outlined will necessitate some changes in the framework of agricultural legislation. Three main changes are proposed. First, the new conditions in farming which will spring from the Government's policy as laid down in the Sessional Papers will create a need for legislation governing the relationships between landlords and tenants. A committee, as has already been said this afternoon, has been set up under the hon. Specially Elected and learned Member, Mr. Slade, and is at present at work advising Government on this legislation. Members of the House of all races are represented on this committee. Mr. Deputy Speaker, the legislation which will arise from their recommendations will be known as the Agricultural Holdings Bill and it is hoped to lay this before the House at the same time as, or perhaps soon after, other legislation implementing the Government's land policy has been enacted. It would perhaps assist hon. Members if I stated that it is the view of the Government, as at present advised, that this landlord and tenant legislation could not in practice be applied to holdings of less than 20 acres.

Secondly, Sir, the Government proposes to introduce a Bill which will repeal the European Agricultural Settlement Ordinance and which will abolish the European Agricultural Settlement Board. As I have already said, it is the view of the Government that henceforth all settlement of land should be on a non-racial basis. The European Agricultural Settlement Board was set up to handle European settlement and I do not think that anyone could deny that it has done a magnificent job. Moreover, in carrying out its task it has made a most significant contribution to the economy of the country, for the great benefit of all peoples in Kenya. But, Sir, in the changed conditions of today it is obviously inappropriate to have a board dealing with the settlement of one race only. We therefore propose to establish a Land Development Settlement Board under the Agricultural Ordinance.

I would like to mention in passing that, at the same time, it is proposed to create a trust which will be responsible for administering the affairs

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of existing tenants and assisted owners of the European Agricultural Settlement Board.

The functions of the Land Development and Settlement Authority, should, it is proposed, be as follows:—

- (a) To administer all small farm settlement schemes for all races in all areas, including the yeoman and peasant settlement schemes which I have described.
- (b) To exercise the present functions of the European Agricultural Settlement Board in relation to all future tenants, tenant-purchase and assisted-owner schemes, again for all races in all areas.
- (c) To act as agents for the Trustees to be appointed to administer existing European Agricultural Settlement Board schemes.

At the same time (and this is the third change in legislation to which I have referred) it is proposed to take the opportunity to effect certain other amendments to the Agriculture Ordinance with three objectives in view:—

- (1) Streamlining present legislation.
- (2) Adapting the organization of the industry to meet the new circumstances imposed by the Government's land policy.
- (3) Implementation of the recommendations of the MacGillivray Committee.

The House, Mr. Deputy Speaker, will in due course be given an opportunity to debate this legislation and it is not necessary for me to give the details at this stage. I think, however, it would be helpful if I gave a very broad indication of the changes proposed for the Agriculture Ordinance.

The first is the Board of Agriculture (Scheduled Areas). The size of this Board is being reduced in order to be able to do away with the Executive Committee and to enable all business to be conducted by the full Board. The main change is that the nominees of marketing organizations and agricultural industries who have hitherto been full members of the Board will become associate members with rights to attend and to vote only for such items as, in the opinion of the Board, directly concern them.

The functions of the Board will remain unchanged except that it is intended to implement the recommendation of the MacGillivray Committee, that is that the Board shall be associated with the Annual Price Review.

I would, Mr. Deputy Speaker, like to mention at this point that in order to obtain the necessary co-ordination, the posts of Chairman of the Board of Agriculture (Scheduled Areas) and of the Land

Settlement Authority will be filled by the same officer during the three years we are now considering and that a post will be created carrying this dual responsibility for which approval of the Legislature will be sought in due course.

Now, Sir, agricultural committees in the Scheduled Areas. It is proposed that agricultural committees should be empowered to co-opt not more than three members with full voting powers instead of nomination of the members by the Minister as at present. It is also proposed that the district commissioner should be *ex officio* a member of the agricultural committee in his district.

The personnel of agricultural committees will be substantially the same as that of the divisional boards and it has been suggested that new elections should be held for these committees because of the new functions which members will be performing, particularly in relation to transfers of ownership and control of subdivision. The same suggestion has been made with regard to agricultural subcommittees, and I would like to take this opportunity of explaining to the House just what the position is at present. The position is that there are 67 agricultural subcommittees with a total of 275 members. Ninety-eight of these members will be retiring in rotation at the end of this year and a further 110 will retire at the end of 1961. In addition, Mr. Deputy Speaker, all chairmen and deputy chairmen are required to give up their offices annually. They can, of course, after themselves for reappointment, but no chairman or deputy chairman of an agricultural subcommittee or committee may hold office for more than three consecutive years without obtaining the special consent of myself as Minister. I consider, therefore, that there is ample provision, Mr. Deputy Speaker, in the Agriculture Ordinance to ensure a regular turnover of membership sufficient to reflect current opinion in committee and subcommittee areas and the Government therefore does not intend to accept the suggestion that fresh elections to those bodies should take place.

Now, Sir, with reference to ALDEV. It is proposed that the title of ALDEV should be changed to that of the Board of Agriculture (Non-scheduled Areas). This is to give recognition to the wider functions which this Board will be performing to which I shall refer in a moment.

It is also proposed to reduce the size of this Board in order to do away with the Executive Committee and to enable all members of the Board to participate in all business. At the same time, it is proposed to increase African representation so that African farmers will be in the majority and so as to ensure that, so far as is possible, the constitution of the Board of Agriculture for the Non-Scheduled Areas is on exactly

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the same lines as that for the corresponding Board in the Scheduled Areas. With the same object in view, it is proposed that the associate members of the Board for the Scheduled Areas should also be associate members of the Non-Scheduled Areas Board.

The new Board, Mr. Deputy Speaker, will continue to perform the same functions as what we have come to know as "ALDEV," except that the responsibility for major resettlement will be gradually transferred to the Land Development and Settlement Corporation. In addition, and again to bring the Non-Scheduled Areas Board in line with that of the Scheduled Areas, the new Board will advise the Minister on production policy and will also participate in the annual review of the agricultural industry.

Now, Sir, agricultural committees and subcommittees in the Non-Scheduled Areas. It is proposed, Mr. Deputy Speaker, that provision should be made in the Agricultural Ordinance for the establishment of agricultural subcommittees in the Non-Scheduled Areas where these are warranted by the general state of advance in the districts concerned. These subcommittees will correspond to those already existing in the Scheduled Areas. Members of these subcommittees will be appointed in the first place, but where registration of holdings has been effected it is proposed that members can then be elected by the farmers themselves. Where these agricultural subcommittees are established or being established we shall be able to make district agricultural committees more representative of African farmers by making provision for appointment to the district committee to be made by each subcommittee.

I would like finally, Mr. Deputy Speaker, to say a word about timing. The Government had hoped to be able to start a pilot scheme for farm settlement by purchasing about 2,500 acres in one or two blocks this year and to have the whole scheme in full swing with the settlement of 800 to 1,000 families a year from the beginning of 1961 onwards. It is now clear that legislation will not be enacted in sufficient time for this to be done. We are, therefore, reshaping our plans on the assumption that the necessary legislation will be enacted, I hope, before the end of this year. In view of the urgency of making a start, we shall now unfortunately have to dispense with the small pilot scheme which would otherwise have been desirable, and it is probable that our programme for 1961 will be something midway between the original pilot scheme for 50 settlers in 1960 and the original full programme of 800 to 1,000 settlers to which we had hoped

to build up by next year. These figures, Mr. Deputy Speaker, are the yeoman-type scheme with no reference at all in numbers to the other scheme—the peasant settlement scheme. The peasant settlement scheme; our figures have yet to be worked out, but assuming the necessary legislation is enacted, I have every hope that we shall be able to make a start with this scheme very early next year.

— I have tried, Sir, to give to the House a very broad outline of our proposals on the agricultural side for the implementation of the new policies set out in the Sessional Papers. What I have said covers, of course, only the first three-year stage of our land reform programme and the whole, I need hardly say, depends on the acceptance by the House of the proposals set out in the Sessional Papers and on the subsequent enactment of appropriate legislation.

No doubt we shall be told by some that the large amount we intend to obtain for our schemes over the next three years is not enough. But it is sufficient to permit some of those who, mistakenly in my opinion, wish to seek their future elsewhere, to do so. We shall also be able to meet the particular needs, and I appreciate this very much, of those who for special private, medical and compassionate reasons are obliged to sell their farms. I must, however, make it abundantly clear that it is our intention to utilize the funds to which I have referred primarily to further the interests of those others who will be starting to farm under the plans I have indicated and those already established who are carrying on farming with determination to continue with their farming career in Kenya.

Dependency has been created by many factors, Mr. Deputy Speaker, but in the meanwhile the Government has been, as my hon. friend said, quietly, firmly and effectively pressing ahead with its plans for the future agricultural development of the Colony.

Our intention is to recreate a sound measure of confidence in the future of agriculture in Kenya in which all races will participate and we believe that the proposals I have outlined will help achieve this. Firstly, through the emergence of a big buyer of land; secondly, by creating conditions which will enable the Highlands to be productively and economically farmed by persons of all races. Thirdly, Mr. Deputy Speaker, by wise and far-reaching plans for the development of the vast potential of the African areas. Fourth and lastly, by relieving the needs of those who are now suffering from intense pressure on land in certain areas.

Mr. Deputy Speaker, I beg to second.
Question proposed.

ADJOURNMENT

Sir Charles Markham: Mr. Deputy Speaker, I beg to move that the debate be now adjourned. We have two very important speeches and we on this side would like time to consider them.

Mr. Blundell seconded.

Question proposed.

The question was put and carried.

Debate adjourned accordingly.

The Deputy Speaker (Mr. Conroy): I accordingly adjourn Council until 2.15 p.m. tomorrow, Thursday, 21st July, 1960.

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

Thursday, 21st July, 1960

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

[Mr. Deputy Speaker (Mr. Conroy) in the Chair]

PRAYERS

NOTICES OF MOTIONS

AFRICAN BUSINESS: MINISTERIAL REORGANIZATION

Mr. Mboya: Mr. Deputy Speaker, I beg to give notice of the following Motion:—

THAT this Council, being convinced of the need to stimulate and encourage African business and commerce in the rural as well as urban areas, is concerned at the lack of co-ordinated effort and the existence of apparent confusion over legislation and policy arising from the fact that the Ministry of Local Government and sometimes the Provincial Administration are made responsible for these activities and calls on the Government to reorganize the area of Ministerial responsibility so that all the efforts and programmes and policies of encouraging African business may come under the Minister for Commerce and Industry.

JUSTICE IN AFRICAN COURTS

Mr. Odings: Mr. Deputy Speaker, I beg to give notice of the following Motion:—

THAT in view of the highly unsatisfactory practices employed in the administration of justice in the African courts by interested staff of the Department of Administration, where there are threats to respect for justice, this Council notes with grave concern the continuity of these practices and therefore urges the Government to appoint a commission of enquiry into the administration of justice in the African courts with a view to placing the said courts in the hands of the appropriate Department—the judiciary.

ORAL ANSWER TO QUESTION

QUESTION NO. 140

Mr. Cooke asked the Chief Secretary will Government publish the names of those persons or bodies of persons who submitted memoranda or gave oral evidence to Mr. Corfield?

If not, why not?

Will Government raise any legal or other objection to the publication by such person or persons of the evidence submitted?

The Chief Secretary (Mr. Coutts): The answer to the first part of the question is in the negative.

[The Chief Secretary]

The reason is that in the interest of security it is undesirable that the names of persons who gave evidence or submitted memoranda to Mr. Corfield should be made public.

As regards the third part, the Government will raise no objection if persons who gave evidence to Mr. Corfield wish to publish it, provided that such publication does not infringe the Official Secrets Act.

BILLS

SECOND READINGS

The Exchequer and Audit (Amendment) Bill

The Temporary Minister for Finance and Development (Mr. Butler): Mr. Deputy Speaker, Sir, I beg to move that the Exchequer and Audit (Amendment) Bill be now read a Second Time.

This Bill is very largely a tidying-up measure and it is a tribute to those who were responsible for the original Bill which was passed in 1955 that it has not been necessary to amend it in any significant way, even after five years of operation. The amendments now proposed were worked out very largely by Mr. C. L. Todd in consultation throughout with the Controller and Auditor-General and the legal draftsman. This was one of the last tasks which Mr. Todd undertook before his death two months ago and I should like to pay tribute to the very valuable work which he did for many years as elder statesman in the Treasury and I am sure that all hon. Members who have served from time to time in recent years on the Public Accounts Committee will acknowledge the value of Mr. Todd's service and appreciate the meticulous manner in which he always examined accounting problems in the wealth of his experience in these matters.

I feel that the majority of the amendments proposed in this Bill can best be debated if any points are raised on them in the Committee stage, but there are two points involving some policy considerations which I feel that I should bring to the attention of the Council now.

The first is the proposal in clause 14 for the deletion of sections 26-30 of the original Ordinance. These were the sections which dealt with surcharges. Prior to the enactment of the substantive Ordinance in 1955 surcharges were dealt with administratively. Legal provision was made for them in the Ordinance largely because our Ordinance was modelled on the Southern Rhodesian Ordinance, which included similar provision. It has, however, been found that it would be more convenient to revert to the original

position under which surcharges were dealt with administratively. That would be in line with United Kingdom practice.

The second matter of some importance is the definition of a consolidated fund service in clause 3 and the amendment in clause 8 which provides separately for the Controller and Auditor-General to grant money for consolidated fund services and for other services. The object of this is to enable us to move further towards the United Kingdom system and legislation which will have the effect of making the charges on our Public Debt a consolidated fund service is now being prepared and will, I hope, be published within the next few months.

I do not think, Sir, that there are any other points of principle which I should bring to the attention of the Council at this stage and I beg to move.

The Chief Secretary (Mr. Coutts) seconded.

Question proposed.

The question was put and carried.

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

The Paymaster-General Bill

The Temporary Minister for Finance and Development (Mr. Butler): Mr. Deputy Speaker, Sir, I beg to move that the Paymaster-General Bill be now read a Second Time.

This is an even shorter and less involved piece of legislation than the Exchequer and Audit (Amendment) Bill to which I have just referred and in fact all it does is to establish by law the office of Paymaster-General, which has in fact existed since we adopted the Exchequer system in 1955. The reasons for the Bill are explained adequately in the Memorandum of Objects and Reasons.

Mr. Deputy Speaker, I beg to move.

Mr. Webb seconded.

Question proposed.

The question was put and carried.

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

The Africans' Arms (Amendment) Bill

Mr. Walwright: Mr. Deputy Speaker, Sir, I beg to move that the Africans' Arms (Amendment) Bill, 1960, be now read a Second Time.

Mr. Deputy Speaker, this is an even shorter and even less controversial Bill than the last two. It is solely to implement an undertaking given in

[Mr. Wainwright] Legislative Council in January of this year that this discriminatory part of the Ordinance should be removed as it is covered adequately under the Firearms Ordinance.

Mr. Deputy Speaker, Sir, I beg to move.

The Chief Secretary (Mr. Coutts) seconded.

Question proposed.

The question was put and carried.

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

MOTION

SUSPENSION OF STANDING ORDERS

The Chief Secretary (Mr. Coutts): Mr. Deputy Speaker, I beg to move:—

THAT Standing Orders be suspended to the extent necessary to enable Government business to be taken on Friday, 22nd July, 1960.

Mr. Deputy Speaker, Sir, I wanted to tell hon. Members of the House that the Sessional Committee had a fairly long discussion as to whether or not we should suspend the Standing Orders tomorrow in order that the Land Debate now in progress should continue uninterrupted. It was certainly felt by some Members of the Sessional Committee that we should not interfere with private Members and their right to have their own Motions taken tomorrow, Friday, which is in accordance with our own Standing Orders. We did feel, however, that the business before the House now is so important and of such great interest to all Members that we should continue uninterrupted. We also felt, however, that in order to assist private Members, the Government should allocate extra time during the Rump Session, which will probably be towards the end of September, in order that all outstanding private Motions should be taken and disposed of during the present Session and we hope that this compromise will be acceptable to the House.

I beg to move.

Mr. Bechgard seconded.

Question proposed.

The question was put and carried.

MOTION

LAND TENURE

(Continuation of debate adjourned on 20th July, 1960)

Group Captain Briggs: Mr. Deputy Speaker, Sir, I am sorry to see that the Minister for Agriculture is not present to listen to the replies on the debate because a good many of the points I

want to raise will affect the Minister's Department and will be in relation to the various statements made in the course of his speech yesterday seconding the Motion.

I would first, Sir, like to recall certain things which I said in this Council in May last year in connexion with the African Land Control Bill. I took the opportunity at that time of pointing out that if the Government intended to press forward with their new land policy in regard to the Highlands, disregarding all past pledges and assurances which have been given, that something in the form of a financial cushion should be provided to stabilize land prices. The object was, of course, to restore a free market for farms which had virtually ceased owing to Government policy and also to enable those farmers who felt that the conditions under which they came to the country were encouraged to come to this country to settle, had been departed from so that they might be able to leave the country if they should wish to do so.

Since that time, of course, events at Lancaster House have further decreased European farmers' confidence in the future, and there is no use our pretending that that is not so. During the Lancaster House Conference itself the United Party delegates there put forward a plan calling for a sum of at least £30,000,000 as a revolving fund for the purpose we had in mind, which I have already referred to. It was submitted, in the course of the discussions we had with the Secretary of State and other members of Her Majesty's Government, that the substantial underwriting of farm assets in this way would help to restore confidence and would encourage many to stay and carry on in Kenya and see how things worked out in practice, who would otherwise tend to dispose of their assets as well as they could and go elsewhere. Therefore, I am bound to say I am profoundly disappointed with the proposals which have been explained to us by the Minister for Agriculture seconding this Motion. If he believes that these will restore confidence in the European farming community or encourage development—in fact, I could say—encourage development starting again, he is being, I consider, entirely unrealistic. I would put it to him that he should take the opportunity of the coming recess to hold meetings throughout the settled areas, and to ascertain for himself what the reactions of the farmers there are to the proposals he has made in this House. If this, on the other hand, does not appeal to him, then I suggest that he should send a referendum for completion by all farmers, in which they can indicate their reactions and their attitude in regard to the future. It is quite useless the Minister pleading for confidence when nothing he has said, to be quite frank, likely to restore it.

[Group Capt. Briggs]

For instance, of a total sum of £14,000,000 only £6,000,000 is available for land purchase and that over a period of three years. This is a ridiculous sum. It is just nibbling at the problem, and will not solve it in any way whatsoever.

I would like to put to the Minister three questions. I hope one of his colleagues will pass these on to him and arrange for one of his colleagues to reply, and these are the three questions. How does he propose to deal with the possibility of a considerable number of farmers deciding to dispose of their movable assets and to abandon their farms? Is he aware that some farmers are already contemplating such a step, and does he know that one or two are actually doing so. The second question is, if a very large number of farms are offered to the Settlement Board which is to be set up, how will priorities of purchase be arranged, having regard to the very small sum available? And thirdly, will he state quite clearly whether it is Government's intention to force the European farmer to stay in Kenya by force of economic circumstances however untenable their position might become in the future? I hope the Minister—or at least one of his colleagues, as he has already spoken—will reply to these questions quite clearly and unequivocally.

I would now like to turn to Sessional Papers No. 6 and No. 10, and I would point out that no indication is given in those Papers, so far as I can see, in regard to the large areas of undeveloped and sparsely occupied land within the native land units. Nor has Government declared its policy, or intentions in regard to the Masai Treaty Area or the Coastal Strip.

With regard to the conversion proposals, there is one thing that is completely omitted from consideration, and that is the fact that farmers have already paid a very large sum by way of stand premiums in respect of the land which they now have on lease. I may add in some cases very substantial sums are involved.

Now the question of regional boards. I think the proposals are quite unacceptable for the reason that these boards will clearly be dominated by persons nominated by the Government, or by quasi-Government bodies, and I think that is entirely wrong in the circumstances. It is quite clear that the representations which have been made, not only by the European Elected Members, but by the Kenya National Farmers' Union, have been completely ignored in many respects, and if the Government seeks European co-operation in these matters, I would urge them to reconsider their attitude to the points I have raised, and to other ones.

Now, the question of individual boards. I believe it is quite essential that only farmers or

land owners should be eligible for election or for nomination to those boards. The boards should also be able to withhold consent for any reason. They should also be empowered to give conditional consent to a transfer.

Now, the next matter I would like to come to is the question of the possibility of expropriation of European lands after the date of independence. Now since the Lancaster House Conference some African Elected Members have claimed that the land in the Highlands is in dispute; There have also been suggestions of the possibility of expropriation after independence. European farmers have, in the past, as I have already said, been encouraged to settle in Kenya by Her Majesty's Government, and they have paid substantial sums for the land by way of rents and stand premiums, as I have already said. They have also invested very large sums in development. This has all been done in good faith and in the belief that Her Majesty's Government would look after both them and their property. Now since Lancaster House it has become clear that they might be faced with the theft of their property after independence.

Now in view of this I asked a eminent firm of lawyers who have taken a particular interest in this subject, and who have carried out a great deal of research, to prepare a memorandum for me on the matter, and this, with your indulgence, Mr. Deputy Speaker, Sir, I would like to read to the House. I am not attempting, as I might otherwise do, to put it into my own words because as a layman I might convey an entirely different impression to that intended by the lawyer concerned. Now the part I propose to read relates to changes in legislation after independence. I quote:—

"On independence let us assume that the Crown would transfer its interests in leasehold Crown lands to an independent Kenya Government. Such a transfer would not, in our opinion, impair the existing privity of contract between the Crown and its tenants. Any breach of contract by the Crown or its assignee, i.e. the independent Government, would entitle a tenant to redress against the person with whom the contract was made, i.e. the Crown, notwithstanding the transfer by the Crown of its interests to the independent Government. An independent Government would be entitled to act within the terms of existing contracts, without giving tenants any redress against the Crown. The vital point will therefore be the actual terms and conditions existing at the date of handover to an independent Government."

On the assumption that the terms and conditions have not been vitally altered by the date of independence, at any rate in so far as

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powers of expropriation are concerned, what will the position be?

1. So long as an independent Government acts within the terms of the rights vested in it by the Crown, no question of claims by tenants against the Crown will arise. For example, consider the existing provisions with regard to revival of rents. The rent in respect of leasehold Crown lands for the period commencing 1961 will be at 1 per cent of the unimproved value of the land. At intervals thereafter the rent increases to 2 per cent and 3 per cent. On independence the power of assessing the unimproved value of land will pass to the independent Government. Such a Government might assess the value of agricultural land at completely unrealistic figures, for the purpose of increasing the rent, thereby reducing the value of the leasehold interest to an unrealistic figure for use in calculating the amount of compensation payable in the event of expropriation under existing laws or similar laws. In such an event we doubt whether tenants affected would have any redress against the Crown, on the basis that the independent Government would be acting within the terms of the contract between Crown and tenant.

Now consider the case of an independent Government acting outside the scope of the terms of existing rights at the date of independence, i.e. outside the contractual terms between tenant and Crown, the Crown interests in which have been vested in the independent Government.

Assume that such rights and terms are not very different from existing rights and terms, i.e. no expropriation except on payment of compensation, it would be possible for an independent Government to enact legislation enabling it to expropriate leasehold and freehold lands without payment of compensation, or with payment of inadequate compensation. Bearing in mind that under existing terms a tenant is entitled to quiet possession except 'so far as the laws in force for the time being in the Colony may permit', the question arises as to whether or not such legislation would fall within the terms of the exception.

We are inclined to the opinion that such legislation would not come within the existing terms and conditions on the grounds that a law 'in force for the time being in the Colony' must be construed to mean a law in force in the Colony, i.e. as part of Her Majesty's domains and subject to Her Majesty's jurisdiction, and not a law in force in an autonomous State, notwithstanding that the physical boundaries of such State would be

the same as the boundaries of the former Colony. If we are correct, then in such an event, we consider that a dispossessed tenant would have a contractual claim for damages against the Crown for breach of the terms of the contract between the tenant and the Crown, because as we have pointed out the privity of contract between tenant and Crown would still be in existence, notwithstanding the vesting by the Crown of its interests in a third party.

The amount of such a claim would depend on the amount of compensation, if any, received from the independent Government. If no compensation was given we consider that compensation in full could be claimed from the Crown. If partial compensation only was given, a claim would lie for the balance. If full compensation was given no claim would lie.

The vital point would, however, be the method of determining full compensation. Compensation would have to be assessed on the value as at the date of expropriation. Under normal conditions true valuations do not present any particular problem, but in the event of values of land having been artificially depressed by the governing power, the determination of the amount for which a claim would lie against the Crown would be extremely difficult. In such a case the actual value would be extremely low, and would not in any way represent the measure of damage suffered by the dispossessed tenant, but it might nevertheless be impossible to marry the full measure of damage suffered to the amount which could be legally claimed from the Crown."

Mr. Mulro: Mr. Deputy Speaker, is the Member in order in making too long a quotation.

The Deputy Speaker (Mr. Conroy): I do not think the hon. Member is out of order in reading a document to us provided it is relevant to the debate, and this seems to be.

Group Capt. Briggs:

"It would, of course, be possible for the Crown to enact legislation before independence absolving itself from all contractual liability to its tenants, in which event tenants would have no claim against the Crown. If, however, such legislation were to be enacted it would be tantamount to the recognition by the Crown of the possibility of expropriation without compensation taking place after independence, which seems to be an unlikely contingency."

On the question of freehold tenure, the present rights of freeholders are dealt with:—

"Technically, according to the doctrines of Common law, land is not the subject of

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the Crown with regard to claims against the Sovereign. We do not, however, consider that these enactments would cover a claim of the nature envisaged, and we think that the only method of pursuing such a claim would be by following the old procedure, i.e. by way of petition, which would be dependent on the prior consent of the Crown being obtained."

An estate in fee simple approaches as near to absolute ownership as the Common law system of tenure allows, but generally speaking tenure is now equivalent to property, and tenure of freehold amounts, in practice, to ownership of the land:—

"(a) On this basis the practical effect of a sale of the freehold of land in Kenya by the Crown is that the Crown relinquishes its title in the land. A sale and purchase has been effected and there has been a completed contract. The title of freehold land is vested in the freeholder and his successors in perpetuity, subject to conditions contained in the Crown Lands Ordinance, relating *inter alia* to restrictions on the right of transfer to members of other races, and restrictions on the right of subdivision.

(b) Changes in legislation before independence. In the case of freehold the consideration of legislation passed before independence is of no particular significance as any legislation enacted by the Crown could also be enacted by an independent Government. Such legislation would not affect contractual rights as in the case of leasehold lands.

(c) Changes in legislation after independence. On a grant of independence there would be no practical transfer of title by the Crown to the independent Government and the title would remain vested in the freeholder, or his successors. There would, however, be a transfer of jurisdiction and an independent Government could enact discriminatory legislation allowing it to expropriate freehold land without the payment of compensation. In this event we doubt whether the freeholder would have any legal claim against the Crown, notwithstanding the technical relationship of tenure indicated in paragraph (a) above.

Two qualifications to the foregoing must be noted:—

(i) Expropriation might proceed on the ground that the Crown did not have the right to make the original grant of title (either leasehold or freehold) in respect of the land expropriated. We consider in such an event that the dispossessed landholder would probably have a claim for damages against the Crown, subject to what is said in the following paragraph.

(ii) Recent enactments have removed many of the immunities previously enjoyed by

the Crown with regard to claims against the Sovereign. We do not, however, consider that these enactments would cover a claim of the nature envisaged, and we think that the only method of pursuing such a claim would be by following the old procedure, i.e. by way of petition, which would be dependent on the prior consent of the Crown being obtained."

The conclusions on leasehold are:—

"We think that for the reasons given, a case exists for saying that a leaseholder under grant from the Crown, would, on transfer of the Crown's rights to an independent Government, be able to maintain a claim against the Crown, under the existing privity of contract, in the event of being dispossessed without compensation by an independent Government. A leaseholder might, therefore, be in a better position in this respect than a freeholder. Other factors must, of course, be taken into account in considering the advantages, if any, to be gained by opting to convert to freehold, e.g. increased rents. But a conversion to freehold would remove any question of contractual ties with the Crown.

2. Freehold. As already indicated, it might be argued that the doctrine of tenure of freehold land from the Crown as opposed to complete and absolute ownership by the subject, implies a contractual or quasi-contractual link with the Crown, incorporating an implied covenant for quiet possession by the Crown analogous to the statutory covenant in respect of leasehold land. We consider that this is too narrow and unrealistic an approach and that, in the course of time, freehold tenure has in practice come to be to all intents and purposes synonymous with absolute ownership of the land. On this basis, we consider that in the event of expropriation by an independent Government no claim would lie in law against the Crown by the person dispossessed."

I apologise to the House for the length of the document I have read, but I felt it would be wrong not to quote it in full as it might misrepresent the case I have been endeavouring to put before you. But I hope that the Government will consider this carefully and that they will reply as fully as they can in regard to the points that have been made. I am sure that they will appreciate that many farmers—in fact, I should say all farmers—are deeply concerned about the possibilities of expropriation of their land in the future. Until this matter is entirely cleared up I think they would be most unwise to consider converting from leasehold to freehold. To my mind the only really satisfactory way of

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of the matter would be for Her Majesty's Government to accept full responsibility for payment of full compensation in the event of expropriation after independence comes.

Subject to these reservations, Mr. Deputy Speaker, Sir, I beg to support.

Mr. Odiga: Mr. Deputy Speaker, Sir, I stand not to take note of this particular Motion because I feel that it is not right for me to take note of it and to accept it. I might take note of it, as I have done, but I am very sorry that I have not accepted it.

Before I say what I wanted to raise on this particular question I should just probably thank the Minister for Land and the Minister for Agriculture for the painstaking way in which they prepared their speeches which they made to this House. I think that they were some of the most excellently arranged speeches I have ever heard in this House. But I doubt whether those speeches were worth anything more than the paper on which they were written.

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): Shame!

Mr. Odiga: I should say, Mr. Deputy Speaker, that the value which I put on those papers are nothing more than the papers on which they were written, because I feel that if the Ministers were really realistic they should have gone into the root causes of the problems of the land question in this country. They know that they are trying to evade the real issue of land in this country and they are trying just to work to cover it up and to pretend that there is no problem at all behind it, which is really very sympathetic.

Mr. Deputy Speaker, I have just come from the World Council of Peace and I really feel that the people all over the world are now trying to find the lasting solution to peace for the whole world. I was convinced and I actually made that statement in that meeting. However, here also this is the time that we should not pretend but should try to dig out all the root causes of the trouble which generally each time generates all the troubles that we have in this country. You will very well understand that it is the land issues and the land question which have been the root causes of all our troubles in this country, although some people have tried to cover it with something about this time or that time. They all understand, and particularly it is the land question in the Kenya Highlands which are occupied by the white men only. That is what is causing a lot of difficulty and a lot of trouble—big ones—because when the British came to this country they ignored

the African ownership when they made the reservation of land in the Kenya Highlands. They pretended that that land was never occupied by anyone and took that land forcefully from those who were occupying it, drove them to some corner in the land and took it.

Mr. Blundell: On a point of order. Mr. Deputy Speaker, surely the hon. Member must be responsible for the accuracy of the statements he makes in this House. I would like the hon. Member to give an instance where the Government of this country forcibly took land which was already under occupation.

Mr. Odiga: Well, Mr. Deputy Speaker, I will not allow myself to be interfered with unnecessarily by those people—

Mr. arap Moi: On a point of explanation—

The Deputy Speaker (Mr. Conroy): You cannot make a point of explanation with regard to a speech you have not yet made. Mr. arap Moi.

The Chief Secretary (Mr. Coutts): I would support the hon. Specially Elected Member in his saying that the hon. speaker must substantiate the remarks which he has made, which is in accordance with our Standing Rules and Orders.

The Deputy Speaker (Mr. Conroy): Mr. Odiga, you have made an allegation of fact, you have been challenged upon it, and, in accordance with our Standing Orders, it is now up to you to substantiate it.

Mr. Odiga: Mr. Deputy Speaker, it is a fact and a fact which, if anybody wants me to produce, I would only ask that there should be a Commission of Enquiry to come and make a detailed report because definitely we are the people who are claiming the land in the Kenya Highlands. There are so many facts to support me that if you will only give me the time I can produce a lot of facts and I have even got the acreages which were taken from each tribe in this country. I am sure that I have always—

The Deputy Speaker (Mr. Conroy): Order, order! I understand that Mr. Blundell wishes to make a point of order.

Mr. Blundell: On a point of order, Sir, it is not a question of whether a Commission should be set up to examine whether the hon. Member was making accurate statements or not. The question is a simple one. Under our Standing Rules and Orders the hon. Member is responsible for indicating to the House the accuracy of his statement and I am now asking him to do so.

Mr. Cooke: Mr. Deputy Speaker, I would submit, as I see it, that the hon. Member made a general statement on a controversial question.

The Deputy Speaker (Mr. Conroy): I am afraid that I cannot allow speeches on points of order. Points of order are raised by one Member and decided by the Chair.

As I understand Mr. Odiga's statement, he has alleged categorically that land was taken by force from Africans by the Government. If he alleges that fact categorically then he has to substantiate it or withdraw it.

Mr. Odiga: Mr. Deputy Speaker, I will only mention one of them, and if the hon. Member would like some more I will get him some more later, and that is the Tinderet Forest. That was taken from the Africans forcibly. If he wants some more I will still give some more facts, and in actual fact I have given the acreages. If the Member had cared to study his HANSARDS of the last meeting he would have seen the acreages which were taken from the Kikuyu, from the Masai and even from the Nandi. Now, Mr. Deputy Speaker, when I was just unnecessarily interfered with—

The Deputy Speaker (Mr. Conroy): Order, order! Mr. Odiga, that is an improper remark. A point of order was taken against you and it was upheld. It is improper for you to infer that a Member improperly interfered with your speech.

Mr. Odiga: I would apologize, Mr. Deputy Speaker, if it was a little bit too strong.

Now, I should say that the African—whatever anybody says—the African maintains that all the land in Kenya belongs to each and every tribe in Kenya and they know the boundaries of that land. Whether or not that is actually accepted by anybody, it is the fact of the African point of view and they hold it. When the British declared Kenya a Crown Colony they did not consult the Africans and the Africans did not agree and all these arrangements have been made without consultation with or with the consent of the African people. As such, we must all face the fact that what the African today and even tomorrow and even from a very long time ago knows is that all land which is being farmed by the Europeans in the Kenya Highlands is being farmed with a complete understanding that when he comes up to demand that land he will get it back.

An hon. Member: Nonsense!

Mr. Odiga: Many times—and it has even happened recently—in the African point of view and anybody who wants to face the facts will completely agree that the *Mau Mau* uprising was chiefly due to the land question and the land hunger which the Africans have. As such, many Africans have requested that the position of the land in the Kenya Highlands should be gone into

and some arrangements made. They have in actual fact been very, very reasonable indeed because the Africans have asked that any land which is at the present moment not used should be considered for return to the Africans to use. We can see that at the present moment with the present arrangements we are going far ahead of putting ourselves on and making progress. In actual fact another gentleman from my side, this side, has intimated that they themselves understand that the land which they are at the present moment occupying they are occupying as their property.

Sir Charles Markham: Quite right!

Mr. Odiga: I should not say to you, "Whether you understand it or not, that it is not your property!" I am also a man who has been in business. I have taken land from the Government to use. I have put up a building on that land. I have rented that land for 99 years. I am sure that when the 99 years are up, the Government will come and demand the land back. My only property which will be on the land will be only that building which I put on it. They might, if they considered it reasonably, consider giving me something on it or not. Therefore, those people who are also holding land in Kenya must understand that they are holding land as the direct tenants of the Africans who are the direct owners of that land. They cannot expect that when they go—as somebody has just alleged—from this country that they will receive compensation for the land and that the land should be considered to be his property. The land is not his property. Whatever buildings or whatever property he has put up on the land will be his but not the land itself. The land is not his—he is at present renting land at very, very low rents indeed and he is paying very little rent. That should be understood and it must be understood first. Those people who talk of freehold—is it not madness to think of a tenant on land is to be a freeholder of that land? Who is there among the Africans who will admit to that? Is there an African who would be foolish enough to consent to a freehold to a man who took the land forcefully from him, who took the land without his consent. He is farming that land; he has decided the rent which he is paying. It is not the owner of the land who has decided the rent at all. He did it, and now he is again deciding on his own that he should be a freeholder of that land.

Sir Charles Markham: Why not?

An hon. Member: Nonsense!

Mr. ole Tips: Mr. Deputy Speaker, Sir, on a point of order, is it Parliamentary language to use the word "nonsense"?

The Deputy Speaker (Mr. Conroy): It is more Parliamentary than the word "shame!" which I have heard used often in this House but of which I disapprove.

Mr. Odiga: Mr. Deputy Speaker, I hope that the Members will give me the ground and when they speak I shall also be a little bit patient. Yesterday when the Ministers were speaking I was very patient and I did not even utter a word, actually, which should show them that I had a little bit of some change of attitude towards Government! Therefore, I hope that they also will give me the ground and be patient enough to listen.

Now, without labouring on details of Sessional Papers Nos. 10 and 6, Mr. Deputy Speaker, I would only say—and when I say this I know that I am speaking for the African people—that the Africans themselves do not recognize—that they do not recognize—that the British Crown is the owner of Kenya land. They do not recognize that the British Government is competent to pass a policy on their land. They do not consider that the Kenya Government is competent (the present set-up of the Kenya Government) to make a policy which is going to affect land because they regard the land as their sole property and as their property they must have a full say on it. Any Government which will have a say on land will have to be the Government which they choose themselves, and the Government which is responsible to them.

With these remarks, Mr. Deputy Speaker, you cannot in any way expect me to support the present policy and I know that it is not our intention to support this policy although it was carefully explained to us and put forward. We reject it and we shall have nothing to do with it until we get the popular Government which is elected by the people.

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

Major Day: Mr. Deputy Speaker, Sir, I would like to start by supporting the carefully worded brief which my friend, the hon. Member for Mount Kenya, gave to this House at length and I would in view of what has just been heard from my hon. friend, the African Elected Member recently seated, ask whether or not it does not add the greatest significance and the greatest need for study to what was mentioned in considerable detail by the first speaker. Now, Sir, I do not propose to go into details regarding Sessional Paper No. 6 which is to be noted by this House, but, Sir, I do consider the two hon. Ministers, who, if I may say in a friendly fashion, I would like to describe as the hon. Tweedledum and Tweedledee, seem to have a wonderful job

in London, Sir, according to their account of it all. I thought that in particular the hon. Minister for Local Government, Sir, when he paid a tribute to the architect of the root cause for all these borrowing expeditions which are going on in London; I thought, Sir, when he paid that tribute to the hon. Specially Elected Member, Mr. Blundell, he was moving to a degree. Would it be presumptuous, Sir, to suggest that others may have assisted in London, not only recently, Sir, but over a number of years? This is nothing new. However, I must in fairness congratulate the two Ministers on what they have achieved in the way of a little extra lolly. And, Sir, I would like to congratulate the long and the short and the tall and the whole boiling bag of tricks.

However, I doubt if they can expect to escape without some criticism. I am sure they will welcome it. I cannot believe, Sir, that these two Ministers when they spoke so fluently yesterday were attempting to becloud this main issue and I would remind them and this House that wishful thinking on a matter of this importance can do far more harm at this stage than a realistic appreciation, Sir, of the present land position today in so far as it affects the European farming community. I believe—

The Minister for Local Government and Lands (Mr. Havelock): On a point of order, Mr. Deputy Speaker, I think the hon. Member misunderstood me yesterday, Sir, when he refers to the credit that I gave to Mr. Blundell, the Specially Elected Member. I gave that credit, Sir, for the policy or the inspiration of the policy: not for borrowing money.

Major Day: Well, Sir, I welcome the interruption and I would reiterate what I in fact said, that I considered that he had given the credit to the architect of the root cause—the root cause, Sir, being this forward seeking policy of the reduction of the land barriers. Sir, I believe that this policy of gradually reducing the land barriers may be indeed revolutionary in concept but it is one which will not be justified by economic results. It may be argued indeed, Sir, and has been argued that it is politically expedient. No one will doubt that. But please, please, do not affirm here if you are sincere that it is aimed at treating the land more economically and thereby increasing positively the agricultural production of this country. It is indeed, Sir, nothing more than a threat to remove Kenya's main economic buttress; that is to say, the European farming community. It is patently obvious for all who are prepared to think to see this fact. We are constantly being told that there is a wind of change blowing; we are indeed the victims of this wind of change. We are now becoming isolated in this

[Major Day] continent and the seas of nationalism are sweeping past us; not past us, unfortunately, because the water is seeping up around us. This tragedy of nationalism which is supported glibly on so many sides; this sanctification of nationalism; in what new country have the people as a whole benefited from it? In every case efficient and impartial administration has been replaced by inefficiency, even dictatorship, both often accompanied by corruption and in some cases expropriation of land. Who can say with confidence that Kenya will be the exception? Who dares to say it? The Congo gives every sign of becoming the classic example of this twentieth century madness. I contend, Sir, that the Government's policy should have been clearer cut long, long before this White Paper No. 10, as it was then, was ever introduced. They should have formulated, Sir, a foolproof scheme to meet the very situation which we are now being asked to face as a community of European farming guinea pigs.

This scheme, Sir, should have been equitable and should have been thought out not in a hurry, not rushed through as it is being done today, but carefully planned and prepared. Whatever they may publicly declaim there is no doubt about the fact that the Government have long been considering that the European farming community—at least the mixed farming community—is tending to become obsolescent. But it is a fact that they would not face; it would pinch their pockets and their realization that without our continual co-operation that the economy of Kenya would flounder. Coupled with this, Sir, I say, added to that a reluctance to face unpleasant facts has prompted them to adopt their present negative attitude—because that is all it is—regardless of what may possibly be the fate of us, the final victims.

So we are told now to lift up our hearts and rejoice because a little more money has been obtained in London. This then is the best, is it, that a British Government can do by way of honouring its past pledges? If it is determined, Sir, to follow this policy of tardiness then the present appalling lack of confidence will not disappear, make no bones about that, it will deepen and become worse.

Now where is this money to go? We are told often that we are going to have fair prices for our land and a number of schemes have been announced. I hope, Sir, that the land will not be bought in the course of these schemes in the cheapest market. I do not blame the Minister for Agriculture; I sympathize with him. I think he is being asked to perform miracles, Sir. He is

being asked to make bricks without straw. However, we will have a new large buyer in the field and that is something to be grateful for. As a result of this wind of change or new look policies of England and America on land as it affects us farmers, the pity of this present situation in this unhappy land is this, that nobody will gain—nobody will gain—except perhaps a few unscrupulous politicians of all races. An opportunity which exists today (I hope it will not happen, but I think it will) will gradually disappear and the greatest sufferers, Sir, will be the very Africans themselves, make no mistake of this. I do not wish to be tedious or repetitious, but I cannot repeat this fact too often and it is true. It may be possible to induce technicians and civil servants to return by high prices and reduce order out of chaos, but farmers are another kettle of fish. It is a long-term policy, Sir. They are not going to come back a second time. I am not painting a defeatist picture. It is very easy to say that you are being defeatist when you are trying to speak the truth. I am only stating cold unpalatable facts. In the Congo were farmers too complacent, or would it have been better if they had been defeatist and more realistic? It may be too late to answer this now, and in any event I am sure that I can say that all our hearts in this House go out in sympathy to these people in their agony. Are we to continue, Sir, this is what I beg the House to note. Are we to continue indulging in this wishful thinking, or is the time not right now—now—for the British Government, the Kenya Government and ourselves to face these facts, because only by so doing will you eliminate tragedy and human misery in the future. The British prate of democracy as it affects the results of these changes so quickly brought about may well mean, Sir, that the clock be put back in this continent many years. How many more Congos will they need to teach them how unready East Africa is yet for independence? Or is this merely part and parcel of a calculated callous scheme, an inability to accept responsibility for their own nationals to whom their first duty must lie? Therefore, I say, if this is so, the least they can do, Sir, is to prepare a scheme without delay which will compensate—call it what you will and the word does not matter now—the European farmers in full if events should prove this to be necessary and I profoundly hope it will not be necessary.

I think maybe they are thinking on these lines now. If so, this is good. This alone could restore the lost confidence and remember we before the Lancaster House Conference—and I speak of my three colleagues and myself—were called defeatist many times. We were called defeatist

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at Lancaster House for the same reason. What might have been sufficient then, Sir, in the way of a fund, will not suffice now. We must have this scheme before the next elections. If events should turn out smoothly and I and my friends and colleagues should turn out nothing but Jeremiahs, well, I consider then nothing will be lost. If the British Government are indeed considering this matter, why should they be reluctant to prepare for any eventualities and contingencies that they apparently believe will never, never come about? Or are they, in fact, being cynical and do they believe that a little political opium in the shape of a few millions per year will satisfy and redeem the moral obligations to their own nationals? We are told in some quarters here to get out of politics. We are asked to stay here and farm, however, and keep the economy of the country running, or help to do so. We pay the taxes, but keep out of politics they say. At the same time we are asked to leave the protection of our land to others. What have they said to make us believe that we can rely upon them? This is, indeed a new one. Taxation without representation is, indeed, a new thing to my knowledge. So we stay here for the good of the country and we are to be denied the first principle of democracy. We are to be political neutrals. Who is going to protect our interests? Who has protected the interests of the unfortunate Belgians in the Congo? We are told it could never, never happen here, ever. "Not in my time, Oh Lord." How often have we heard this political jargon vomited forth: barren words of political humbug, meaningless? One hears a good deal of self-righteous declamation as to the Belgian Government handling over too quickly. Let us hope that the lesson will be learnt here. How many African administrators are there in Kenya? This is not the fault of the Africans, but how many are there? I contend that it is far easier to be a Minister than a district commissioner.

Now, I am not one, Sir, who believes that the events in the Congo will drastically alter the policy of the British Government, but surely it is not too much to expect that they are now beginning to realize their economic obligations to the farmers of this country. I think they are beginning to and that is why I welcome the result of what the Ministers told us yesterday. I welcome it, Sir, for that reason because it is a sign, a little cloud no bigger than a man's hand, a cloud showing what they are—not a miasma—showing what they are perhaps beginning to realize. I hope they will go on realizing it, Sir, they have got a long, long way to go yet. The course, may be, towards self-government is set we are told and I contend that if this is so then the sooner we find

responsible Africans, Sir, the better, but surely it is madness to continue to build from the top downwards. Buildings will never last if they are so constructed, they will collapse into ruins. Yet here we see in this particular Paper the very reverse of that mechanism being brought into operation, in so far as our land is concerned. Some months ago the Government declared their policy of the gradual reduction of the land barriers. Then there was a hurried attempt after considerable pressure to produce a scheme which was called the "50-Acre Scheme". It is now, I believe, going to be known as the "Yeoman Farmers' Settlement Scheme". In addition to that we are going to have other schemes.

Now, Sir, at the risk of repetition as I think it is a point of sufficient importance to push home, I would say again that before there was ever this loose talk about lowering the land barriers there should have been some such scheme ready and prepared, otherwise you are merely inviting the lack of confidence among the European farmers which exists today. In fact you have got it. I contend, Sir, that this is a classic example of trying to build from the top downwards and it is the direct cause, apart from Lancaster House, of the present lack of confidence. I appeal to this Government, Sir, to tackle this problem as I know in their heart of hearts they sincerely wish to do with Resolution and remember this Government also—apart from the Government in England—has moral obligations to its own people irrespective of whether we are talking of a multi-political non-racial society or not, leave that to one side, remember your moral obligations to your own people. I can never accept that the wind of change—these new pressures we are told about—all these things which are happening in the world today, can be used as an exemption from what I consider to be a sacred and fundamental responsibility of the British Government, and similarly of this Government here who are the agents, Sir, of the British Government, if a return of our confidence is desired—and who in this place does not wish to have that return of confidence—then it is only, Sir, by honouring to the full the spirit of the pledges given by past British Governments to all the minorities, but particularly because I am a European and because I represent a European constituency I am pleading for them, to all minorities it is only for this reason, Sir, only in this way will that confidence return. But time is slipping by and I beg that action is swift.

With these remarks, Sir, which I hope will be taken in the spirit in which I have made them, because I understand the difficulties of the Government and I am not trying to minimize what our Ministers have done in England, with these words, Sir, I would support this as best as I

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can, but very unhappy, Sir, that it is so little, that it is so little and so small and that it is just the beginning I hope but the beginning of something which will really and truly restore confidence.

Colonel Jackman: Mr. Deputy Speaker, some ten months ago when notice was given of the Motion which we are today debating, I think a great number of people both inside this Council and outside were somewhat concerned by the contents of Sessional Paper No. 10, I think, Sir, they were concerned not so much with the content which dealt with the Government policy on land as with some of the provisions by which it was proposed to put that policy into action. Therefore, Sir, I think these people were very much relieved when His Excellency the Governor, speaking on this matter when he opened the present Session of this Council, declared that there would be no immediate debate on Sessional Paper No. 10 and that ample time would be given for all interested parties to make their representations to the Minister and to have those representations carefully considered.

Now, Sir, ten months have gone by and more recently—not long ago—we had laid here Sessional Paper No. 6 which really produced a number of amendments to the provisions of Sessional Paper No. 10. It is quite obvious, Sir, that a great deal of thought has been given to the representations made by various bodies because Sessional Paper No. 6, I think, removes very largely many of the objections which people had to the provisions in Sessional Paper No. 10.

In this connexion, Sir, I feel that it would be only reasonable for me to pay a tribute to the Kenya National Farmers' Union. They, Sir, as soon as Sessional Paper No. 10 appeared appointed a working party who have done a very, very great deal of work on this matter, and I think that it is very largely due to their efforts that we now have something which I think will be generally acceptable.

I should also like here, Sir, to congratulate the Minister not only for the very clear way in which he presented his case yesterday when moving this Motion, but I should also like to congratulate him on the manner in which he has been able to reconcile so many differing points of view which have been put up to him, and I think this is even more remarkable when we consider that he has only comparatively recently taken over this particular portfolio.

Just one or two points, Sir, that I should like to deal with very briefly. The first one concerns the cost of conversion from leasehold to freehold. I was most interested to hear what the hon. Mover had to say on this matter yesterday

and very much encouraged by the fact that he stated quite definitely that he thought that the terms of conversion would not be unduly onerous. Sir we all know that it is the declared policy of the Government that as far as possible all land tenure should be throughout the country on the same basis. More recently, Sir, we have had individual titles given to African farmers in the areas where land consolidation has been completed and these have all been freehold titles. It is therefore quite obvious that the only common title, if there is to be such a thing, must be a freehold title. Quite obviously it seems to me, Sir, that if that is what the Government wants to achieve then it would be very difficult, if not impossible, for them to do this if they did, in fact, put the price to the present leaseholders up too high. I am sure, Sir, having heard what the hon. Mover had to say we will all be looking forward very eagerly to learning what the new valuations of our land will be when they are published in due course.

My next point, Sir, concerns this period of five years during which a leaseholder will have the option to convert to freehold. I think I am right in saying that the position now is that if within those five years the leaseholder does not exercise this option then the door to choosing freehold title will be closed for ever in respect of that particular property. If this is not correct, Sir, I hope I shall be corrected when the hon. Mover replies, but if it is, Sir, I would ask him to have another look at this because I do feel that this might well be a great hardship on new owners of property who acquire such property after the five-year period had elapsed and where conversion has not been applied for and received. Not only might this be a cause of hardship, Sir, but equally I think it will do something to prevent the fullest implementation of the Government policy of common land title and, as I say, perhaps the Minister would be good enough to have another look at this.

My third point, Sir, concerns regional boards. I am not altogether happy about the composition of these boards although I do understand the reasons the Minister has for having designed them the way he has done. The only thing I would say, Sir, it is quite essential as I see it for divisional boards to have the very fullest confidence in the regional boards. If this confidence does not exist I think you will find it extremely difficult for the divisional boards to function properly and I would therefore ask the Minister to keep this in mind when these appointments to the regional boards are being made, and ensure as far as possible that the people who are appointed to those boards are people who carry the full confidence of the divisional boards.

[Colonel Jackman]

Sir, the Minister yesterday laid great emphasis on the need if this new policy was to be fully implemented, for confidence in the security of all titles, and I think he was very right indeed to lay this emphasis. He went on to tell us, Sir, that Her Majesty's Government considered this matter of such great importance that they were proposing to remove it out of the arena of this Council and deal with it on the basis of Orders in Council. Well, Sir, I am sure we are all very pleased to hear that Her Majesty's Government does think this matter so important, but I personally am not quite clear how that particular action will affect security of title; perhaps the Minister in replying can expand a bit on it.

We have also been told, Sir, that Her Majesty's Government is having a very high-level enquiry into this particular matter and I am sure we will all look forward with great interest to getting their report after the enquiry and I hope that this will not be too long delayed.

Apart from that, Sir, I have always felt for a very long time that there is one particular thing which could be done in this country which would have an immediate and very large effect on the question of confidence and that, Sir, would be a categorical statement by hon. African Elected Members, the leaders of their people, that they are prepared themselves now, and if at any future time they find themselves in a position of authority in any other Government, they are prepared to respect to the utmost extent the sanctity of all titles. That, Sir, is a thing which we in this country can do here without getting any assistance from anyone outside—Her Majesty's Government or anyone else. I am quite certain that a statement of that sort would overnight restore a great deal of the confidence which has been lost and which is absolutely essential if we are going to get full benefit from this new policy on land. I admit, Sir, that after listening this afternoon to what was said by my hon. friend the Member for Central Nyanza, who is not here at the moment, that it seems quite impossible to expect all African Elected Members to make this statement. What he said this afternoon, Sir, gave another violent push towards the destruction of confidence and I can only hope that he does not represent the majority view of his colleagues.

I should like to turn for one moment, Sir, to something which concerns what the hon. Minister for Agriculture said when he was seconding the Motion and I only want to talk, Sir, about what he describes as this peasant scheme. These peasant schemes, Sir, when introduced will obviously in many cases be in the Scheduled

Areas and I should like someone later on when replying to these points to let us know what the Minister is thinking in regard to how these schemes would operate *vis-à-vis* existing agricultural subcommittees and committees.

I know these details have probably not yet been tied up but, if, Sir, some indication of the line of thought on them could be given to us, it would probably help us, ourselves, to come to reasonable decisions.

I should also like to have the assurance of the Minister that these schemes will be very, very carefully controlled. They will be, I think, Sir, somewhat in the nature of a gamble, and to put an African family—and African families can consist of a very large number of people—to put one of those families on a smallholding of 12 or 15 acres runs a considerable risk, I feel, of having the thing degenerate into subsistence farming. That, Sir, I take it, in fact, I know, is not the intention of the Minister, and if it is to be avoided the very strictest control will be necessary. I hope we shall be able to get that assurance from him.

Sir, I do hope that nothing that I have said this afternoon will be taken as indicating any lack of support on my part for Government policy, this new Government policy, on land.

Sir Charles Markham: You'll be sacked if you don't!

Colonel Jackman: I shall be sacked in any case shortly. Sir, this new policy which envisages sweeping changes and a completely new look, I believe is very necessary to meet the changing conditions of the present and future and, in fact, is probably overdue. The points I have raised, Sir, are those which I think require some clarification, or are one or two suggestions which I hope may be of value to those who will be charged with the very heavy responsibility of implementing the new policy.

Mr. Deputy Speaker, Sir, I beg to support the Motion before the House.

Mr. Alexander: Mr. Deputy Speaker, I do apologize to the Minister that I was not here when he delivered his speech yesterday. I did mention it to him, and I think he does appreciate that I was spending my time usefully, and I do apologize, Sir, that I will not be here when he answers. Mr. Deputy Speaker, in view of all this derisive laughter, may I say it was one of the most wonderful things that has ever happened in Kenya for many years.

Mr. Deputy Speaker, perhaps the most important part of the speech by the Minister, and I did read it all, in full, is the quote from the

[Mr. Alexander]

Secretary of State's statement in the House of Commons yesterday, when he said that Her Majesty's Government regard the future security of title to land as a matter of vital importance. This aspect, Sir, was acknowledged fully at Lancaster House, this aspect of the need to ensure security of title, and I can remember on Tuesday, 16th February, the hon. Specially Elected Member, Mr. Slade, was at his most analytical and brilliant best when he brought out in the course of a full day all the fundamental issues affecting this question, and it is wise, Sir, that we should now focus attention specifically on this very emotional issue of land title, and focus it both here and in the United Kingdom. But, Sir, let us not deceive ourselves that the answer, the final answer, lies in the United Kingdom. Let us not, Sir, create false expectations for ourselves that the complete answer is in the United Kingdom. It must be, Sir, and can only be the complete answer in Kenya, and that, Sir, will depend entirely, and the answer will be provided entirely, by our relations one to another as the peoples of Kenya. We have arrived at the stage, Sir, in our history, when we can look to the United Kingdom for only two requirements. Firstly, to provide the capital, the money, to develop this country of ours, and secondly, to provide the means of upholding law and order. For the remainder, Sir, the answer fairly and squarely is here with us in Kenya, and the sooner we realize that the sooner we will come to the proper conclusions on this very difficult and very bewildering matter.

Mr. Deputy Speaker, one of the dangers of looking to London is that in an anxiety and an acute eagerness to canvass the sympathy, and perhaps the pity of the people of Britain for our worries, we seem so often to transfer there an an overdose of despondency and gloom, to the extent even of contaminating them in Britain with the same complaint. That, Sir, is what is happening at this very moment because it is becoming clear that some people in Britain are wondering whether it is any use them having confidence in us when they discover that some of the most important elements in our society appear to have lost or lessened their own self-confidence. Therefore, Sir, our first task, our first responsibility to ourselves and to those whose help we seek, is to regain self-confidence here in Kenya, and particularly, Sir, amongst those who mean so much and matter so much to all the peoples of Kenya. Particularly those whose only hope is in Kenya, and here understandably and rather naturally I refer most particularly to my own community. And we will do this, Sir, by

facing up squarely to the realities of the Kenya of today and coming to wise and sensible current terms with it; with it and all sections of its people. This means, Sir, that at the same time we must move with caution and prudence. It is right that we should do and be very careful that we do not turn these fine qualities of caution and prudence into dismal alarm and gloom, because at times, Sir, there is a very narrow division between them, and it is all too easy to fall over into the despairing side. It is right that we should be careful. It is right that we should look to the lessons of history, Sir, but in doing so, to look forward and not be looking backwards.

Mr. Deputy Speaker, we have learned that in connexion with civil servants Her Majesty's Government have agreed to set up a commission to look into the whole of their problems, and there is much analogy between their problems and these problems of land owners and property owners in Kenya. And it is, Sir, I believe, right that others, people other than civil servants, should look to a thorough examination of their own particular problems. The Minister when speaking did say that this matter was being taken most seriously by Her Majesty's Government, but I would urge upon him, Sir, that when looking at this matter in Kenya, and I know he and all the Ministers of our Government are looking at this most thoroughly, but when they are doing so, Sir, they should urge upon Her Majesty's Government, in turn, to take this sufficiently seriously, that the matter is dealt with at Cabinet level. And I believe, Sir, that Her Majesty's Government owe it to us to look at this at the level of the whole of the Cabinet of Her Majesty's Government. We do not want a commission about it. We had a commission about land in recent years, and we do not want to go over that ground again, but what we do want is the very highest authority in Britain looking at this.

Sir, the statement by the Secretary of State for the Colonies refers to security of title to land. May we know, Sir, whether that in fact refers to all land, and whether it refers, in fact, to the ownership of property generally and assets generally, because surely in this we are "all in the same boat". When we talk about it in this context I know we are inclined to believe, or to think that it must refer only to farm land, but I would urge upon the Government, Sir, to realize that this matter is of equal importance to all owners of property and of land and of title. I know, Sir, it is argued that it is only the farm land that is at issue, but, Sir, if we are to face evil consequences, and that is what we are trying to prevent, if we are, they are always aimed at everybody. In fact, Sir, we know that evil men, when they

[Mr. Alexander]

are let loose, are more likely to want people's radio sets and motor-cars and houses than they are to want people's agricultural land. Sir, there is, and I have said this before in other debates in this House, there is considerable industrial investment, many millions of pounds in land that is in urban areas or just outside, and these people, Sir, have the right to be equally as concerned about the future security, and when we are dealing with this, Sir, I trust that we will look at the whole issue.

What is it that we are really trying to do, trying to establish? It is that governments of the future in Kenya will find it difficult or impossible to disturb the normal principles and generally accepted code concerning private property, and that, Sir, I believe, must extend to all property. May I give the example here in Nairobi, where people, in order to avoid city regulations, have gone out of the town and built mud and wattle homes in which they have taken very great pride, and year by year they have improved their dwellings with stone structures. Today, Sir, that is to them their all in life, and they are concerned about that as anybody is about land.

Finally, Sir, may I say that undoubtedly the answer, and the only final answer, will be in the goodwill that we can generate between ourselves here in Kenya; the goodwill that we can establish as man to man. It will depend in the self-confidence and the self-respect that we can gain in one another as peoples of the same country. I realize, Sir, that at times it is frustrating and tiring to attempt to establish these situations, but we must go on because I am sure we are right, and I am sure in the end that we will prove to be right. We have a wonderful opportunity here, Sir, of showing the whole world, in fact, what can be done with human relationships in a society of people of mixed races. It is a challenge given to us, and one which I am confident we will answer.

May I finally, Sir, also speak as a European Elected Member, as the Member for Aberdare and the Member for Mount Kenya. As a European Elected Member I see the issue very clearly that confronts our own—my own—community, and there is today, Sir, a fundamental difference in approach sincerely held on both sides. As a European Elected Member, I believe that I do the best for my people and for Kenya by looking around and finding peoples of other races with whom I can work and with whom I can think, and going forward together as one. There are others who believe that they do their best by being exclusively Europeans. Therein lies the difference, Sir. It cannot be said too often because our community, I do not think, has yet grasped where

the difference is, Sir, and I believe that those of us who look to our fellow men for the answer will prove ultimately to be right.

Mr. Deputy Speaker, I beg to support.

Mr. Mboya: Mr. Deputy Speaker, Sir, the Government asks us to take note of Sessional Paper No. 10 and Sessional Paper No. 6. I presume from that that in fact all we can do is to make observations, but action, if there will be any, will be taken by the Government. Perhaps regardless, or perhaps in consideration of the observations that we make during this debate.

There have been statements made during the debate by some Members on this side of the House, and also perhaps some outside this House, referring to questions of confidence, security, sincerity and all the rest of it, and the future, especially of the Europeans in this country. Too often it has been the case for some people to try and show how very little confidence they will have in a future Government of this country by trying to insist upon certain protective provisions for their own community. I am referring especially now to the European community. The last speaker, if I may say so, has for once attempted to make what I may call a positive contribution in the matter of confidence or discussions on confidence, but it would be very useful if he could get hold of the Member for Aberdare, who seems to believe that confidence and security for the Europeans lies in torting guns around and threatening everybody.

Major Day: I thank the hon. Member for giving way. I made no mention of guns, Sir. I think he should restore that statement.

Mr. Mboya: With due respect, all I said was "seems to believe". I did not say you have said it. He has made statements which I am left with no alternative but to interpret as implying that confidence and security for himself and his community can and will come about by some external artificial force, a force that will be beyond that of the government of the day, and perhaps men like himself should be told at this time, before it is too late, that no such a force exists, and that a future government of this country will be beyond those forces which he contemplates, and that a future government of this country, democratic or otherwise, will be quite free and in order to govern as it sees fit at that particular time. I think this ought to sink in the minds of some people who in the last few days or weeks have given the impression or tried to sell the idea overseas that there was no future, no hope, no place for any person in this country, and that dictatorship, anarchy, and racialism would, in fact, be the order of the day when Africans govern this country.

[Mr. Mboya]

I heard reference made to the Congo. If I may say so, Sir, if anything the situation in the Congo proves once and for all the bankruptcy of Belgian Colonial rule and Colonialism generally. No matter what efforts some people may make to exaggerate the situation, to exploit the situation, it does not alter the fact that this country, Kenya, is going to be independent and governed by Africans. I do not know what those who think of external protective devices, think of. I do not know how long they think they can hold it, and if at all they can hold it, what the consequences would be if it is to be held by force, without due regard to the wishes, to the feelings and to the aspirations of the local people. This is something which I think some people have overlooked, and men like my friend, the Member for Mount Kenya and the Member for Aberdare, perhaps need to contemplate a little bit further on these rather elementary facts of our situation. It is not going to help them, or indeed help the European community, to live in the past and base their policies on wishful thinking and self-deception, because changes will come as surely as I stand here, despite the Members I have mentioned, and despite their policies.

There is also the tendency to think that when people talk of confidence reference must be made to Africans, because it is they, and they alone, who it would appear, in the eyes of some people, control the question of whether or not there is going to be confidence and security, and people tend to question the sincerity of African leaders, and doubt their capacity or ability in the future to think of the interests, the legitimate interests of other people. I will suggest as I have done before, that confidence is not a one-way traffic, it does not depend entirely on the Africans. It also depends on other people who compose this community of ours. If they believe in the policies they have outlined in the last few weeks, the reaction is a very simple obvious one. If someone believes that he is going to gain confidence by collecting arms and forming security groups, then, Sir, that someone who believes in that thing must face the possible reaction of other people also trying to collect arms for counter security.

Major Day: Mr. Deputy Speaker, Sir, on a point of order, could I ask the hon. gentleman to substantiate this repetitious statement he is making about arms and ammunition?

The Deputy Speaker (Mr. Conroy): I do not think so. Mr. Mboya has commented on something which is fairly public knowledge, and that he is entitled to do. I do not think he is entitled to level anything at you, Major Day and I do not think he is doing so.

Mr. Mboya: I am very grateful to you, Mr. Deputy Speaker, but perhaps I might suggest that the Member for Aberdare reads the newspapers. Before he interrupted I was saying that this confidence depends on everybody, and sometimes it is a question of reflex action, or reaction to certain policies, certain speeches, certain ideas or tendencies of some people. It is not just the Africans. The other people too have a responsibility in this matter.

Now, Sir, the African position on the question of land cannot, in my view, to any person who has lived here for any time, be confusing, nor can it be misunderstood, because I think all the time it has been consistently stated, clearly stated, that we have opposed two important aspects on this land question.

One is the act of exclusive reservation of the so-called White Highlands entirely for European settlement, and the other is the economic policies pursued in order to preserve or protect that act of exclusive reservation, the false assumptions that have dominated the thinking of our Government in its economic planning, that Kenya's economy is entirely dependent on European enterprise—I mean, goodwill and the rest of it; that Kenya's economy would break down and run into chaos the moment you interfere with the Europeans or displace them: in fact, that nobody else is doing anything else in this Kenya economy except for this European farming or settlement. This is a false assumption. Admittedly, European economic activity has resulted in some good for this country: nobody has ever denied that: but to assume that this country is entirely at the mercy of European settlement and must go on its knees and beg and beg and please the European settlers is absolutely nonsense.

This position which we are expounding today is not a new one. It is a position we have consistently stated, and our demand to move away from this position has been consistent and perhaps has been the longest dispute in the political history of this country. We have said in the past that so long as this situation prevails this would constitute a bone of contention that would bedevil the entire political thinking and political change in this country, and to the extent therefore that this Government would like to break away from that act of exclusive reservation it would be merely acting in a manner consistent with the demands that we have made. The question that I see here is how this Government is intending to go about it, what measures they want to take, what timing is involved, and so on. It is here, Sir, that this Government failed. At Lancaster House we made our position very clear. I was surprised that some people, even despite

[Mr. Mboya] that, do not seem to have understood our position at all. At Lancaster House there was almost a week's deadlock—perhaps it was over a week—during which time the Colonial Secretary tried to get the various parties to reach agreement on a draft that would summarize the Conference's views on the land issue. The deadlock was complete and was never resolved as such, except at the end, in the Secretary of State's own Paper in which he made his own statement and he said it was his own statement, not our statement. We were not asked to accept it or reject it. It was his own statement he said. The impression we got was that the question was left without any resolution. We stated at Lancaster House that the Lancaster House Conference was not, as constituted, the proper place to discuss and resolve the land question, that this was a matter which would have to be discussed back home, and on a certain basis. On the other hand, the European leaders had sought that we should be committed to respecting certain what they have called "land rights" as they presently exist, a point which we refused to accept, stating that the land was a matter of dispute. There were certain wrongs, we said then, that should be righted before any general wholesale application of a Bill of Rights. I would like to emphasize the point that at Lancaster House and elsewhere the African Members singled out the land question as the main issue on which further discussion would take place in the context of the application of the Bill of Rights. I make this emphasis because I do not want to be misunderstood on the point of property rights as applying to ordinary normal business and industry or commerce in which we have already addressed ourselves here and at Lancaster House and on which in general terms we have agreed that definite and emphatic safeguards would be applied.

Now, Sir, it is all right if this Government or anybody wishes to ignore the fact that land has been a disputed point for all these years. That certain of our communities have believed, and still believe, that some boundaries are unfair and unjust boundaries, that some land presently occupied by some people in the so-called White Highlands belongs to certain areas and tribal groups. All these things we have said before, and I say it again, should, and in our view must be gone into, and rightly, before you can secure a position where you can generalize on this question and take general action.

We have come back from Lancaster House with this dispute unresolved, and now before the end of this Government we are being asked to take certain definite steps in the matter. The main argument being put before us is the need

to give security to European settlers, to allay their fears, to create confidence. Would it be unfair for our people to interpret this move as an attempt to accelerate these measures and bring in legislation before the constitutional changes take place. If that is a fair reaction does it create the atmosphere, the conditions of good will and confidence which everybody is asking us to observe. The programme will go over a number of years and yet the General Election is only a few months ahead. We do not know whether the Minister today will be the Minister next year unless there have been some guarantees behind our backs. We do not know whether the same detailed stipulations in this report will be accepted by the next Government as sound economic proposals. We do not know whether the next Government wants to be committed to these loans, debts, and interest to pay on this basis, as against some other order of priority in its economic planning. Now, my view is that all these things should have been taken into account, and this hurrying up, the haste in which the Government finds itself, has bothered many of our people in this matter.

I said once that I thought this Government was incompetent to take certain decisions. I believe that as an outgoing Government it should have seriously taken into account the need to restrict its activities to such short-term measures as are consistent with its present life.

I was struck by some piece of argument here that you must do everything to give Europeans security and confidence before independence comes. I was led to believe that we were being asked to believe that whatever we did for the Europeans now would be sacred after independence. Now, I am not trying to suggest that the next Government of Kenya will be out to destroy everything that has been done in the past, but I am prepared to state that the next Government may find some of the things done today to be totally inconsistent with its own thinking on the question of the development of this country and the advancement of its people, and in those circumstances that Government will be entitled to take such action to modify those decisions taken today as it sees fit. But what is even peculiar is that whereas everybody tries to convince us that everything must be done now to give Europeans security after independence only the other day the Governor said to the Masai people, "I cannot guarantee you this after independence." Now, if the Masai cannot be given guarantees why are we being asked to guarantee Europeans? Is European security more important than Masai security, or are the Masai people any less citizens of Kenya than Mr. Smith of the Kiangapo? There is an obvious contradiction of terms. The Government must make up its mind

[Mr. Mboya] what policies it wants to pursue and in whose interests. If these policies are a short cut to entrenching European interests then, of course, they will be suspect, and if Government makes pronouncements that will cause some people to feel there is a short cut to that entrenchment then they should not be surprised when our people reject some of these ideas.

The second aspect of this land question is the economic aspect. I said there were two aspects: the first is the act of exclusive reservation which I said and still say that we all want to see gone. The second one is how far a programme of land reform will meet the publicly stated desire among the Africans to deal with the question of landlessness and land hunger in the African areas. Every time our people have called for the disbandment of the White Highlands' Order in Council they have also stated that they want to see a genuine, effective settlement programme in the Highlands for the Africans. It should not just be a question of pronouncements or a token settlement; it must be genuine, effective resettlement of Africans in the Highlands. I note that in these reports it is intended, I think, to provide something in the order of 60,000 acres for such a programme. This leads me to say that once again our Government has been caught out trying to do too little too late.

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): 120,000 acres per year.

Mr. Mboya: Having been too late, they try to hang before our eyes a piece of meat to confuse the whole issue. Now, Sir—

The Minister for Local Government and Lands (Mr. Havelock): On a point of order, Sir, if the hon. Member had listened to the speeches of myself and the hon. Minister for Agriculture, he would be right in his facts. He is not at the moment. Maybe he would like to check up on those speeches and find out what the schemes do entail in the matter of acreages.

Mr. Mboya: Mr. Deputy Speaker, with due respect to the Minister, although I was not here yesterday I have looked up the speeches and I know my facts.

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

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

The question that this Government must face and must state clearly is whether in their view they think that the programme they are putting forward is going to meet with the demands of

our people for resettlement in the Highlands and whether taking action at this time before proper exhaustive discussions on those other questions that I have mentioned, the righting of the position of what we have called "wrongs" on matters of boundaries and so on, should not be dealt with more fully before this programme can be effective.

The other aspect of these reports we are asked to note is whether the Government thinks and wants to give the impression to the European community or settlers that this is in fact the final steps that will be taken in the matter of reforms in the White Highlands. I myself would say very definitely that I cannot consider this as a final step in the matter; I cannot consider this as eliminating completely the grievances which our people have expressed over the years. There is the question of title deeds for Europeans on which our people have very strong feelings and which need exhaustive discussions before any definite steps should be taken.

Lastly, I would like to say this, that for those who appear to condemn wholesale our suggestion that the White Highlands will have to be opened in terms of reforms that would mean greater resettlement of Africans, they might stop for a while and think over what psychological situation is created when an African boards a bus from Kisumu or some overcrowded reserve and travels through some of these vast areas—

Mr. Blundell: Mombasa!

Mr. Mboya: Or from Kiambu and travels through some of these vast areas—

Mr. Blundell: Northern Nyanza!

Mr. Mboya: And he is told that although in some cases his grandfather's grave may be somewhere in these areas, this is reserved for Europeans. What will be his reaction and what psychological situation do we create in this sort of situation? I say it is a bad psychological situation and in fact it is not in the interests of those who think that this is their greatest protection. I heard the Member for Nyanza saying, "What about the Masai?" Since when have the Masai lands been disputed among the Africans? Since when have the Masai been regarded as immigrant communities, as are the Europeans? Since when have they ceased to be indigenous and to have the native right of ownership in their respective areas? The question has always been whether or not the immigrant communities had the right to settle on land and whether or not politically and economically this was a happy situation to exist in this country. Those who are bringing in the Masai, I have said once and I say again, all they are

[Mr. Mboya] trying to do is to try and cause friction and rifts among the Africans. We have heard these appeals to the Masai and the rest in the last few months: "Join with us because you are a minority and you are threatened as much as ourselves." This is an obvious, deliberate attempt to create a political issue which the Europeans can exploit with a view to inducing perhaps some Africans to support their own political programmes and motives. It is cheap political tactics and I am doubtful whether they are going to succeed.

I say to the Government that these reports fail to meet fully—they fail to meet fully—the position which the Africans have taken in the past.

An hon. Minister: (Interruption).

Mr. Mboya: I am not afraid to say they have failed to meet it fully, I have said that, about the act of exclusive reservation, the question of re-settlement and so on. And as such, no African can consider this a satisfactory solution to the land problem; no African can accept this as the final position on the land question; and no African should be expected to support this Government on this particular programme as such.

Closely connected with the question of land is the question of continued immigration of Europeans into this country. We have said in the past when talking about land that the European settler-immigrant is no longer desired in this country. I do not see any more room for the settler type of immigrant into this country and what we would like to see side by side with whatever steps are taken to meet the land situation or reform it should be Government's categorical statement that to those people who want to come here to settle on land the door is closed. Why has this not been made? When you set up boards you put in so many Europeans, so many Asians, so many Africans and they will decide.

The last time I referred to this Government as the agent of a Colonial régime someone boomed from this side and another from this side. Today we have it confirmed in the words of, I think it is, the Member for Aberdare—

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): You believe him now?

Mr. Mboya: —that these are agents. Some of them on this side say they are the kith and kin and that their kith and kin will support them. I think the situation is perhaps changing too fast for the Member for Aberdare!

However, the point I am making is that the Government should take immediate steps to stop

further immigration of Europeans coming here to settle on land.

Mrs. Shaw: Mr. Deputy Speaker, on a point of order, are we discussing immigration policy or what?

The Deputy Speaker (Mr. Bechgaard): I think immigration is connected with the settlement side of this question.

Mr. Mboya: Thank you very much, Mr. Deputy Speaker. I thought I was right. I might as well repeat for the sake of the Member for Nyanza that we do not want any further European settler immigration into this country.

The Minister for Local Government and Lands (Mr. Havelock): Settlers only?

Mr. Mboya: No, settler, settler, settler! I have never called these business industrialist settlers like some of the fellows behind here.

Mr. Blundell: Would the hon. Member give way? I am sure all the hon. Members find the hon. Member's remarks most interesting. I would like to ask him whether he includes in the immigration of Europeans for settlement the tea industry?

The Deputy Speaker (Mr. Bechgaard): It is not in order to ask questions at this stage.

Mr. Mboya: I thought so too! Mr. Deputy Speaker, I might conclude therefore by saying that the Government would be well advised to re-think or review the steps they have decided to take in this matter and especially to take into account the points that we have made in this debate.

The Minister for Local Government and Lands (Mr. Havelock): Mr. Deputy Speaker, on a point of order, the hon. Member, when I interrupted before—I did not wish to interrupt him again—stated that his facts were correct and that the Government scheme was for settlement of 60,000 acres a year. For the record, Sir, I think it must be put right that the Government's scheme will probably amount to something between 120,000 and 180,000 acres a year for settlement.

Mr. Mboya: 60,000 per year.

The Minister for Local Government and Lands (Mr. Havelock): 120,000 to 180,000 a year.

Mr. ole Tipsi: Mr. Deputy Speaker, Sir, the title of the two Sessional Papers which we are now asked to take note of, are, in my opinion, quite irrelevant to the whole question of land apart from, of course, being a complete negation on the part of the Government in its land policy. As far as the African is concerned, the barriers

[Mr. ole Tipsi] to the so-called White Highlands are artificial and they were placed there by a foreign Government. Surely, Mr. Deputy Speaker, this "iron curtain" if I may call it so, was not there before the white man came into this country.

Now, it is quite true, Mr. Deputy Speaker, that a very big portion of land which is now occupied by the European settlers in this country belonged to the Masai people and it was the sole birth-right property of the Masai. Now, these people defended and maintained the land they so much loved under the rule of the spear, which most people seem to have forgotten. Now, I have heard so often when debates on land or any other controversial matters are debated in this House some people who feel rather happy to mention the Masai name all the time as if they were the sole protectors of the Masai tribe. Surely, what has these people done for the Masai people? Surely, if they are very sympathetic to the Masai cause, the right course for them would be to hand over the land they now occupy to its rightful owners? I feel that it is only fair that some of this loose talk should stop or should cease because we can see beyond our noses all right and we cannot allow ourselves to be deceived by anybody. We have been deceived long enough and we are not going to have it.

Now, I think the Government is trying to repeat its old, old mistakes again. It has been told time and time again that the land in Kenya has been, right from the start, a bone of contention in Kenya's politics, and it was high time, instead of trying to introduce half measures, that it thoroughly went into the whole question of land, went through it thoroughly, with a view to solving it. Half measures will never do.

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

[Mr. Deputy Speaker (Mr. Conroy) resumed the Chair]

Now, I think I am rather inclined to refer quite a bit, if you will allow me to, Mr. Deputy Speaker, because I have very, very strong feelings about this mentioning of the Masai every now and then. Some people tend to forget that it was through the two treaties of 1904 and 1911, respectively, between the Masai and the British Government that the Masai were driven by force—and I repeat, by force—from the beautiful land that they loved and driven into the bushy, semi-desert land in what is known as Southern Reserves. So that those open, wide, rolling plains were left to the European settlers. The problem of water, Mr. Deputy Speaker, which today

besets the Masai would not have arisen if these people were not driven out of that country in which rivers flow at random, which we still regard as another Palestine for the Masai people.

Now, it is a great pity, Mr. Deputy Speaker, that the British Government should be so ungrateful, ungenerous to the people who have sacrificed so much of what they value more than anything else. No compensation whatsoever was paid to them. I can see one of my friends on the opposite side trying to laugh, but this is no matter for laughing. It is a very serious matter.

Now, in other words the Government seems to be quite inconsistent in its policies and utterances, and I think, if I may warn them, they ought to be a bit more careful in what they say and in the measures they introduce. I remember just recently when His Excellency the Governor addressed the Kajjado African District Council, and his address appeared in the *East African Standard* of 12th July, 1960, I read a paragraph which, with your permission, I would like to quote: "The protection of your friends, the British people who made a treaty with you in the year in which I was born, and who will honour it while they hold power in Kenya, will not remain for ever." Well, those are very, very clear words. Now, the contradiction as far as I am concerned comes in here: if the present Government cannot guarantee that the Masai treaty will remain for ever and ever, how can the same Government introduce such Papers as are now before us, asking us, the African leaders, at this moment, when we are not in a position of authority, when we are not holding the powers of Government in our hands, to guarantee anything? If they want any guarantee, well let the present Government move out, let us take over, and then we shall be in a position to give any guarantee. It will be very self-deceiving even now, at this juncture, if the present Government try and tell some of our friends that they can convert their leasehold titles into freehold on the one hand and on the other hand they tell the indigenous people, such as the Masai tribe and the other Africans, "Well, we cannot guarantee anything." It is quite nonsensical and illogical.

Now, I think that if the British Government have already made up their minds and have decided to do away with the Masai treaty, when their rule ends in Kenya, then at the same time the white settlement in areas which belonged to the Masai people must automatically end as a result of the breach of the treaty. It goes both ways. We have given this land for European settlers to settle on and we want it very badly, and we can always do with it, and welcome anybody who we want on that land. Africans in other parts of the country are very congested,

[Mr. ole Tipls] and before you came we were in a position to settle things among ourselves.

Now, the other thing, Mr. Deputy Speaker, is that most people do not seem to realize the seriousness with which the African thinks of his land.

Mr. Slade: Not only the African!

Mr. ole Tipls: Well, with all due respect to the hon. Specially Elected Member, not only the African, I agree. But it would be almost trying to evade the issue if we said that most of this land or all land was not found here. It was found here: no land was imported from Europe to Kenya! Of course, we do not deny the right of those people who somehow or other have done so much for the country; but what we do not want is to see large pieces of land lying idle, miles and miles, while our people are suffering in some of the reserves and they have not even half of a quarter of an acre to grow vegetables for their subsistence.

An hon. Member: That is what it is for.

Mr. ole Tipls: Well, the Minister says, "That is what it is for." I do not look at it in that way. The way I look at it is quite a different way. It is not a question of, "That is what that is for." My father had the right over that land and I do not see why I should be prevented from occupying it.

Now, when you come to say that this land should be bought by an African from a European farmer, then it becomes another serious problem altogether. I remember my father used to tell me some stories of how they were driven out from Lalkipia. It was not a question of buying this land from them: it was a question of kicking them and dragging them away, whether they liked it or not. How can you justify asking me now to come and buy it? Whom did you buy it from? Ask the man who sold it to you, not me.

Now, Mr. Deputy Speaker, I say that the way the opening of the White Highlands should be looked at is that it is not a privilege to open the White Highlands for African occupation but a birthright. That is what these people are forgetting. That is what you people are forgetting, and we will regard it as such. The question of converting these leaseholds for 999 years to freeholds title deeds has been rather rushed by the Government, I do not know what is at the back of their minds, and I request them to tell us clearly because we can see that there is something which is worrying them. They should tell us clearly what is at the back of their minds, because the conversion to freehold titles should have waited. A few months would not have made any

difference, and then a proper elected government of the people of this country, the Africans, will give those freehold titles if it is felt that they were justified.

Now, the way I look at the whole position is this; that the Government has been very hasty over this affair: they say, "Well it is a good thing, for a change we have now opened the White Highlands to relieve the over-population in some African land units". So well and good, On the other hand they come and ask me from a position of being ruled by a Colonial power to endorse the granting of freehold title deeds, to people, to Europeans for that matter, when I am not in a position to do so. Surely I cannot commit any future government over that.

Now, Mr. Deputy Speaker, I feel that the Government would be well advised for a change to withdraw this Paper because I do not think that it has fulfilled any, or it has done any, good from what it was intended for and we cannot treat the land question lightly.

Take for instance, we have some of the lands in the Highlands which are still in dispute. People are claiming this land, every now and then, from the British Government, and now before we settle these disputes you come and ask them to buy this land. On the other hand it would be very interesting to know what is the Government's intention in at least compensating those people who had very good lands with access to water and salt licks and so forth. What are they going to benefit from the so-called proposed schemes.

With these few words, Mr. Deputy Speaker, I beg to oppose.

Sir Charles Markham: Mr. Deputy Speaker, during the course of this debate it was to be expected that certain issues would be raised which were far beyond the scope of the subject matter contained in the Motion before the House this afternoon. Land has always been an issue which has become emotional, and I accept without any reservation at all, Sir, that in so far as my hon. friends the African Elected Members are concerned, they have always considered the land in Kenya as one of the burning political problems. It is no good, Sir, pretending that this problem is being solved by the Government statement yesterday, both in the speech by the Minister for Lands and followed then by the Minister for Agriculture. But always, as hon. Members will know only too well, it is hard to find a solution, an economic solution, to a political problem. I have always believed, Mr. Deputy Speaker, that the time would come when it would be impossible for land to be held in Kenya either on a racial or a tribal basis, but I would have liked in the course

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of this debate today to have heard suggestions made by my hon. friends that all land should be thrown open to everyone. I agree, Sir, that I have been out of the House on occasions this afternoon, but in the main all we have been told by certain of the speakers is that the land in the Highlands is in dispute and we have had criticism of the Government proposals regarding the conversion from leasehold to freehold, and I will come back to that problem in a minute.

If we take the problem of land, being a national asset of the country, as a whole, then indeed we should consider land as a whole and not just one smallish section of the Colony's assets. It is in my opinion unfortunate that Government have not taken the opportunity when they issued the White Paper this year to have produced a blueprint for all the farming land throughout the country. The impression is being given, from the White Paper, Sessional Paper No. 10, and the No. 6 of this year, that the only land to be considered is that in that part of the country known as the Highlands and which is covered by the Highlands Order in Council. We know, Mr. Deputy Speaker, from investigations made by people who are prominent in the world of agriculture, that there are vast acres of land in Kenya which are capable of development provided there is sufficient capital to do so. Indeed, it was interesting to hear from Mr. Horden, who opened the Royal Show last year, of his envy at certain parts of Kenya at present virtually unoccupied, which compare most favourably with parts of Australia in so far as beef production is concerned. I know they have not got the disease problems we have, and they are very fortunate in that respect, but it does show that if this country is developed fully there is an enormous economic and agricultural potential of land at present undeveloped, and I would hope in the course of this debate we can get a speaker from the other side of this Council who can tell the House of the picture of land in the whole of Kenya and not just limit the debate this afternoon and tomorrow perhaps to the issue of the Highlands.

Mr. Deputy Speaker, as I said a moment ago, I have always believed that land should be treated as a national asset, and I believe that in many ways we have as a European community been stupid in our attitude towards some of the problems. Nevertheless the fact remains that that change has now come and what must be made clear now is the question of how that change is to affect the economy of the country. We have heard a lot, both in the speech by the Minister for Lands when he introduced this Motion yesterday and again in the speech by the Minister for Agriculture, and other speakers who have already

spoken in this debate, of the question of confidence. Confidence is a two-edged weapon and it has to be mutual if it is to be of any value at all. I was therefore, Sir, somewhat hurt, not surprised, however, but somewhat hurt at the ungenerous attitude taken by my hon. friend the Member for Central Nyanza. If his speeches, which we have come to expect, are what we can expect in the future, then certainly, Sir, that confidence will never be restored. It is difficult for us, however much we are told that we have got to have faith in the future, it is difficult for us to be anything else but realistic. It is so easy to read out every platitude that is contained in the dictionary, to quote all the political slogans used by every political party, when they wish to use them, and to carry out the normal art of rhetoric of which the hon. Minister for Lands is a past master, and explain to us that we must have confidence, and yet he could not find any means, or as far as I could see, produce any means, whereby that confidence could be justified.

I realize only too well, Mr. Deputy Speaker, that he was not in a position to do so, but what I do think would be perhaps just to this House and the Members of this House would be, on this occasion, to be brutal in so far as the facts are concerned, rather than risk the danger of pneumonia by hanging around in clouds of hope in the trust that something will turn up to make it all right.

Let me say this much regarding confidence: it is normal, and I believe looking at the Front Bench, the Middle and Back Benches of Government today, it is normal for all men and women who have a trust to their shareholders, if they are directors of companies, to make certain that the money which is owned by the shareholders is invested wisely. Therefore you can hardly blame the directors, which in this case are the vast majority of farmers and businessmen in Kenya, if today they are cautious before continuing further investment in the Colony. You can hardly blame them, Mr. Deputy Speaker, in view of remarks made about sanctity of title. You can hardly blame them in view of remarks that the land does not belong to anybody anyhow except the future African Government, whoever it may be. And therefore when your board of directors takes the normal precautions of waiting and hesitating before committing further business deals in the field of agriculture, they are being nothing more than prudent. It is no good, Sir, the Minister for Lands suggesting that this confidence is being shaken by the dismal talk of people here and in London.

The fact is that I believe it is kinder to speak the truth on occasions, and certainly it will be very unfair to pretend to investors in England

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that this moment is the right moment to invest until such times as we have got this question of title out of the way. Confidence, as I said a moment ago, is and must be mutual to be of any value, and at the moment I have been given no proof by speeches made this afternoon from my hon. friends on the left that I can write to London and say the atmosphere has changed and you should now continue your investment in Kenya. That, Mr. Deputy Speaker, concerns people who might be investing: what about those people who have their all in this country, the same as I have? If, Sir, this was an Olympic hockey match, as apparently it was earlier this afternoon, there is nothing wrong in being defeated. Indeed, Sir, Kenya has suffered that on numerous occasions. But this is too important, and what is vital if this country is to continue is that the European farmer does not lose heart. It would be wrong, in fact it would not be an exaggeration, to say that the vast majority have not lost heart. They cannot see at the moment a solution to the problem, a problem which affects not only them but the future of their children, and however much they might be told they must be non-racial, they must be non-political and other "nons", the fact remains that they still think of their own future, and whether you like it or not they are going to continue to think of their own future not, Mr. Deputy Speaker, in a position of privilege. That is not wanted. It is only in a position of security. We in this House have been urged on numerous occasions to wait and see what happens once independence has been granted and we have been told that all the future will be settled by the African Government that will come into power. That, Sir, is an obvious remark and cannot be disputed. It is accepted by me anyhow, if not by some other people in the country. All we want to make certain, Sir, is that the leaders of today and, as my hon. friend the Nominated Member, Colonel Jackson, said, the leaders of today can give us the assurance, as we hope, that the leaders of today will be the leaders of tomorrow. We cannot, of course, perhaps even suggest or guess what might be the result of the ballot box so far as any of us is concerned. But that assurance given now, even though it might embarrass them in their campaign, would at least prove to us their sincerity on this issue. Let us, Sir, put back into the past history the rights and wrongs of the Highlands. The fact remains that land which is owned by Europeans in the Highlands is, with a few exceptions, in areas which did not get freehold title, which is known to the Minister without mentioning them here. The vast majority of land is held on 99- or 999-year leases, and most of those people who have

the former lease have the option to convert to the 999-year lease; with the exception of the revision of rent there is very little difference between freehold and leasehold other than the fact that with one you do not pay the Crown rent and with the other you do. But I would suggest to my hon. friends who have attacked the freehold proposal that they should read up the conditions granted in a leasehold title which is granted by the Crown, and as far as the privilege is concerned on that lease it is equally binding as if it were freehold. Therefore, Mr. Deputy Speaker, I would suggest that there is little difference except for the revision of rents I mentioned and the paying of an annual rent between the two titles in so far as security is concerned. I therefore do not look towards any future African Government for security on the title to my land because the title to my land was granted by the Government of Kenya, and it is always customary for successive Governments to honour agreements on title. I know, Sir, that it is difficult for African Elected Members, perhaps, in this interim period prior to the elections, to commit themselves. I know as well that certain of them have made promises at meetings that once freedom comes there will be a general distribution of wealth and land throughout the Colony. I shall look forward to being umpire during that particular scramble. The fact remains that with audiences, many of whom are not so sophisticated as the speakers, many of whom are not perhaps so educated as the speakers, the danger lies in the fact that people do believe that land will be available once the great day emerges. In fact I do know that people are joining a club in certain parts of the country where for a nominal subscription—I will also say it goes into the pocket of the man who is the organizer—you are given prior rights on a farm. I have put my name down for two or three farms, and I hope that I am lucky in the draw, too!

Mr. Deputy Speaker, when we come to the details of the White Paper, I heard with interest the speech of the Minister for Lands when he answered most of the points contained in a criticism made by various bodies such as the Kenya National Farmers' Union. I feel that he has answered to some extent the detailed criticism levelled at the proposals contained in Sessional Paper No. 10. I wish, however, that he had been able to have considered once again some of the recommendations of the K.N.F.U. because it is important to remember that it is probably the members of the K.N.F.U. who are also the members of agricultural committees and they will be the people who will make this scheme work, and unless they have confidence in the proposals put forward by the Minister then it will perhaps

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result in the land transactions becoming more and more difficult.

When, however, we came to the speech of the Minister for Agriculture I must admit, Sir, that I was amazed to hear somebody change his mind quite so quickly just after a visit to London. We all know, Sir, that we all have to change our opinions on occasions, but I remember particularly being told by the Minister for Agriculture when he came to the Settlement Board to announce his new proposals to us that the one thing that had to be avoided was the question of going back to a peasant economy or peasant agriculture. Well, I suppose, Sir, the rarified summer air of England has resulted in a change of opinion.

I remember as well, Sir, the doubts expressed by Members of this House on the scheme which we now call the yeoman farmer scheme. I remember Members suggesting that if this scheme was to go ahead it must go ahead on the basis of being economic generally, and we were assured by the Minister, and I think the Director of Agriculture too, that the scheme would be fully economic, resulting in a surplus income, after subsistence, of round about the £200 a year mark. Now, we have superimposed upon us this additional calf of the Minister for Agriculture which is called the peasant farmer's scheme or, what is commonly called in Kenya farming circles, the re-introduction of Kaffir farming. I remember, Sir, the leader of the New Kenya Group, when he was Minister for Agriculture, telling this House during a debate on land consolidation, that what we had to get away from was ever, ever again a return to the system whereby we had this fragmentation of good land into a kind of peasant economy producing nothing more than subsistence farming for the family living on it; and yet we are now told in the speech yesterday that the benevolent British Government have made available funds so that this scheme can be a settlement scheme, not necessarily in the Highlands but in the Highlands and in other parts of Kenya. I presume, Mr. Deputy Speaker, that we must not have any sinister thoughts as to what has caused this, but one cannot resist suggesting that this is a political move purely—perhaps that is the wrong word—or simply and impurely. If it is not a political move then what does the Minister for Agriculture suggest will come from this land which has been divided up into smallholdings, of 10 acres or such, so far as the economy of the country is concerned? If in this House only a short time ago the minimum holding in high potential land was to be round about 50 to 60 acres, is it now suggested that in other areas of land, perhaps not of high potential, that 10 acres

will be adequate? If it is, Sir, then all I can suggest is that the Minister for Agriculture should either have a policy which he sticks to or come back to the House and admit that he has no policy at all.

I remember as well, Sir, the Minister for Agriculture telling us in the Settlement Board that what was very important was that farms at present economic should not be broken up into small units which would not do anything more to assist and boost the agricultural development of Kenya and productivity. We know from bitter experience—and I feel certain, Sir, that when he speaks the hon. Specially Elected Member, Mr. Michael Blundell, will confirm this—of the disastrous results of Kaffir farming, if I can use the word once again, that took place in areas such as the Wanjoh Valley, for example, prior to the Emergency. We are told that the scheme will be supervised. Who, by my, may I ask? Who is to provide all these numerous bodies who will be required to supervise the various schemes? We are told it will be the Settlement Authority. Sir, all I can suggest is that you will require a superman to be in charge of that Authority. You will require as well the most qualified board in Kenya, and you will require under their a'team of people which will make sad reading when it comes to the Annual Estimates in this Council. It was suggested to the Minister when he spoke to the European Agricultural Settlement Board that there would be numerous difficulties in trying to administer the scheme which is now known as the yeoman farming scheme, but this new scheme suggested, where there will be a large settlement in various areas of Kenya, again administered by the same Authority, presents, I would have thought, difficulties such as have never been encountered in Kenya since the days of consolidation. I would like to know—although he cannot reply personally since he has spoken this debate—from the Minister for Agriculture whether this scheme has the approval of his own Department. I do know that a similar scheme was put forward by one of the deputy directors who had long nurtured an idea such as this, but it was turned down on the advice of a more senior official. If this, Sir, is now the same baby reborn, then, Sir, the description of its parents is beyond Parliamentary language.

Now, Sir, I apologize to the House for having kept Members so long, but I do believe that this particular debate is very important indeed.

In his speech yesterday afternoon the Minister for Lands paid a tribute to the fact that the person who had first advocated the lowering of land barriers was my hon. friend the Specially Elected Member, Mr. Blundell. There was, Sir, some misunderstanding in my mind when that remark was

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made, but it was cleared up this afternoon because he was not giving all the credit to my hon. friend for having raised this additional money, as, Sir, I think others were equally involved, but I would acknowledge, myself, Sir, that it has been my hon. friend who did himself inaugurate the scheme for lowering the land barriers. It would be ungracious of me, Sir, not to admit that. But, Sir, if he does admit that, then, having taken that bit of credit, he must also now, Sir, take a bit of the blame. If his colleagues, as called by the hon. Member for Aberdare, Tweedledum and Tweedledee, are the authors of the present scheme put forward under collective responsibility yesterday, then, Sir, my hon. friend the Specially Elected Member must also be a party to those proposals. I cannot believe, in view of the statements he made a short time ago, that he believes that this is anything more than a political gesture.

Unemployment, we know, Mr. Deputy Speaker, is a desperately serious problem in Kenya, but the settling of some thousands of families in areas available for peasant farming will not let us face it—solve that problem. The only thing that will solve that problem is a wave of the wand which restores political confidence and economic confidence in the country which will allow people then to establish new industries here, which will encourage people to erect factories and assembly plants and the like, so that your vast overpopulation that streams in from all centres of Kenya can then make a living in the towns. Then, of course, you have your problems of housing and the problems allied to housing which do not concern us in this debate. But just the settling of some thousands of Africans on areas of land in Kenya will not solve the problem and I do not think, also, that it will get any extra votes for any African candidate in the next election either.

Mr. Odinger: Certainly not.

Sir Charles Markham: Sir, I do not think that the hon. Member for Central Nyanza will be deeply involved anyhow. One of the stories about him is that he is waiting for his crown in Nyanza and that therefore he will not be involved in this settlement scheme. I do, however, understand, Sir, that he is going to use his best influence so that members of other races should go into the Lembe Valley.

Finally, Sir, I listened with interest to part of the speech by my hon. friend the Member for Nairobi Area. He reminded me, Sir, of my parrot I have at home. When I go home the parrot always comes up and makes cooing noises at me. I then put my finger in his cage and he promptly bites me. The hon. Member started off

with sweet reason. Then I wondered when the sting was going to come, and then, Sir, I could be almost as sure as the bookmaker about to buy a Rolls-Royce when I thought that at some time very soon in his speech there would be the sting; and there was, because the hon. Member, unlike my racehorses, always runs to form.

It was unfortunate, Sir, that he should have misunderstood aspects of fears of Europeans, and I believe even though we may disagree amongst ourselves, and we always have done since the advent of colonists at the turn of this century, the fact is that all of us, I hope and believe, are sincere in our remarks and our fears for the future. There are different people who may have a different solution, as they see it, in the light of events; others feel that they are wrong; but the fact remains, Sir, that in a civilized society there is always room for both points of view. I deprecate, Sir, the suggestion made, or the innuendoes made, that speeches are made by European Elected Members in order to try to prevent African progress. They are not, Sir. They are there in order that African progress can be maintained, indeed hastened in some instances. I do not, Mr. Deputy Speaker, this afternoon wish to mention the tragedy of the Congo except to say this: that it would be disastrous if we tried to make political capital out of other people's misery. All I would like to suggest to hon. Members who think that Europeans are concerned because of the Congo is that we have a certain standard of behaviour and an accepted code of decency. If that code is broken then naturally we are concerned. What we are determined, however, Mr. Deputy Speaker, is that events such as those that have happened near our border will not happen in Kenya, and therefore that any action which we can take now on land, or other methods of solving the difficulties in front of us, must be taken by men of good will of all races. We may disagree, Sir, but surely now is the time to try to find a common solution to these problems which I believe are manifest.

I beg to support.

Mr. Mate: Mr. Deputy Speaker, Sir, I stand to support the principle enunciated in the two 'Sessional Papers' but I have some very strong criticisms of the whole idea. One of them is the fear expressed by the European tribe of Kenya that it is only they who are accused of having too much land and that it is only their land that should be given for resettlement by Africans. Sir, it is quite obvious if you take the acres owned by the other tribes, and compare the numbers of acres owned with the number of people in the tribes, it will be seen that they have got too much land. When we are told by the

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Member for Ukamba that they are dividing up empty land and that we are going to affect the economy, I am sure that he is only using a smokescreen of so-called economy to try to blind us to the facts. The fact is this. The present African contribution in the way of agriculture—coffee, pyrethrum, maize and anything else—comes from those ten-acre plots and even one-acre plots. The Africans in farming today have only got very small acreages. What is the worry he has? What is the worry if these empty lands are divided up amongst those people who want to make use of them, to make use of them?

He would not convince me that the African contribution today from their small plots, in spite of consolidation, is nothing for Kenya's economy then I would go with him, so when he talks of ten-acre plots and of four-acre plots for an African it is a whole world. He should not be worried with his 10,000 acres, half of which are not farmed and go to waste, if they are being used properly. So on the question of the European tribe and the land they have, I feel it is very, very important when they have too much land per head as far as the European community is concerned. On the question of land I agree it is their land, but they are the latest comers to Kenya, it is quite obvious, and when they want to establish to us here, in this House, that they have been here for as long as possible, when they want to challenge the Member for Nyanza Central that such lands were not taken away, I am thinking of such areas as what we Meru call the Murray's Farm, or the Kiguyu call the Tigonj or the Tinderet. Mr. Deputy Speaker, this is a very shallow argument, and I do not think that any Member of this House should use it as excuses for holding back reforms. What I feel should happen is that we should accept each other in Kenya as we are today and not try to prove how entrenched we are, work for a kind of compromise when we meet on the need for our people for a space to live in some security without affecting the economic position and my argument so far as the economy is concerned is what contribution we Africans make to our economy so far as agriculture is on these so-called small plots. Even if I have got a small ranch in the Nanyuki area and I look after some animals and I get some milk on a small farm, the total product for Kenya is the same or even more. In Meru in the area known as the Kimbo-Kibirichia scheme the Africans there have only eight acres. They have animals, they have pigs and other things and they try to make the best of it, as they would on a ten-acre plot. What is the worry? If all the empty land in the Nanyuki area was made available for the Africans, the only worry is that

the European farmer wants to hide under the so-called land titles in order to refuse, so on that argument I feel we are pulling it too far.

It is true that there are very many parts of Kenya that are empty, and if we can find out where these areas are, automatically they are in the so-called White Highlands, and we should not allow these mistakes which were made at the beginning, to cloud our thinking today.

Sir, related to that problem is the question of the security of the African who already lives in the settled areas, and in the Crown Forests. These Africans are given an acre or two to farm and they get their food from there. They are employed by the owner of the land and they have no right to that piece of land. They use it: all right. But, he can throw them out any time he likes. That is what we do not want. They are living on that particular land today, they have lived there all the time. Give them a straightforward right to that piece of land so that they can live there without fear or farm without a feeling of insecurity. So for those so-called squatters they have every right because that piece of land they are using is not needed, and as a scheme I do not see anything at all touching on that. I hope the Minister, when he comes to reply will mention this particular problem of the so-called squatter. It gives any man or woman a very bad feeling of insecurity.

The question of freehold titles to the European farmers will make life even worse for these people. After that he can simply say, "Buy it from me, and if you cannot or, perhaps, if I do not like you, go to." Where would he go, he has nowhere to go? Even today, he is quite comfortable only he has got this feeling of insecurity in his mind.

Mr. Deputy Speaker, I feel that some Members here forget the kind of background thinking the African has on the question of land. A piece of land to an African is his home. He does not pay any rent on it, he lives there, gets some food to eat; what he can spare he sells and is free from hunger and many other psychological insecurities, and if we let these millions of Africans hang around without security in the absence of social security, we are only courting trouble for the future and that is where I join with the Minister for Lands and the Minister for Agriculture when they mention insecurity. You cannot keep back hungry people who feel insecure and make them behave themselves. You cannot. And I feel that today in Kenya we have plenty of space, plenty of room in the country as a whole for these to be given these so-called five- and ten-acre plots. We are not assuming the ten-acre plots to be ideal. There would be freedom

[Mr. Mate] of acquiring more land, but he should not hold a large area of Kenya's soil and say "Because it is mine, I was given it by a certain Government at a certain time, nobody should use it". He should realize that what we want is for the land to be developed and the land so acquired and the disturbance when we make use of it quite little, and we want that chance to get a start.

Sir, I feel the most disturbing aspect of this change is not so much the question of land titles or the question of the economy, it is the question of what effect it will have on certain individuals who have been living in a place for a long time. I believe the belief and fear of the European community is that the Africans have a secret thought somewhere to destroy their farms, their businesses in order to take away land from them. I think I am right in saying that the Africans have no sort of secret intention for driving away the Europeans or anyone else for that matter. And I think it would be most foolish for anybody to destroy the coffee, the sisal and all the good things which have been done for the good of Kenya in order to have the land from them. We are talking about the empty lands. Many mentions have been made, but these empty lands should not be allowed to continue to be empty. It would be a very foolish man or woman who would think for a moment that we do not believe or imagine that we do not need investment in this country or we are going to destroy what has been done, rather than to improve what we have. But, at the same time, these empty lands, on the question of title to those lands, is most disputable. Somebody is given a title to own a lot of area: he does not use it, but he says because of the title nobody should have this. I feel that any sensible Government should call that a mistake by another Government, and effect a change. But nobody should destroy what good work has been done today; farms, ranches and many other good things that we need.

What is important is whether that man who owns a piece of land does need it. In the same way that applies to the forests. I think it would be a mad Government, whether African or any other Government, who would destroy the forests. They are so important for water, but at the same time by cutting off a bit of forest on Mount Kenya for somebody to plant coffee or tea like in Upper Chuka no damage is done. So, Mr. Deputy Speaker, I would seriously suggest to our Government today that the land which all the talk about is a marginal question. We do not want to interfere with everything but on this marginal question it is a very important issue—empty land, homeless people and wasted labour—and those who are farming their areas properly

can continue to farm them as they have been doing.

Mr. Deputy Speaker, I feel that on the general question of land we have begun to be misunderstood and our European colleagues think that logic is the only answer to all the problems of life. Logic and argument are for lawyers and not for ordinary people. On this when the British Government assumed the responsibility for this country, called it a colony and protectorate, they had a Legislative Council here without an African representative here, in order to get here we had to argue and form political movements, the K.C.A., the K.A.U., Kenyatta's, Mboya's, Odinga's, to get to this pitch. The African has had to struggle for even a say in this House; just now we are having elections next year when we hope to see more Africans. Now it has been an arduous struggle to come to this point. The European community at large—not everybody—have wanted to hold everything back and I must say I remember the times in my own district when district commissioners and chiefs were persuaded to call the Meru people to come to Kiambu to the European districts to work on the coffee. It does not happen in these days because now we are farming our own coffee. The policy has been so framed so that Europeans benefit and live the Western way of life at a European standard; but not in Kenya, that is impossible. We have got to meet somewhere before we can grow together so that if the European thinks he can have artificial privileges in Kenya and the majority live otherwise without mutual acceptance and recognition and working together and out of that grows a unique country called Kenya of the world they are wrong. This is not a Kenya as Mr. Smith would like to see it or Mr. Patel or Mr. Njeroge or Mr. Onyango. Until they see that we are moving ahead together and then stop talking logic and become more sympathetic to the African cause and not use old arguments about the Government and the Governor at that time did this, these things do mean very much to the ordinary man. Until the European community sees this and they are more human, I do see how emotionally and some feeling, too, can be got out of some people in Kenya, we get a happy change in the future. As for the confidence among the people, as the Member for Ukamba said, it must be mutual. We must both try to see each other's points and as far as their fears are concerned, they must recognize our fears too and our needs. It is not a question of greed but of needs and we must get more experts in this country to work out the so-called economic units, including education, from the practical aspect that we have needed up to this point, the question of the economy does not come in.

[Mr. Mate]

Personally, I dislike the idea of drawing on the Congo scene. For everybody it is a very sad experience. I do not believe that if you become a murderer you only murder someone else's son and not your own. I believe that any country that wants to remain a good country must respect human life and work towards that. As far as the Congo is concerned, for the ordinary African it is a point of regret because it is the African race which is being shamed that after independence that people should not try to advance properly but rather aim at malpractices. So I regret that we have to make reference to it and if anything I think we should all feel very sorry about it.

So Mr. Deputy Speaker I would urge on the Government without any idea of a threat—because I do not believe we are going to have a Government in Kenya which is purely African and nothing else, everybody will have his part to play, if not in this House or in offices, it is practical politics that if we pretend we have no Europeans in Kenya we are only wasting time. I for one will never dream that we are going to have a Government which is purely one race, nobody need deceive himself it will be a multi-racial Government, I mean the actual working of it. So all we are saying is that when an actual African Government comes I feel we have got right away from the question and I should say that even this Government here is trying to do a lot of sensible work to help bridging that gap between what has been and what is to happen in the future for the improvement of our country they should get credit. I would like to assure the hon. Member Mr. Blundell on the tea question that we are very happy to have the tea company in our area, and we have no intention—whether from this Government or another—of giving up that opportunity of making more money for our people just because the Government is predominantly African. It is a sensible decision given by the people and it will continue to be like that. I feel there is a danger here because so often we talk in Kenya in such different terms that we complicate matters for ourselves. So I should say I support the principle and would urge the same Government to go a bit further to meet the ordinary man and not be tied down too much by the so-called sanctity of title and other things. Simple arithmetic will show which tribe has more land and should give more to other people. Yes, when I say that I know it has repercussions! The hon. Member Mr. Blundell will say it is Meru. I maintain it is the European tribe.

Well, they may have so much land but have they done so much with it? And at the same

time we are not opposed to people coming into Meru. What we do not like is people coming to change us too quickly, our customs, our traditions, everyone from tribes or clans, from Nyanza, from Kikuyu country, from Ukamba, if they come quietly without interfering with our language, our customs, they are welcome. We are not "anti" anybody, but there are certain things which we think are so important that we must always defend our own customs. So as some Members here can see, this speech may have repercussions so far as the land is concerned, but we are not just cowards, we must face these problems for the Meru people. So, Mr. Deputy Speaker, I hope this same Government will not be so shy of the so-called Africans that they cannot move in the right direction and I have seen other people that they have seen the problem, it is hard to them to carry it out and finish the job so that in future the land issue will be got out of the way and we can concentrate on the economic and other things to give our people more employment, that is if this is got out of the way. We all realize it is allied to all the other questions, but it must be got out of the way so that it is no longer a political issue but an economic one, but today it is a political issue.

I beg to support.

Mr. Bompass: Mr. Deputy Speaker, I too am a landless African. True I have one acre, but unfortunately half of it is rock and the other half is murrum. So I have a great deal of sympathy for the speaker who has just sat down.

Sir, I had hoped that I might have been able to speak fairly early on in this debate because I have seen in successive speeches much of the point of what I had wanted to say passing away. Sir, His Excellency the Governor gave us an undertaking last year, in November, that interested individuals would be given every opportunity to make clear their views on the two Sessional Papers. I would like to say, Sir, that it would be doing less than justice to Government if I did not acknowledge from this side that that pledge has been honoured in most generous measure.

Sir, I think it would be appropriate, too, to acknowledge the patient and sympathetic way in which the Ministers concerned have received the many representations which have been made to them by the European Elected Members both collectively and sometimes individually. Sir, with rather more than his usual efficiency the hon. Minister very lucidly took us through Government's land tenure proposals and he very rightly emphasized that sanctity of title was a prerequisite to the success of those proposals. So when the Minister quoted the statement made by the Secretary of State for the Colonies, rather

[Mr. Bompas]

with the air of a conjurer pulling a rabbit out of a hat, my first reaction was that it was rather a miserable and rather a scraggy rabbit. Sir, I think that was perhaps the immediate reaction of a great many of us, and for that reason I think it was very wise that the House did adjourn last night because it has given some—at least—of us an opportunity to ponder what are the real implications of that statement. Sir, the Secretary of State said in effect, firstly, that Her Majesty's Government considers that security of title is of vital importance; that the matter is receiving detailed study at a very high level; and, further, our land legislation will be enacted by Order in Council. Sir, there can be no doubt whatsoever that not only is Her Majesty's Government making our land problems her own, but by enactment through Order in Council she is accepting a very great measure of at least moral responsibility for sustaining the rights of the individual landowner of whatever race, of whatever tribe he may belong to. Sir, it is a complete canard to suggest, as it has been suggested in speeches this afternoon, that this legislation is designed merely to bolster up and assist the Europeans. This legislation, Sir, is quite obviously designed to ensure the continued prosperity and the economy of this country.

Sir, the statement by the Secretary of State, even though it may not be in any sense complete, final, should in my belief go a very long way towards restoring confidence both overseas and locally. The extent unhappily to which it will succeed in its purpose will depend entirely on the manner in which it is received by hon. Members in this House and all those who choose to express extremes of opinion from either end of our political spectrum. Sir, there are those, as we have again heard this afternoon, who show a total disregard for the rights of individual property owners. At the other end there will be those who tend rather to look every gift horse in the mouth. Sir, this debate is a wonderful opportunity for anyone who so desires to be provocative and destructive, and I would like to warn all hon. Members of their responsibilities in this matter. It is by their words either in this debate or outside this House that they can contribute either to reinforcing Kenya's economy or, as saboteurs, they can help to drive it into the slough of despond.

Sir, I believe that this debate and actions arising from this debate will quite clearly demonstrate who are the patriots and who are the statesmen, and who, indeed, are the opportunists, and I would appeal to all hon. Members, Sir, to debate these Sessional Papers from now on taking it as completely axiomatic that title, legally granted,

by the present or by any future Government of Kenya is sacrosanct.

Sir, I would like to add from this side of the House to the congratulations expressed by the hon. Nominated Member, Colonel Jackman, when he congratulated the Kenya National Farmers' Union for the infinite pains which that organization has taken, not only to dissect the Sessional Papers and in particular Sessional Paper No. 10, but also to ascertain in a most careful and thorough manner the general opinions and reactions of practically every European farmer in this country. Sir, the memorandum of 12th September on Sessional Paper No. 10 was prepared with the most painstaking application as I have mentioned, and it certainly helped me, and I believe it helped all those who wished to study the problem to a better understanding of what the position really was. It injected new lines of thought and reinforced opinions already held. The Kenya National Farmers' Union has since produced a further memorandum, Sir, on Sessional Paper No. 6 of 1959/60.

And that second document reviews the points upon which Government has not felt that it could meet the representations which had been made, not only by the Kenya National Farmers' Union, but also by other bodies, including the European Elected Members. Now that Paper constitutes a very convenient catalogue from which to catechize the Minister, and I make no excuse for using it in that manner.

The first point, Sir, on the Sessional Papers that I would like to make is this. Personally, Sir, the Kenya National Farmers' Union initially disputed the need to have both freehold and leasehold systems, not, I think, with any very great validity. They have since conceded that this necessity no longer exists, but the grounds they adduce are that there is now no inducement for lessees to convert to freehold. That, Sir, is one of the few observations which I do not accept for reasons which bring me to their points on the conversion proposals. These, Sir, are dealt with in paragraphs 4-9 of the Sessional Paper No. 6.

It is quite obvious, and the Minister has confirmed to the House that despite Government's tardiness over many, many years in revaluing the leasehold lands and in reassessing the rent which was Government's due, this is now going to be done. The consequence, Sir, is that the owner has to face the choices of paying the new rent, which again is subject to adjustment at 30-year periods for a full 99 years, or of paying its equivalent if he should decide to convert for 18 years. I suggest, Sir, that interest at 6½ per cent on the outstanding amount of the 18 years' rent seems a very minor premium to have to

[Mr. Bompas]

pay in order to convert, and so, Sir, I would dispute that there is no inducement to convert, and I would suggest that anyone who fails to do so will regret it if he misses that opportunity. He has fortunately five years in which to make up his mind, but if he dallies for the whole of that five years he will, of course, pay 23 years' rent instead of 18 years' rent in effect, less 6½ per cent.

Sir, paragraph 11 of Sessional Paper No. 6 deals with the resumption powers of the Crown, and I think it is worth recording because the point has not been made, that here indeed landowners have scored. I welcome the Government having given way on this particular clause, and the fact remains that now that the land acquisition is brought under the ambit of the Land Acquisition Act, 1894, the owner gets not only such amount as may be awarded by a collector, but I believe that he gets a 15 per cent surcharge in addition, and I think it is worth reminding landowners in this country of that, which I think is a very valuable concession.

Sir, that brings me to the control of subdivision. I think it was indeed wise that the Government agreed to bring subdivision control within the purview of the control boards. Sir, I would like to ask the Minister to comment in due course upon the Kenya National Farmers' Union recommendation that for reasons of economy only one regional board is necessary at present, and I would also like to ask the Minister why he thinks that agricultural areas, rather than county council areas, are a better zoning for the divisional boards.

Sir, if I may move to the composition of divisional boards, the proposals by Government in Sessional Paper No. 6 run counter to the Kenya National Farmers' Union opinion, but the Kenya National Farmers' Union is nevertheless disposed to accept Government's proposals, provided that only registered farmers or landowners should be eligible for election or nomination. I would add there, Sir, that if that were to be taken as a criterion it should also include senior executives of land-owning companies.

The second point, Sir, was that fresh elections should be carried out for agricultural subcommittees. Now the Minister for Agriculture dealt with that and defined the turnover of membership in agricultural subcommittees. I believe, Sir, that that turnover for the launching of these agricultural subcommittees with a new role to play is not quick enough, and I do believe that all members of agricultural subcommittees who are called upon to work under the new land regulations, both on control of transfers and of subdivision, should be people

who have been selected with that thought in mind.

Another point, Sir, on which I would ask the Minister to comment is the need to provide for expenditure on professional advice and assistance for the boards.

Sir, now I would move to a bone of contention which lies in paragraph 29 of Sessional Paper No. 6, and that is the composition of the regional boards. This, Sir, was referred to by the hon. Nominated Member, Colonel Jackman. I think, Sir, the impression has been created quite widely and quite understandably, Sir, that it is Government's intention to load the regional boards with members over which it has some direct or indirect influence and control. I think this is unfortunate, and I feel that Government would have been much wiser to have avoided any danger of that being even hinted at by accepting a board as was originally suggested comprised of the chairmen of divisional boards. Now we know that the immediate and obvious disability of that was that it was asking, or appeared to be asking, a board to stand in appeal against decisions of members of the divisions board. But, Sir, that point was very adequately covered by stressing that the chairman of the divisional board would be precluded from functioning on the appeal board, that is the regional board, whenever his own area, his own divisional board, had a case for hearing, and so I do suggest to Government that they should look at that particular aspect again, and without necessarily giving way on the principle of chairmen of divisional boards comprising the regional board, they should contrive to make the appointment of at least some members of the regional board on the nomination of the divisional boards.

Sir, I support completely the view that control of share transactions in public companies is impracticable, and that only private companies share transfers should be controlled, but I would like to add the proviso, Sir, that there are a fair number of public companies which in essence are treated as private companies from the point of view of taxation, and particularly in terms of undistributed income tax. Although fundamentally and within the company law they are public companies, they are, in fact, controlled companies, and I believe the transactions in their shares should be subject to the normal land controls that private companies would experience.

If I might turn, Sir, to clause number 27 of Sessional Paper No. 6, dealing with mortgage transactions, this clause, Sir, I believe, has to be handled with extreme care because unless a potential mortgagee is very fully satisfied that he has a better than a good chance of the divisional

[Mr. Bompa] "The regional boards allowing him to exercise his powers of sale or foreclosure should not arise, he will either not lend at all, or will very greatly curtail the amount of money that he is prepared to lend. Sir, I recognize the need and the desirability that a sale by a mortgagee in possession to a third party should most certainly be brought under control, but I must say I question the equity, or the desirability of dictating to a mortgagee in possession who he shall employ as a receiver or a manager. After all a restriction of that sort is not placed on an owner, who is free to employ a bad manager if he is stupid enough to do so. Surely, Sir, this particular aspect should be covered by legislation under the Agricultural Ordinances and not under this particular Ordinance.

Sir, the duties and functions of divisional boards. I simply cannot understand why Government insists on persisting in defining the precise duties and the reasons for which divisional boards may refuse their consent. It is perfectly clear that divisional boards must report to the regional board why they have turned a particular application down, and surely that is the place for the regional board to decide whether the rejection is frivolous or otherwise.

Sir, I made no comment on the speech of the Minister for Agriculture. That is not because I was not deeply interested in it, but I believe there are persons in this House far better qualified than I to deal with it. So Mr. Deputy Speaker, I beg to note.

Mr. Nyagah: Mr. Deputy Speaker, Sir, I rise at this late hour in the debate just to take note of Sessional Papers No. 10 and 6. I notice that there is not much we can do to change the Government view, but we are expected to take note, and I will take note in a very few words.

This is only an attempt by the Government—that is what I take it to be—to try and put right or alleviate the problem of unemployment and landlessness, taking care of the need for sound economy in this country. I say it is just an attempt, and I do hope that it is the first step in trying to get what has been described time and again by my friends, fellow African Elected Members, as a need for land reforms. Land reforms, the legitimate land reforms that will be done in stages after this first one. And these legitimate land reforms will take great care of the need of economy in this country. I cannot see any Government that forgets or fails to realize that importance surviving at all. In taking note, however, I would like to tell the Government this: It is quite true that the Government is prepared to introduce some of the schemes that the Minister

introduced yesterday, or outlined yesterday. In so doing, I think at this stage the Government ought to be reminded that there are some areas which have been in dispute and which now come under the title of Crown lands.

If the Government is going to settle or make any settlements at all in these areas, the prior and legitimate claims of such tribes that are adjacent to the areas should be met first of all. I am thinking of areas, Sir, that border with the forests which under the Carter Commission the readjustments of the boundaries such lands were purposely or deliberately left on the other side of the forest, now under Crown land. If the Government has any plans to settle any people at all in such areas, I would say very strongly that a claim should be given to such areas of high productivity to adjacent people.

I would also like to say, Sir, that there are also other areas which can be developed such as Mwea-Tebere. The claims of the Embu people there who want to develop these lands—they are ready to develop them—should be met first of all. I say this is a first attempt by the Government to alleviate the problem of unemployment and landlessness. Let this Government not get into more chaos by trying to cause landlessness in other places. If people want to develop any land which they hold today so that it can produce more and create stable citizens of Kenya, they should be encouraged rather than the Government bringing the people from the so-called highly congested or crowded areas into such areas where they will only be met with some form of hostility. Consultation, Sir, should take place between groups and the Government or the people that are going to be concerned with the operation of the schemes so that an amicable solution could be found.

Mr. Deputy Speaker, I say this is only the first stage, the first step, in the attempt by this Government to place Kenya on a sound agricultural basis. Incidents that have taken place lately from our neighbouring countries like the Congo are indeed very unfortunate. I believe we learn by and from mistakes and no one with any sense of humanity at all or with any sense of decency would condone the actions and the behaviour of some of our friends in the Congo. By those mistakes I am sure there is still time for us in Kenya, Africans and Europeans, to avoid a recurrence or any occurrence of such like in this country.

All that I wanted to do, Sir, was to take note and to remind this Government of the points that I have raised in connexion with disputed pieces of Crown land and also to welcome the attempt to open the Highlands and to try and alleviate the problem of landless and unemployment. Much has been said by the previous speakers and I do not want to repeat them.

[Mr. Nyagah]

With these remarks, Sir, I beg to take note.

Commander Goord: Mr. Deputy Speaker, it always gives me great pleasure to hear the last speaker who always speaks with great sincerity and great common sense. I think that in this particular debate, in the few words that he has said, he has hit some nails very firmly on the head. He has described in very clear words, I thought, Government's intention in this measure; i.e. relief of unemployment, resettlement, the encouragement of the country's economy and, in short, agricultural reform. Then he said something which I thought was even more important and that was that it was encouragement to produce more.

Now, that, Sir, to me is the nub of the whole problem, and it is a nub which I have thought during the debate today many of the African Members have not been able to appreciate at all. The Member for Central Nyanza opened the debate—almost opened the debate—with what I thought was a gross distortion of fact. He failed to substantiate what he said, which was that land had been taken forcefully; and the statement did him no credit and will do the country no good. Afterwards he described it as a "fact as the Africans see it". Now, Sir, a fact is a fact and when facts become something as one party sees it, or another party sees it, they are no longer facts. Nevertheless, Sir, I am going to take the liberty of expounding some facts as I see them.

On the question of ownership of land, this brings us to the thorny question of lands in dispute. I have never fully understood whether the African Members contend that some individual areas remain in dispute or whether the whole of the Crown lands in the Highlands are in dispute. I thought the last speaker when he talked about "pieces" of land probably put the first interpretation on it. Well, of course, there are, and we must acknowledge it, certain parcels of land which are in dispute. But we must reject the contention that the whole of the Highlands are in dispute and I feel that this arises from a certain basic misconception of the general principles of land ownership.

I wonder, Sir, as it is now approaching half-past six o'clock if I could leave the matter there?

ADJOURNMENT

The Deputy Speaker (Mr. Conroy): The time has arrived for us to adjourn and I accordingly adjourn Council until Nine o'clock, tomorrow morning, Friday, 22nd July.

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

Friday, 22nd July, 1960

The House met at Nine o'clock.

[Mr. Deputy Speaker (Mr. Conroy) in the Chair]

PRAYERS

PAPERS LAID

The following Papers were laid on the Table:—
The Water (General Amendment) Rules, 1960.
(By the Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie))

Report on the Kenya, Uganda and Tanganyika Post Office Savings Bank, 1959.
(By the Temporary Minister for Finance and Development (Mr. Butter))

ORAL ANSWERS TO QUESTIONS

QUESTION No. 130

Mr. Muliro (on behalf of Mr. Mboya) asked the Minister for Agriculture, Animal Husbandry and Water Resources to state what steps he has taken in respect of a recent statement by a Brazilian spokesman in the United States with regard to Kenya's loan from the International World Bank.

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): None, Sir. But the hon. Member may like to know that the Commission of the Board of Governors of the International Coffee Agreement, including coffee experts from Brazil, will be visiting East Africa next month, and I intend to discuss mutual problems with them.

Mr. Blundell: Mr. Deputy Speaker, for the purposes of the record, will the hon. Minister say which recent Brazilian statement that was?

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): As so many and various statements have been made by various Brazilian experts I am afraid I do not know which statement was being referred to.

Mr. Blundell: May I ask on what basis the hon. Minister was answering the original question?

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): All the statements were much in the same vein, and I answered generally, Mr. Deputy Speaker.

Sir Charles Markham: Coffee flavour!

Mr. Blundell: Mr. Deputy Speaker, am I to assume that when the hon. Minister gets up and

[Mr. Blundell] speaks in this Council his words are nothing more than the tinkling of brass and the clanging of cymbals?

QUESTION NO. 131

Mr. Muliro (on behalf of Mr. Mboya) asked the Minister for Agriculture, Animal Husbandry and Water Resources if he will suspend any action on the proposed South Nyanza Cash Crop Marketing Board until he has visited Kiili to investigate the situation regarding the Kiili Farmers' Co-operative Union?

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): Yes, Sir, I shall be visiting South Nyanza next week when I shall be having discussions with the Kiili Farmers' Co-operative Union. If the hon. Member would like to accompany me, I shall be only too pleased for him to do so.

COMMITTEE OF THE WHOLE COUNCIL.

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

IN THE COMMITTEE

[D. W. Conroy, Esq., C.M.G., O.B.E., T.D., Q.C., in the Chair]

The Exchequer and Audit (Amendment) Bill, 1960

Clauses 2, 3, 4, 5, 6, 7, 8, 9 and 10 agreed to.
Clauses 11, 12, 13, 14, 15, 16, 17, 18 and 19 agreed to.

Title agreed to.
Clause 1 agreed to.

The Paymaster-General Bill, 1960

Clauses 2 and 3 agreed to.
Title agreed to.
Clause 1 agreed to.

The Africans' Arms (Amendment) Bill, 1960

Title agreed to.
Clause 1 agreed to.

The Chief Secretary (Mr. Coultts): Mr. Chairman, Sir, I beg to move that it be reported to the Council that the Exchequer and Audit (Amendment) Bill, the Paymaster-General Bill and the Africans' Arms (Amendment) Bill have been considered by a Committee of the whole House and all three Bills have been approved without amendment.

Question proposed.

The question was put and carried.

Bills to be reported without amendment.

The House resumed.

[Mr. Deputy Speaker (Mr. Conroy) in the Chair]

REPORTS AND THIRD READINGS

The Exchequer and Audit (Amendment) Bill, 1960

The Temporary Minister for Finance and Development (Mr. Butler): Mr. Deputy Speaker, Sir, I beg to report that a Committee of the whole Council has considered the Exchequer and Audit (Amendment) Bill, 1960, and approved the same without amendment. I beg to move that the Council do agree with the Committee in the said report.

The question was put and carried.

The Temporary Minister for Finance and Development (Mr. Butler): Mr. Deputy Speaker, Sir, I beg to move that the Exchequer and Audit (Amendment) Bill be now read a Third Time.

Mr. Webb seconded.

Question proposed.

The question was put and carried.

The Bill was accordingly read the Third Time and passed.

The Paymaster-General Bill, 1960

The Temporary Minister for Finance and Development (Mr. Butler): Mr. Deputy Speaker, Sir, I beg to report that a Committee of the whole Council has considered the Paymaster-General Bill and approved the same without amendment. I beg to move that the Council do agree with the Committee in the said report.

The question was put and carried.

The Temporary Minister for Finance and Development (Mr. Butler): Mr. Deputy Speaker, Sir, I beg to move that the Paymaster-General Bill be now read a Third Time.

Mr. Webb seconded.

Question proposed.

The question was put and carried.

The Bill was accordingly read the Third Time and passed.

The Africans' Arms (Amendment) Bill, 1960

The Chief Secretary (Mr. Coultts): Mr. Deputy Speaker, Sir, I beg to report that a Committee of the whole House has considered the Africans' Arms (Amendment) Bill and approved the same without amendment. I beg to move that this Council do agree with the Committee in the said report.

The question was put and carried.

The Chief Secretary (Mr. Coultts): I beg to move, Sir, that the Africans' Arms (Amendment) Bill be now read a Third Time.

Mr. Webb seconded.

Question proposed.

The question was put and carried.

The Bill was accordingly read the Third Time and passed.

MOTION

LAND TENURE

(Continuation of debate interrupted on 21st July, 1960.)

Commander Goord: Mr. Deputy Speaker, when I started speaking yesterday, I criticized the Member for Central Nyanza for interpreting a fact as being "a fact as certain parties saw it". I then went on in rather lighter mood to say that I proposed to expound certain facts on the question of land ownership and titles as I saw them! I would like to say that my meaning there was not that I was expressing a point of view, but that I was expressing facts as I believe them to be true.

Sir, it is often said inside and outside this House, by certain Members that the land belongs to the African people. That statement, Sir, in a certain interpretation, is one which, I believe, we can all uphold.

The lands, the Crown lands of this country, are held by the Crown in the name of the people of Kenya, 95 per cent of whom are indigenous to this country; and when independence comes the State will hold the residual ownership of that land in the place of the Crown as at present. Sir, it is not possible, except in perhaps communist countries, for the State itself to develop land and to increase the wealth of the country from land; and therefore title has to be granted—whether it be leasehold or freehold does not alter the basic situation, that the residual ownership of the land is that of the people. But, Sir, I feel that the interpretation that many African Members are putting on this question of land ownership is that the land belongs not to the people of Kenya; but to the tribe. I believe, Sir, that that concept is very much out of date, and that the future will prove it to be so, and that in fact the policy in regard to the granting of titles in land by an independent Government will not, and cannot, differ materially from the policy which has been adopted by the Crown in the past.

In England, Sir, it is quite possible for persons of any colour who are not prohibited immigrants to own land, and I see no reason why that should

not be the case in this country in the future. In fact, there are many good reasons why it should be. If we go back to the beginning of the history of this country, title was granted to Europeans in order that the great empty spaces of this country could be developed, not for the benefit of those Europeans, but for the benefit of the country and the peoples of Kenya as a whole. It is a fact that land was reserved for Europeans, a position which is now anomalous, and which we propose to abolish, but it must be remembered that that reservation had the purpose at the time of attracting those Europeans to the country to invest their wealth and to build a country. Now, Sir, that policy must be judged to have been successful. There are in this country at the present moment four times as many people as there were at the beginning of the century, all or most of them enjoying an immeasurably higher standard of living; and I was very glad, Sir, when the Minister paid tribute to those people who came to the country in those early days and pioneered agriculture, and many of them lost their fortunes, lost their all in the process, so that the generations which are to come should benefit.

The hon. Member for Nairobi Area, despite this, has said, "No more settlers". Well, Sir, this may well be a purely academic matter; but there must be realism in this question of the capitalization, of the size of the farms and the ownership of the farms. Our objective, as one African Member said so rightly, is more production; and it so happens that in much of the land of Kenya more can be produced with greater benefit to the people of the country as a whole from a properly capitalized large holding than ever it can from smaller holdings. There is, Sir, in my neighbourhood, a small farm which I may quote as an example of this. It is of 500 acres, and it maintains 50 families. Now, Sir, on that 500 acres only about 100 acres is capable of arable farming as the African knows it. The remaining 400 are what was once veld land, and is now improved veld land, which is quite unsuitable for peasant farming. If such a farm were divided up between those 50 families they would have two acres into which they could get a *jembe* and eight acres of grazing. They could never produce anything like what is produced by that unit when farmed as a single unit of 500 acres; and it is interesting that the owner, a neighbour of mine, asked his headman whether they thought it was a practical proposition to divide this farm up between those 50 families, and the headman said "No"; they were happier as they were. And why? Because each family was earning in the neighbourhood of Sh. 100 a month and living rent free, and they could never get very much more than that from their individual holdings

[Commander Goord] were it divided up. But over and above that, they would have no insurance against disaster, against a bad year when the maize did not grow, when there was little milk, or when there was a disease, perhaps, in coffee; and it was obvious that those men regarded the owner, who I may say regards himself more or less as the manager on behalf of the people who live on that farm, as a very necessary buffer between them and possible catastrophe.

That leads me, Sir, to the aspect of the agricultural reform programme for the ten-acre farms. Sir, in common with the hon. Member for Ukamba, I have doubts on this particular aspect. I think it would be wrong to criticize this part of the programme until we know very much more detail, but it is obvious that it will be extremely difficult to find suitable land for ten-acre holdings, where the rainfall is regular and constant, and where natural disaster will not intervene. Nevertheless, one must recognize that there is a very real wish on the part of the Africans for this type of settlement, and we must recognize that economics cannot be the sole deciding factor in matters of this nature. Nevertheless, I do feel, Sir, that it should be borne in mind that schemes of this nature can only satisfy a very small proportion of those people who are landless, and that they could well be detrimental to the greater economic interests of the masses of the people. On this issue, Sir, I think we must await the more detailed plans before we pronounce any definite criticism.

During the debate, Sir, I feel that rather too great a stress has been placed on the aspect of reinsurance to European farmers. I do not see this debate, Sir, as having that particular purpose over and above more important purposes, the first of which is the opening of the Highlands to all races. And here, Sir, in regard to Sessional Paper No. 6, I would like to congratulate the Minister on having amended the original Paper in such a manner as to meet, to a very great extent, in a very reasoned way, the many objections put forward to the earlier Paper, and I myself have no criticisms except on details, which perhaps have been mentioned by other Members.

Secondly, in the course of the debate, Sir, we did have this assurance, that the matter of titles is being re-examined, and as another speaker so rightly pointed out, I feel that the value of this assurance, vague though it is at the present time, should not be underestimated, and that we should welcome it very wholeheartedly.

But mainly, Sir, the objective in this debate is surely to introduce these sweeping measures for agricultural reform which we hope and trust will be directed towards greater production and

greater wealth and greater prosperity for everybody in the country. I see, Sir, in these programmes, a vital part in the Colonial Government's aim for this territory, that is a strong, free and prosperous country in East Africa, and it is clear that in this programme the immigrant peoples have a most essential part to play, and that part is very freely recognized by the Colonial Government.

It is said, Sir, that nature abhors a vacuum. There is no doubt it is the one thing that the communists welcome, and we must see to it that at all events there are no vacuums in Kenya. I feel, Sir, that we have had enough warnings, enough gloom and foreboding, and the time has now come to recognize that all our peoples in Kenya have got a common aim in developing this country as a free and prosperous territory in Africa, and to this end we should welcome Government's proposals, and the aid and help which Her Majesty's Government intends to give even if this is not as extensive as we wish, as the beginning of a really dynamic policy for a new Kenya.

Sir, I beg to support.

Lord Portsmouth (Nominated (Non-Government)): Mr. Deputy Speaker, Sir, I rise as an Anglo-Saxon immigrant in England who dispossessed the poor Celt, and I would like to add also that if my family's land was on a 999-year lease it would only have 90 years to run, and therefore I am possibly able to speak with as much feeling as everybody else about land.

Sir, in general, and in a great many details I approve of the new Sessional Paper No. 6, and like the hon. Nominated Member who has just sat down. I too am grateful for the way in which so many of our practical wishes on the possible working of this scheme have been met in that Paper. Sir, I would like rather than to go into any detail on that to turn to the Minister for Agriculture's various schemes for new settlement and resettlement. I will not comment on the yeoman farmers' scheme, but I should like to have a word or two about the—I think it is what he called—the private enterprise scheme where persons could—present farmers—could either lease or sell direct to somebody of another race in the Highlands.

Now, Sir, I have been here for a very long time. In fact, even the Royal Commission advocated this form of opening up the Highlands, and I believe that it is in this way perhaps more than in any other that you will get real co-operation and real friendship and real results, with other races coming into the Highlands, because of taking somebody into partnership. That person is there as your next door neighbour and you are in

[Lord Portsmouth]

contact and able to help probably much more, and much more efficiently, than in the way envisaged by big schemes, either the yeoman scheme or the peasant scheme. I believe, Sir, that as schemes of this sort in private enterprise can come into being and are vetted and allowed they should be watched most carefully with a view to encouraging them considerably more than they are doing today, and, if possible, where money is needed for water supplies then in due course as the scheme begins to work money should be made available on loan for settlement of that sort.

Now, Sir, rather like the hon. baronet who spoke yesterday, was very much surprised at the peasant farmers' scheme. Sir, on the other hand I do not share his misgivings. I have for many years in another country worked on a smallholders' committee in my own county of Hampshire in England. In fact I was on this committee for 25 years and I know that a smallholding intensively run can produce considerably more than subsistence and it is a matter of right placing of the right man and the right help and guidance in order to make it economic as well as subsistence. I do submit that it would be better in dealing with a scheme of this sort that we lay the foundations of that economy by bringing in other work as a first preliminary. It may be that you can find a place where there is all the water you want, all the chance of growing pyrethrum or green teas, or what have you, intensively. But that is not going to be easy and in some cases the ability to lie close to a market may affect that as well.

Now, Sir, if there is going to be any real correlation with unemployment in the present scheme it must first of all be of the type that, as I say, can be considerably more than subsistence; and secondly I think it has got to go further than that in that it has got to be not merely handing over of one bit of land to another use but it has got to be something done with the idea of producing more work in the end.

Sir, if I can just give two instances, the first I will not name because there may be some negotiations going on about it just at the moment, but I do know of a place, eminently well situated, where by building quite a high dam it might be possible to attract industry which is just as much needed as agriculture. It would also supply power and it would also supply to quite a large extent, as well as industry, irrigation. Now, Sir, I think that you will be putting in a case of that sort the horse before the cart if you started in order to attract industry at least not the part that will go into irrigation for agriculture. You would then get the unemployment relief for the people on the

dam and you would get unemployment relief in the new industry and you would get either a small or large settlement scheme below based on intensive irrigation with a fair market close by. Now, Sir, I submit that that is one of the ways in which, trying to be practical, a peasant scheme should be considered rather than as merely a document on paper and a dot on the map.

Now, I would like to give another instance. This, too, I am afraid, is connected with a dam. Our local town in the Highlands, Kitale, is getting more and more worried about its water supply. The local springs are undoubtedly drying up in that area, but it is quite possible to dam up something like 2,000 acres there which would assure the town of its water supply and local water supplies for the foreseeable future. At the same time it might be possible to place a small settlement scheme with the necessary water and the necessary markets just below the dam by use of water both for irrigation and for intensive farming. The other result of that again would be better and more intensive agriculture, more employment, and not only safety for the town's water supply but a greater encouragement to tourism in that district through a large area of water for sporting purposes.

Now, Sir, I have deliberately tried in this debate to say very little that would exacerbate anybody's feelings, that would bring back the old question of confidence and who is responsible or not for destroying it. I think possibly the two wing tips of our body politic must both claim some responsibility.

But, Sir, I listened to my hon. friend the Member for Nairobi Area yesterday skating with great skill and cutting beautiful figures of eight on very thin ice and doing it with the utmost good humour. But, Sir, I am going to suggest that there is another way of gaining confidence, important though those two aspects may be. I do suggest that if we are going to make, both in the Highlands and in other areas, these schemes work, then we can get confidence by doing what lies to our own hand and by doing the things that matter most in a practical way to make this a prosperous and happy country where people can live together.

I beg to support.

Mr. Blundell: Mr. Deputy Speaker, I would like to congratulate the last speaker on his speech and merely for the purposes of the record I would ask him whether he could speak a little louder because the merits of his words are such that I feel everybody should be able to listen to them.

Sir, I welcome the proposals which have been put before the House by the Minister for Lands and the Minister for Agriculture, and I do so for two reasons. In advocating the lowering of the

[Mr. Blundell]

land barriers, or being a protagonist for that. I have always thought that we would not solve the problems of this country until we could begin to get out thinking on land on economic rather than on racial or tribal lines. Now, we shall not achieve that in one blow because the emotions of race and tribe lie deep. If we cast our minds forward to the sort of country which we are planning and hoping to create here then inevitably that must happen, and I would think that the end result of all our land planning should be willing-buyer willing-seller without consideration of race or tribe and bearing in mind the economic necessity of observing the productive capacity of the land. We will not get that at once but this is the first step towards that.

The second reason which has more consistently convinced me that we are right is that we are set towards the path of independence. When independence comes I am not a pessimist. I believe that we will all be taking part in that independence, and once one accepts that as a fact then it seems to me the essential thing to do now is to plan wisely for that independence. Now, I am convinced in my own mind that no Government based on the majority of the people of this country could avoid some form of land reform. If that is so it is wiser to start the planning for that land reform now in a considered way rather than in the atmosphere of an emotional new independence. I say that land reform will be necessary, but not, as so many people feel, for reasons of political expediency. When people advocate great changes in existing and established features of society they are often accused of political expediency. But I would like to put to the House that what will dictate these changes are the social and human needs of the people of this country. It is in effect such factors as the lack of adequate security in old age, the fact that we have got no great industrial development upon which to base security in old age, unemployment, and the fact that unemployment can only be backed either in land, in work on land, or, elementarily today, in industry, and, lastly, human aspirations, the fact for instance, that a man is farming a 12- or 15-acre farm, shall we say at Karatina, may want to develop and expand on a larger acreage and therefore might well be inhibited by racial or tribal barriers. These are the social and human pressures which will ultimately dictate the changes, and I think it is wiser to examine them now and make those changes so that they are made in a co-ordinated way.

Now, I believe that all this can be done, Sir, without damage to the economy of this country, and I think in planning land matters we really want to bear in mind three things: the Minister

for Agriculture touched on them but did not develop them, probably because of the time available to him for speaking. We must do our utmost to maintain the existing production.

Secondly, we must not lose sight of the fact that tremendous potential is still available in the African areas by continuing development such as that started in the Swynnerton Plan. Lastly, we have got to face the problem of resettlement.

Now, I think that all those can be done on an economic basis without damaging the existing economy. I would not like, however, such an effort to be put into resettlement and the Government yeoman farming scheme, for instance, that the natural expansion and development of African agriculture was stopped. In that expansion and development lies another factor in the meeting of these social and human problems of unemployment, greater economic development, which will meet such problems as security in old age.

That the Government is successful in putting this paper before the House I think is answered by the speech of the hon. Member for Nairobi Area. He asked what was the reason behind the Government advocating these changes now. Was it that it felt that the Government of the future would not advocate them? I do not think that is the reason at all and I think the reason why the hon. Member posed those questions was obviously that if these plans are successful much of the thunder of the hon. Member in the political field will be stolen. The hon. Member in his speech advocated two major things. One was the elimination of exclusiveness (for instance, the European Highlands) which these proposals place actually before this House; and the other was an attempt to decry the value of the economics of the production in the Scheduled Areas.

Well, Sir, in so far as exclusiveness is concerned, I would like to say this. It must be inherent in our thinking that if the land barriers around the European Highlands go, then eventually they must go everywhere. When there is a free Government in this country elected by the people dealing with their own problems without the hon. Ministers opposite or the hon. Ministers from the Colonial Service opposite whom they can blame for everything that goes wrong, it will not be possible only to solve the human pressures of this country in terms of the Scheduled Areas. To do so would destroy a valuable asset, that of intense production. It is necessary, and I want to say so and I want to ask the hon. African Members to begin to think on these lines, it is necessary for the people of this country to begin to flow over the tribal barriers. I have advocated consistently the lowering of the land barriers. I think it is necessary for us to show an example, but it must be

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followed up. Now, I think that my views are supported by the hon. Member for Nairobi Area, because in an article in the *East African Standard* which providentially appeared yesterday, the opening of this debate, headed "Politics Should Not be Based on Personalities", he says that K.A.N.U. does not believe in tribalism and will oppose it without qualification. That was in answer to the hon. Assistant Minister for Agriculture. Now, if that is so then I think the hon. African Members of this Council should indicate to the African people that one of their more prominent political leaders, in advocating the elimination of exclusiveness, for instance, a section of the land areas, at the same time is standing for the elimination of tribalism and must obviously therefore be a firm and strong advocate of the reduction of all land barriers and all tribal differences in the holding of land. I am glad that the hon. Member so clearly indicated to the House yesterday his views on exclusiveness.

The hon. Member, Sir, touched also on the feelings of a Jalu in Kisumu over the question of his grandfather's grave. I think, Sir, all of us have respect for the graves of our grandfathers. What I do want to record is that if a Jalu stood in Kisumu and looked out around him, as we were told yesterday, at his grandfather's grave and could see it, it would almost certainly lie in the country of the Abaluyia, the Maragoli, the Nandi and the Kipsigis. It certainly could not lie anywhere else that he could see. It might lie in the Kano Plains, the classic example of bad agricultural management in this country. It might do, but I do not think so. Now, I think when we examine this grandfather's grave, we want to bear in mind what might have caused his death. Almost certainly it would have been the onslaught of the Nandi or the Kipsigis from the hills around Kisumu on the huddled grandfather in his Luo hut at night. It would be burned and as he ran out he would be speared. Or it might be by the invasion of the slave traders. I do not know whether hon. Members know, but when I first came to this country at any rate many Members from Kisumu would have been called Kavirondo and I was told by a very old African of 80—more than 80—who was in one of the expeditions that caught the slaves around Kisumu that the origin of "Kavirondo" was the report of the muskets of the traders reverberating from the granite hills—Kavirondo—thus. Well, Sir, that is the grandfather whom we were asked to regard. I only raise it in the Council in this way for this reason, that I feel the Government's proposals must be really accepted in the hearts of many African Members here and by the Member to whom I am referring or he would not have had to bring

into the debate such an emotional, vague and specious issue.

The third point, Sir, that he made was the immigration of further settlers. I think that is a matter we can leave to the Governments of the future. I do not think it is a matter that concerns us very much today. If it is presented that an immigrant may not come into this country because he is white, then indeed we have colour consciousness in a very big way and I think we have to ask ourselves whether if that is to be the policy we should not examine the origin of the hon. Member for Mombasa Area, who I have reason to believe has some affinity with Nyassaland. I find it difficult, myself, to see why he has open entry into my country and I or an affinity of mine may not have it. I can only assume that it is because I have the misfortune to be pale and he has the good luck to be dark.

Now, Mr. Deputy Speaker, I want to emphasize that the land problem in this country cannot be solved only in the Highlands and it is useless in my view to deride the economic aspects of agricultural production. I am sure I speak, Sir, for all hon. Members in this country who perhaps were not of the original indigenous population when I say that we are proud of what we have done in this country. I did not create two farms in the course of my life out here—and I am sure the Asian Members of this Council did not stimulate the trade of this country—with the horrible idea that in the end it would be a device to ask the Africans to go down on their knees and beg us to stay. We had no such ideas in our minds at all. We came here to do what we could for the country we had adopted and I would like to put to the House that remarks of that nature disclose to my mind the human feeling of envy and jealousy. I am, Sir, I suppose in a small way, a political leader. The hon. Member for Nairobi Area is a political leader as well. I compared with him have tremendous disadvantages; I have had no great source of funds given to me by trade union movements overseas or emotional American people imbued with the doctrine of anti-colonialism to support my political views. But I do not feel envious; I do not feel jealous; I do not even worry about it. I would like to recommend to the hon. Member that he should try to eliminate these feelings from his heart.

What are the actual basic facts that we have to consider? It is a simple one: we cannot get away from economic facts short of bringing to the people of this country of all races great misery. I do believe that development in this country has got to take place on a widespread scale regardless of whether it is in the scheduled areas or the non-scheduled areas.

[Mr. Blandell]

Now, Sir, I want to turn to one or two points which were made by the hon. Member for Ukamba. I feel I should thank him for saying that he would agree with the thought that possibly this White Paper stems from some of the thinking which at any rate I have tried to put before this country in the past two or three years. It was good of him to say that. But I would like to remind this House that when I first suggested the elimination of the land barriers, when I had finished speaking, the hon. Member for Ukamba was the first to get on his feet and move a reduction in my salary. Therefore, I thought I would like to pay a tribute which I think all hon. Members will agree is justly earned—to the flexibility of his political outlook. Now, Sir, when I spoke about fragmentation as Minister for Agriculture I was referring to the disaster of 20 and 30 pieces of land which when aggregated together might make only three or four acres. I was not referring to smallholdings of seven to ten acres. We know from our experience in the African areas that smallholdings of four to ten acres can provide subsistence and a reasonable cash income. I think it is wishful thinking to imagine that we can avoid some peasant development scheme or peasant settlement scheme in the Highlands as well as in the African areas. The Minister made it quite clear when speaking that this was part of a wide policy which would embrace all the available agricultural areas of the country. Now, I think if we accept the necessity for peasant development in the scheduled areas on a subsistence plus cash basis, it is reasonable to make a real plea to the leaders of African thought to try and educate the more remote African people to the same necessity in their own areas for persons such as the Maragoli, the Kikuyu at Dagoreti Corner and in Kiambu, who are desperately pressed in the matter of this land problem. It is not a matter merely of slanting envious eyes at any section. It is a matter of trying to meet the real human needs in terms of the land that is available to us. I have no reason to believe that the scheme which the Minister has put forward need be in any way connected with Kaffir or subsistence farming.

Now, Sir, I want to turn to the question of confidence. The Minister when speaking said very little of this could be accomplished in regard to financial sources unless there was stability in this country and he made a real plea as I understood it for the political leaders of this country to attempt to create those conditions. Well, it seems to me that confidence in this country can be created from two sources: the first is from Her Majesty's Government who are still ultimately responsible for our affairs; and the second, from

ourselves. Now, I particularly refer to Her Majesty's Government and I want to direct the attention of the House to a speech which the Prime Minister made in London at a meeting of the Empire Industries Association at the Central Hall in Westminster.

This is what Mr. McMillan said: "It would be foolish indeed to conceal from ourselves the political problems which confront the Federation." (The Federation of Central Africa.) "Here unlike Ghana and Nigeria we do not have a homogeneous population; we have large numbers of our fellow countrymen who have made their homes there. They have led the economic progress and have been the pioneers. While, therefore, it is right and proper that Africans should share more and more in the life of the different territories, yet nothing must be done to destroy the security and rights of Europeans. The picture that we have of a multi-racial society is not to transfer domination from one race to another but to develop on fair terms a sense of true partnership. This will require restraint from all over there and even more from all of us here. These problems will not be solved by slogans but by patient, intelligent and imaginative treatment."

Now, Sir, I raise that in this House for this reason, that the problems of the Central African Federation, although not duplicated here, are similar in that we have a widespread Asian and Arab population here as well as that of a European one. I would like to ask whether the Prime Minister deliberately excluded this country with its widespread Asian, Arab and European population from his analysis of the African scene. It does seem to me that confidence would be aided in this country if an indication could be given that the obligations of Her Majesty's Government, for instance, in regard to the Protectorate, in regard to the treaty with the Masai and in regard to the special relationships of Her Majesty's Government with the Asian and European populations, could be indicated as of special concern to Her Majesty's Government and must dictate a different pattern in this country to that of a purely homogeneous country. In other words, I would like to ask whether the Prime Minister deliberately left this country out of his statement at the Central Hall or whether it was an oversight—because the problems of these territories of Central Africa are similar.

Now, secondly, Sir, I want to deal with confidence amongst ourselves. Here I want to record what a great disservice I felt to this country the speech of the hon. Member for Aberdare was which he made yesterday. I do not want to deal or touch much upon the Congo, but I must record that there is no comparison whatsoever between what has happened in the Congo and

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the conditions in the Congo with this country. Surely the whole justification for what we undertook at Lancaster House in conjunction with the African Members is borne out by what has happened on our border. What was the intention? It was the phased, planned evolution of the people of this country in the training and the administrative art of government. The hon. Member for Aberdare derided nationalism and yet, Sir, if we look at the world it is one of the major forces in the world. It is not something that can be ignored, cast on one side, nor can we pretend that it does not exist. I will make a confession—who were the original nationalists in this country? They were the European farmers, and when I was first elected to this House with some of my colleagues who are now Ministers I was antagonistic to the hon. Ministers from the Colonial Office opposite. I regarded them as the imposed emblems of an alien and colonial rule. It is only increasing maturity, I hope, and experience which have made me realize their devotion to duty and the value which they are to us. But let us be frank: if we who allege that we are mature and experienced, well versed in the arts of democracy, have these intransigent feelings, cannot we have the imagination to see how they burn in the hearts of the African people? Nationalism is a force that we have got to meet, to understand, to channel, to harness and to guide. It is because we accepted that at Lancaster House that I believe there is little possibility of what happened in the Congo happening in this country.

The hon. Member asked us to accept the plain, cold, unpalatable facts. Well, these are the plain, cold, unpalatable facts. The majority of the people of this country are Africans and our future will be no safer, no more secure than we can make the Africans better or worse. And those are the plain, unvarnished facts. We accepted that at Lancaster House and the hon. African Members in their heart of hearts accepted it and they accepted the need for training in the art of government.

Again the hon. Member raised the whole question of compensation for the settlers in full. Well, I assume he was speaking for myself and I would like to record that I do not need compensation. What we need is to plan to stay to help the people of this country to create a better country. We do not need people who plan to quit. I would like to suggest to the hon. Minister for Agriculture that the greatest service that he can do this country would be possibly to purchase the farm of the hon. Member for Aberdare. The hon. Member, I would have thought, Sir, had almost the impertinence to say this, "Why did the Government not..." I am sorry the

hon. Member is not here, but he is literate and he can read when he comes back.

Sir Charles Markham: This is not a comic opera so don't be rude!

Mr. Blandell: Mr. Deputy Speaker, I was not being rude. The hon. Member for Ukamba has a habit of braying from a vacant mind which I think he might try and control—

Sir Charles Markham: Mr. Deputy Speaker, on a point of order, that was an offensive remark to say, "The hon. Member is, I presume, literate." He could not be a Member of this House if he were not literate and therefore that is the reason I interrupted, Sir, and I should suggest the hon. Member should withdraw that allegation.

Mr. Blandell: I am pleased, Mr. Deputy Speaker, that the hon. Member feels that the seat he is sitting on is hot so he has difficulty in retaining it.

Sir, the hon. Member for Aberdare said he wanted, or he suggested to the Government, that the Government should prepare a plan before suggesting the lowering of the land barriers. What I would like to put to this House is this: can anyone in this House imagine the anger with which such a plan would have been received by the hon. Member for Aberdare if the Government had prepared a plan before this sort of debate had taken place?

Now, Sir, I would like to deal with one or two details which arise out of the White Paper. I would urge the hon. Ministers to consider divorcing the chairmanship of the proposed Development and Settlement Board from the Board of Agriculture. I think that it is unwise to have the same chairman for development and settlement and for the proposed new functions of the Board of Agriculture. I would like the hon. Ministers to devote their minds to that. Apart altogether from there being too much work on the one man, I feel that it may well be that there would be a clash of interests between the two boards and I think the hon. Minister should consider separate chairmen. I would like to take the opportunity, Sir, of paying a tribute as I began the European Settlement Board in 1946 to Mr. Lipscombe, who was its chairman for many years, and who resigned over a difference with the Government. I think this is a suitable moment when consideration to the abolishment of the Board is being given for us to record the great work which Mr. Lipscombe did.

I want, Sir, to say something about leasehold and freehold. I agree myself with the hon. Member for Mount Kenya. I am doubtful whether immediately until the future is clearer in many people's minds there will be a great move to freehold and I particularly want to

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mention it because there is in the African minds dislike of the movement of the European landowner from leasehold to freehold. I think that is because in many Africans' minds it appears to establish more firmly the position of the European in this country and I would like to suggest to the hon. African Members that it is time African opinion began to be educated to the thought that the sincere, hard-working European farmer making the best development of his land is an asset and is entitled to fair treatment and not to be regarded as an alien imposition.

Again, Sir, I would like to urge the Ministers to look at their proposals with a view to reducing as much as possible red tape. I do not like, for instance, suggestions that where in an area agricultural subdivision has been allowed and planned, presumably down to certain acreages, after approval by the divisional board it is necessary for the schemes to go to the planning authority. I would suggest that where transactions of land lie within the established policy of the planning authority it is not necessary to submit the plans to them. The more one submits plans to bodies the greater the delay and the axiom in land transactions is, as far as possible, swift decision.

Again, I would urge that the hon. Minister for Agriculture be not led astray by the strain on the resources of his Ministry in planning these new schemes into lowering the advice which will be available to the existing agricultural industry. I think it would be disastrous if in taking up this extra burden much of what he is accomplishing all over the field of agriculture was damaged in any way and I hope that he will be able to augment his resources rather than to extend and dilute those he already has.

Again, Sir, when the Minister for Lands replies, I think he would be wise to indicate to the House that in purchasing land as the Government will be the major purchaser of land and will be the major factor in stabilizing land values. I would like to suggest that it would be wise to set up some machinery for adjudication on land values to avoid the suspicion that the Government is using its power to depreciate and purchase at cheap rates. Now, there was no mention of that in either of the two speeches and I think the hon. Members should deal with it.

Lastly, Sir, there is an important point. I would urge the Government to consider with the African leaders in the areas concerned the whole question of purchase by Africans in areas taken from the European settled areas which are deemed by the Africans concerned to be in dispute. It does seem to me that that is a matter

which will need careful examination and consideration by the Government, and it may well be that the purchase of that land will need to be as a national factor rather than by any individual person. I think that is something the hon. Ministers must consider. A typical instance is the area to which the Nandi refer when they speak of Tinderet.

And now, Sir, I would like to end by making an appeal. After my earlier remarks it may not be a very suitable moment, but never mind. I would urge, Sir, some of the people in this country to stop their cries of alarm and despondency about the future. What are the facts? We have not got independence here. We have time to train; we have time to think about it, and we have time to plan for it.

We have got Her Majesty's Government firmly in control of our future destinies. We are having the whole of our land placed by Order in Council and associated with Her Majesty's Government in the United Kingdom. We have substantial sums to purchase land with, which will relieve the burden of those who for one reason or another may wish to sell their farms, and I do think that the best we can do for our country today is to throw our weight behind these plans, not to destroy the confidence in our country by unwise comments, and that applies not only to my own community, but to the African people. I would like to ask the African Members to have more courage in dealing with this land problem. It is the economic development of their land, and the elimination of tribal suspicion and difficulties which will ultimately lead the African people to a higher and better standard of living, and enable them to take a much fuller part in the affairs of the world, which is in the heart of every African man. Less exclusiveness is vital to the African people, and I think there are really two tasks ahead of us. It is in my own community to realize that their future is inevitably bound up with the happiness and security of the African people, and it is for the Africans themselves to understand that they are still trammelled by the emotions of the past, and they cannot really fully emerge into the new world until they have the courage to overcome those barriers.

I referred earlier to the Congo. Well, Sir, we should plan that it does not happen here, and it need not happen here. The solution is to meet the problems of the Africans, for all of us to share in the training in the transitional period, and as the Member for Nairobi West said, to establish the human relationships between ourselves. People say today a great deal about security. I would like to ask the House, where is security? Where is it? Can one be certain that by going anywhere else in the world one can

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avoid the effects, for instance, of the nuclear bomb? Can one be sure even in England that the expropriation of private property with compensation known as "nationalization" will not be carried out violently in the next 15 or 20 years? There is no security for the human being in the 20th century other than by establishing the relations between each other basically. That must apply in this country as in any other, and I would like to end, Sir, by saying this. One of the problems with which we are faced is that because of our racial differences we appear alien and remote to each other—we can establish confidence the moment we begin to look at each other as fellow countrymen and fellow human beings. If everybody would dedicate themselves to that, I think there is no necessity whatsoever to lack confidence in the future.

I beg to support.

Dr. Ismail (Nominated): Mr. Deputy Speaker, Sir, in supporting this Motion I wholeheartedly welcome the Government's intention to remove the racial barriers from land in this country. These barriers which reserve the right of a certain community to the best land in this country were the most anomalous and the most illogical and indeed the most unjust measure that existed in this country, and I really can never understand the opposition that has come from certain hon. Members on the other side. This is indeed a historic occasion—the end of an era and the birth of a new one, and I consider, Mr. Deputy Speaker, that this is the occasion really for a celebration and jubilation, with dancing in the streets and fireworks at night, instead of all these shedding of tears which befalls the whole atmosphere in this country. These measures were not only illogical, but outdated, and could not last for ever, and I must congratulate the Government on the measures that they are suggesting in these two Sessional Papers.

While saying this, Mr. Deputy Speaker, I am a little surprised at the silence that has been shown by my hon. Asian friends on the other side in this debate. I am sure they do not want to sit here as passive spectators watching a sort of tussle between the Europeans and the Africans on this land question. I wish to remind them, and this House, of the struggle that has been put in by the Asian community through their organizations against this grave injustice to the right and dignity as citizens of Kenya, as is borne out by the fact that innumerable resolutions have been passed by them ever since this Highland Order in Council came into existence. They are not asking for any privileges, but asking only to be considered as citizens equal to anybody else. The

position was intolerable, and an insult to the self-respect of any community.

Just consider the position that has existed so far. You could have enemy aliens in your midst, having all the privileges of a full citizen which are denied to the British subject solely on the ground of race. It was an intolerable situation, and therefore it is a matter of great satisfaction to us all that the situation is being remedied by Government. It has been argued in the past that the Asians are not really interested in land. If many Asians are not employed in land today, it is not because they are not interested in land but because opportunities have been denied to them. It is also said that if land is opened to Asians speculators will grab at them just for purposes of speculation to the detriment of the agricultural economy. This is simply not true, as is shown by the very successful farming of Asians in Tanganyika and Uganda. It is simply not true to say that Asians are only fit to stand behind a counter or to be employed as *fundis*. If an equal opportunity is given to them they will show that they are as good farmers as any other community in this country. The majority of Asians in this country have come from a stock with farmers only one generation ago, and I am perfectly sure that they could make themselves as successful farmers as anybody else in this country.

Coming to the various schemes that have been initiated by the hon. Minister for Agriculture, I hope that Asians who wish to do so will also be allowed to participate in these schemes wherever possible, and also in any future scheme they will be encouraged to participate to their fullest ability. There is growing unemployment amongst the Asians, especially amongst the younger generation, and if for nothing else, through sheer force of circumstances they will have to look for other openings for employment, and agriculture should be one of them. So my only object in speaking today is to put on record that Asians are not indifferent to this question of land. They are very much interested, not only in the question of the Highlands but in all land in Kenya wherever it is, and they only wish to be treated as equal in all land questions as in any other matter.

Mr. Deputy Speaker, Sir, I support.

Mr. Mallon: Mr. Deputy Speaker, Sir, before I say anything on this, let me congratulate the Specially Elected Member, Mr. Blundell, on his most excellent speech and very plain speaking to this Council today. I think, like he does, that it is time we started taking these things more seriously and that of Kenya as Kenya and the people of this country as a whole. I do share the view that there are many Europeans in this country who are more apathetic now, and in fact they are becoming more of a liability to Kenya

[Mr. Muliro] than an asset now. I share his views completely, and the hon. Member for the Aberdares who is so despondent should be bought over and let him leave the country and go and settle where he wishes to rather than disturb the Kenya atmosphere.

Mr. Deputy Speaker, as far as the Africans are concerned, they have mixed feelings as far as these two Papers are concerned. On the question of opening the Highlands, that is welcomed by everybody else in this country, but what I want to make in my speech today is that we look upon the opening of the Highlands as an economic issue and social problem rather than opening the Highlands for the sake of opening the Highlands. The Highlands have been an age-long political jargon in Kenya politics, and let me hope that this is the end of this political jargon in Kenya politics, and from now onwards the future will be on an economic basis rather than making the Highlands a political jargon in Kenya politics any more.

When one comes to look upon the settlement of Africans in the Highlands, I do not regard this as an issue where everyone wants to say, my race should also get there, but it is to alleviate the social and economic problems in the congested African areas at present. The Africans in various areas of the Central Province and in my own constituency, Maragoli, Bunyore and Teriki, one finds that these people have not anything to live upon. Many Africans in my own constituency have moved to go to Uganda and Tanganyika. I hope the Minister for Agriculture after the passing of whatever Ordinance they want to push through this House will make these settlement schemes available to these Africans who are now desperately in need of a piece of land to till.

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

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

The Africans buying land which has not been bought by the Government look upon it with very serious grievance. They regard land as their own in this country, and they do not see how they could ever buy the land which was once their own. They do not see the reason why they should buy that land when they got nothing for it when this Government took it over. That is a fact which the Government must reckon upon when coming to the question of buying land by Africans. By this I do not mean to say that the European who has been paying premiums for a piece of land which the Government is going to claim should not be compensated. I think the British Government has a responsibility and they should provide the money

or funds which even the European farmer will be given in order to get their land and give it to the landless Africans who are very needy for that piece of land now. If Africans are going to buy this land it is going to be very difficult because they will have to repay the loans, and hence they will not be able to find the money to develop the piece of land properly. It is no good saying that we are giving Africans pieces of land when the financial resources are not going to be there to develop that land.

The question of a willing buyer and willing seller, as advocated by the leader of the New Kenya Group, is out of the question as far as the African masses are concerned. We feel the Government must get land somehow to resettle these people who are becoming now a social problem. If we do not do that I think the future of this country is going to be very bleak.

On the question of titles, the conversion of leasehold land now into free title deeds, Africans are completely opposed to that. We feel the titles to be given might be wanted now to try to help the future Government, when the future Government, which will be the real Kenya Government, wants to carry out reforms, and these reforms will be contested in the international courts of law. But it will be much better to wait as far as the leasehold being converted into free title is concerned until we have a real and genuine Government for this country. This would then help the patsy European farmers in this country. If we do it now and then it is upset afterwards it might have worse repercussions than if we wait. But what I want to make perfectly clear is that whatever Government might come into power in this country and whatever reforms that Government might want to carry out in Kenya, that Government would not be blind. That Government will have to reckon upon hard economic facts. They will have to find out whether by carrying out those reforms they will be to the detriment of the economy of the country or the promotion of the economy of the country, and the same Government will have always to consider that before it carries out any land or economic reforms. This is why I say the farmers in this country need not have any worries. They are worried because they had false hopes. The farmers of Kenya, many of them, particularly those who are old enough, had hopes that there would be no political changes, they had hopes that if these political changes ever came in Kenya they would come when the Europeans had the upper hand. Of course, that was the wrong impression because whatever political changes are carried out in any democratic society by a Colonial Government like the British Government, which is very highly democratic, they will

[Mr. Muliro] always move towards democracy. Therefore those friends of ours, those families, who are afraid of a democratic Government in this country should actually, if they wish, leave the country now, and then let the country move forwards in confidence. What I want to make perfectly clear is many African politicians in this country are determined to see that we have democracy in this country, and in a democracy the property of an individual will always be respected.

There are fears, Mr. Deputy Speaker, that once Kenya becomes independent, and it is coming into realization probably sooner than many of us think, that the Congo scene is going to take place in Kenya, but this is most unlikely. Those who want to see that there is no Congo in Kenya please, for goodness sake, why do we not work for it now? If you are afraid of the future you must get what you do not want. If you are clear minded and you want a democratic future, for goodness sake let us start now. If anyone stands in the way of land reforms now that the present Government is trying to bring forward, I think we will be intensifying the pressure by the time we come to independence. Whatever the Government is doing now it is doing it as a safety valve, it is making a safety valve, so that by the time we come to independence we will not find that pressure, and I think any African Elected Member, or any African politician in this country who wants to see changes in the new Kenya, while opposing certain aspects of this White Paper, must accept that the land resettlement schemes must be carried out right now. There are Africans, Mr. Deputy Speaker, who want them to be carried out, and if there are any African politicians in this country who do not want these things to be carried out now, they are actually fighting against the odds, because when you go through Kiambu, Fort Hall and North Nyanza right now the Africans tell you: "When are we getting these settlement schemes? We want to get a piece of land to have a livelihood." Therefore, as far as opening the Highlands is concerned, that is a clear case. Land schemes, settlement schemes, let us do them also now, but as for the money which is being borrowed from the International Bank for Reconstruction and Development I would urge the Minister for Agriculture to bear in mind that the Government should not concentrate loans into the areas which are now being grant-aided, and if we want a better future the African farmer in the African land unit should be given a loan on long-term leases so that he has his piece of land there and creates employment for someone who is living in the reserves, and not to have all the money in the Highlands which are going to be opened for settlement schemes.

What I want to say lastly is this, that many people deplore the African politicians in the African areas. Many people say the Africans now say, leave the politics to us, and not to the immigrant communities. I think the point is very clear. Even if all the Europeans or all the Asians could combine together in one political party in this country they would do us no good in this country at all. What we want are two or three political organizations in this country, very strong, which we accept as individuals. If we do not have that, and we just say the European should join a given organization, or a group of European politicians should join an organization as a group, with the fears which they have got, that would delay us in this country. What we have to look for is that Kenya politics should be divorced from our land. In Kenya politicians must look upon the future of the country as a whole and not of the individual race or tribe. What is going to mar this country, if we want it to be marred at all, is sectional thinking and tribal thinking. As long as we look to racial groupings or tribal groupings we are not going to get anywhere, or even if a given group says, "We, as Europeans, will stand for X, we want land development, unfortunately nationalism is an inevitable force". You do not take steps for nationalism. It is dictated by the atmosphere and by the political tempo in the country. These forces are created every day, and the pace of independence of Kenya will be dictated more by the pressure at which it is created in this country politically rather than by any individual politician in this country. In fact the trouble in the Congo arose simply because the Belgians never dreamed that the Congolese should be independent. They had never had it in mind. It just bounced on them like that. Here we are much clearer. I think the British have got Kenya and when I move around the African continent I find that Kenya is much more ready for independence now than most of the countries which are already independent in Africa. Our problem is that the Europeans, the Asians and the Africans are not sufficiently integrated to think as nationals of one country.

Now, Sir, on the Congo. The sooner we banish these things, the sooner we look for political integration and racial or tribal disintegration in Kenya, the better it will be for this country. With these remarks, Mr. Deputy Speaker, I reserve my right to note these.

The Temporary Minister for Finance and Development (Mr. Butler): Mr. Deputy Speaker, I had not intended to speak in this debate, but it does appear both from what was published in the Press and from what some hon. Members opposite have said that they have misunderstood the per-

[The Temporary Minister for Finance and Development]

fectly clear statements by my hon. friend the Minister for Agriculture with regard to the financial side of the various settlement schemes which he explained to the House. In particular in yesterday's *Last African Standard* it was stated that £3,000,000 had been allocated from Colonial Development and Welfare Funds for the peasant settlement scheme. The hon. Member for Mount Kenya referred to only £6,000,000 being available for land purchase. The hon. Member for Ukamba congratulated the Ministers on raising the money. The hon. Specially Elected Member, Mr. Blundell, this morning also appeared to me to believe that the money for these schemes had been raised. The position was put quite clearly and correctly by my hon. friend in his speech and I would like to quote from his speech and also from a statement reported in the *Last African Standard* of today's date by the Secretary of State.

Firstly, with regard to the yeoman farmer scheme, the hon. Minister for Agriculture stated, and I quote, "Money for the purchase of farms will come from the loan of £3,150,000 on which the House has already been informed. This loan is conditional on the participation of international finance. Development by owners, assisted owners, and tenants, will be financed by development loans from the £5,000,000 for which application has been made to international sources". Referring to the same matter in a written reply to a question in the House of Commons, as reported in today's *Last African Standard*, Mr. McLeod said: "The Kenya Government have applied to the International Bank for a loan of £5,000,000 to redevelop farms in the Highlands for the more intensive settlement by good farmers of all races. The British Government has already undertaken to make available to this scheme Exchequer loans of £3,150,000 up to 31st March, 1964." We can therefore say, as stated by the Minister that we have been promised £3,150,000 by Her Majesty's Government conditional on the participation of international finance, and application for this has been made, and we have every reason to hope that the money will be forthcoming.

On the peasant settlement scheme, as I have stated already, the *Last African Standard* yesterday in the leader stated that £3,000,000 had been allocated from Colonial Development and Welfare Funds. This, Sir, is not correct. The hon. Minister said in his speech, and I quote: "We estimate that a total of £3,000,000 will be needed for this scheme in the first three years. Money for the start of this scheme will be found from the balance of Kenya Colonial Development and Welfare allocation which it had previously intended to reserve for the 1963-66 planning

period." He went on to say, Sir, and I quote: "Arising out of the discussions we have had with Her Majesty's Government we hope that the balance will be found for the remaining period." The sum to which the hon. Minister referred is that described in paragraph 5 in chapter III of the Sessional Paper on the Development Programme, 1960-63. There it was stated that the Kenya territorial grant from the C.D. & W. Vote for the four-year period from 31st March, 1960, to 31st March, 1964, was £5,000,000, and that it was proposed that some £4,500,000 of this grant should be used during the development period, leaving £440,000 for the first nine months of the next development period. It is this £440,000 that we intend now to devote to the start of what the hon. Minister has described as his peasant settlement scheme. We have every reason to hope that the necessary funds will be found both for the start and the continuation of these schemes but I do not want any hon. Members to be misled by what has been stated in the Press.

Finally, Sir, the hon. Minister referred to the Land Bank. He said, Sir, that £3,000,000 might be required by the Land Bank in the next few years. He went on to say, "I must here sound a note of warning. Success or failure in attracting outside capital is going to depend on the degree of confidence which exists in the future of our country." We hope, Sir, to be able to raise funds for the Land Bank as they are required for loans to existing farmers or new farmers in Kenya, but the source of these funds has not yet been finally decided. The scheme is now a gleam in the eye of the Minister and he has, I believe, his eye on one or two well-dowered ladies and we hope that he will succeed in bringing one of them to the altar. But I do not wish the House to be misled in any way into believing that we have already negotiated the provision of this finance.

Mr. Deputy Speaker, I beg to support.

Mr. Pandya (Eastern Electoral Area): Mr. Deputy Speaker, I welcome the principles introduced by the Government in the introduction of the two Sessional Papers which we are debating just now. They are based on sound common sense, the principles of equity and justice and, indeed, they should have been introduced years ago to avoid the crisis that we are facing today. I refer, of course, to the fact that the main considerations are a non-racial approach to land problems and the best economic use of this wonderful asset of ours. It is heartening that a start is to be made at last on these sound lines. Many of the details and the machinery, I feel, could have been improved upon, but the Government must be given the credit for thinking so

[Mr. Pandya]

boldly, particularly at a time when emotions have had the upper hand in people's attitude to this most vital aspect of our existence in this country.

Now, Sir, the European community have expressed their fears and, indeed, they are entitled to do so. They seek assurance from those people who are going to take over the destinies of this country in a few years. I would like, Sir, to pay tribute here to the Specially Elected Member, Mr. Blundell, for what I thought was one of the best speeches he has made in this Council. I admired his courage and it was heartening to feel that there are Europeans in this country who are prepared to think boldly and to accept the changes that are not only inevitable, but which must be implemented if we want to live as Kenyans together.

However, Sir, I was a little disappointed—although I should have expected that—in the speeches of the hon. Members for Mount Kenya and the Aberdares who expressed the view that they were invited and, indeed, encouraged to settle in this country. Indeed—and what did they do?

[The Deputy Speaker (Mr. Webb) left the Chair]

[The Deputy Speaker (Mr. Conroy) resumed the Chair]

They made the ownership of land in the Highlands exclusively European, and called the land the White Highlands. They denied the use of these areas to non-Europeans and then introduced the idea of racial segregation as between the peoples of one unit, the British Empire as it was known then. Then, having established that doubtful privilege, one now hears talk from these leaders that they are the only people who have contributed anything worthwhile to the economy of the country. How much better, I feel, the economy of this country would have been if all the peoples were allowed to participate in the economic development of these areas: production would have increased, the balance of trade would have been much better, and we would have advanced the commercial standing of this country. They put limitations on the possible development, restricted the full use of land that was available, and then now take all the credit for the economic development of this country; this policy of theirs has minimized some of the good work the European community has done for this country. I acknowledge their contribution to the many facets of development in this country, but failure in certain respects must be admitted honestly and sincerely; and the only way to mitigate these shortcomings is to accept

and not only to accept but indeed to initiate, the changes themselves and show that they mean to right the wrongs that have been perpetuated since early in this century. But what do we find? The proposed progressive policies are opposed on one pretext or the other. Let them show by words and deeds that they mean to implement a new policy and make others feel that they will treat them as equals and work as equals in the pursuits which would be of benefit to the country as a whole before the time comes because of pressures which will have succeeded in breaking through some of their outdated ideas. Let them show by example that they mean to do good before the opportunity is lost to them.

Now, Sir, talking of confidence, it has been said that it is a two-way traffic. Indeed, Sir, it has got to be mutual if it is to be of any use or benefit to the citizens of this country. Let the Europeans, Sir, who claim that they are the leaders, make a start and show by their speeches and actions that they mean to live here and stop this panicky attitude of talking of compensation and guarantees. Yes, and the African leaders at the same time must say categorically that they are going to respect, indeed, that they mean to respect, the sanctity of titles and individual property rights.

But room has to be allowed, Sir, for land reforms. For how can you justify the holding of large areas of land, particularly when no use whatsoever is made of them? It cannot be justified, Sir, either on economic or on moral grounds. Now, Sir, conditions have to be created to settle all the landless people on land wherever and in whichever area it is available. I cannot see how small peasant farming can be a disadvantage to the economy of this country. It means that all people are required to make their contribution to the wealth of this country. The new schemes which have been envisaged by my hon. friend, the Minister for Agriculture, will solve many of the pressing problems, particularly that of unemployment and, what is more important, bring greater happiness to a large population for the greater good of the country as a whole.

Now, Sir, some of the speeches yesterday set a bad example, in my opinion, for our new society. Most British people are men of courage, faith and foresight. How much I and many others have admired them and their wonderful character of tenacity and determination during the Second World War! Alas, I do not see much of that character here at the present time, for I see most of them talking of retreat, quitting and compensation, which is all against their inherent character. Let us see, Sir, a bit of that spirit which made that nation so great and vital. Let us not

[Mr. Pandya] take the only example of the Congo, because it has already been emphasized that the conditions there were different. But let us remember the heroism of the people of Dunkirk and the struggles of the Battle of Britain. That is what is required from the British people to make Kenya a truly better and fitter place to live in for all the people in this country, and not only for those of one race. That is what was achieved with the co-operation and the joint enterprise of many who believed in similar ideals at that time. Let us see that spirit of realism and co-operation in joint endeavours for the betterment of this country. Of this land of ours, which we call Kenya. Let all men of goodwill who wish to find common solutions to most of our problems work incessantly for the betterment of posterity and then we shall have some satisfaction for knowing that we have done something that really was worth while.

Let us justify this talk of decency, good behaviour, equal treatment, and Western standards, by our own example and action. Indeed, Sir, I would say also that our African friends should help to create such conditions by making such speeches as will make those people join in with them in leading Kenya to the high place it is destined to play in the affairs of this part of the continent. Let them co-operate with all citizens of like ideas regardless of race, and reap the benefits of our joint endeavours for all the peoples of this country.

Sir, I beg to note.

Major Roberts (Rift Valley): Mr. Deputy Speaker, Sir, while I was listening to the very eloquent speeches of the hon. Mover and Seconder of this Motion I thought for a while that I was listening to fairy stories. I am not for one moment, Sir, suggesting that the tellers were fairies: I should hate to see either of them in the garb of fairies. But, Sir, something was missing from those stories. It was the conventional ending which is usually "and they lived happily ever after". Perhaps the reason for that is because they were not quite sure who were going to live happily ever after. Sir, I came to this Session with expectations of hearing a glowing rocket or comet, but instead, Sir, I heard the fizzle of a damp squib. I waited to hear what this great statement, which would be made simultaneously in this House and in the House of Commons, was, that would restore confidence, but it was not for some time after the statement had been made that I realized that in fact it was that statement. As far as I could make out what it said was, Sir, that Her Majesty's Government were very perturbed regarding this question of land title and were

going to give this matter the very deepest consideration at the highest level and would have available the highest legal advice possible. After that, Sir, we heard the hon. Member, the Minister for Agriculture, say that a sum of money for resettlement and development, amounting to £14,000,000 spread over three years, was going to be made available. On the face of it, Sir, it sounded very heartening. It sounded like half the amount over a period of three years that we had originally asked for at Lancaster House over 10 years but which, unfortunately, due to the intervention of one particular delegate at any rate, was finally reduced to £5,000,000. When we examined the amount of money available we find that it really is very close to that £5,000,000, because only £6,000,000 of that amount of money is actually to be used for the purpose of land value stabilization, and that, Sir, is completely and utterly inadequate. My colleagues and I warned the Secretary of State at Lancaster House that an offer of a sum of £5,000,000 would in no way restore confidence, that it would have the exact reverse effect and create a panic; and that, Sir, is what I am afraid will happen when people realize that the true figure of £6,000,000 is the amount which has been stated in this House.

When it comes to the question of deciding the amount of money required to stabilize land values and to restore confidence it must be related to the period of time which will exist between now and complete independence being granted to this country. If that period is to be a short time then, Sir, the amount of money must be very considerable. If it is to be a long period then the amount will be very small. I am very doubtful if much of it indeed would need to be used. The real reason for the lack of confidence in this country has nothing to do with the breaking down of land barriers: it is that people fear that premature independence will be granted to people who are not ready for it. If, Sir, the British Government would make it perfectly clear that the new Constitution will last for four years, and after that there will be a further period in which there will be a move to responsible Government, with Her Majesty's Government still retaining control, then I am quite certain that confidence will be restored and the need for land stabilization will be nothing like so great. Unless they do give that assurance, Sir, then these fears will exist and I am afraid that the offer of £6,000,000 will do no less than create a mad rush to cash in on it.

Sir, our views and our fears of what independence could bring about are really based on the utterances of the African leaders who, during this debate, have over and over again stressed that we have got no right to our land, that our titles are in dispute, that at Lancaster House they made

[Major Roberts] it perfectly clear that in their opinion to expropriate land from European farmers who they thought had too much land, to give it to their own so-called landless people so that they could practise peasant agriculture, would be expropriation in the public interest. Those are the statements, Sir, that cause us to have this fear and this lack of confidence.

Sir, if we could just have a period of time, and know that we are going to have a period of time, and know the pattern which the future would hold, then I think we could work towards it and that we could create the goodwill that so many people are always talking about. But, Sir, these schemes, good as they are, as well thought out as they are, are valueless unless we can have that period of time. I do plead with Her Majesty's Government just to do that one thing that will restore confidence and that is to make it quite clear that we are going to have that period of time.

Now, Sir, as regards the details of these two Sessional Papers, I do not propose to go into them because the Kenya National Farmers' Union have produced a very excellent memorandum of which my hon. friend, the Member for Kiambu, placed the details before this House yesterday. I am very grateful to Government for the consideration they gave to the original Kenya National Farmers' Union memorandum, as a result of which we had Sessional Paper No. 6. I do ask them most strongly to consider the second memorandum which relates to Sessional Paper No. 6.

Now, Sir, there are two matters which have been raised in this debate by hon. Members on this side of the House which I think were aimed at me personally. Although I feel that they are completely irrelevant to this particular debate, I will ask your permission, Sir, if I could very briefly answer them.

The hon. Member for Nairobi West claimed that European Elected Members' opinion was divided into two categories, those who think they can do best for their people and Kenya by looking around and finding people of other races with whom they can work and with whom they can speak, as against the others that believe that they can do their best by being exclusively European. Sir, the hon. Member, who seems to love indulging in self-righteousness and whose halo I sometimes see glistening above his head, was referring, I presume, to my colleagues and myself of the United Party. I do wish he would not distort the true facts in order to make capital from his political opponents. Sir, we believe that we can do our best by standing out for what we think is right

and just for our own community and also what we consider is right and just for other people; and we feel, Sir, that by doing so we can come to an understanding and that we can go on and that we can work together for the goodwill of everyone in this country and bring Kenya to be a prosperous and happy country. We have never asked, we have never said that we wanted to dominate anyone. If the hon. Member could read what we have said in our pamphlets he would see that that is perfectly true, and I suggest that he takes off his dark glasses and uses clear ones.

Now, Sir, I must return to some remarks made by my hon. friend, the Member for Nairobi Area, who, I regret, is not here. Sir, he referred to something which had nothing to do with this debate at all; to an artificial force beyond the control of Government which would indulge in toting guns. I presume, Sir, he was referring to a speech made by me at Nakuru. I do wish he would not jump to erroneous conclusions and would take the trouble to find out the true facts of what was really said. He is not the only one, Sir. There are other people in very high places who have jumped to conclusions without having the good manners to find out the truth. Sir, I do not intend to go into the details of what I said in this debate. I gather the hon. Member intends to raise the question at a more appropriate moment, but I would just like to say this. No mention was ever made by me of raising armed forces or a private army. Mention has been made of organizing persons of all races in order to assist the forces of law and order by looking after themselves in the event of certain circumstances arising which would make it expedient to do so.

Sir, I think it is a great pity that personal attacks have been brought to this debate and I really was somewhat surprised when I heard the Specially Elected Member, Mr. Blundell, after making what was a most constructive speech resort to making a bitter attack on my colleague, the Member for Aberdare. I do think, Sir, that that attack was most unjustified and I see no reason why one should be rude to one's colleagues in this House.

Sir, the hon. Member on my left seemed to imply that it was the settlers who created the White Highlands in this country. Sir, it was Her Majesty's Government who created the White Highlands, not the settlers at all. Sir, we are not opposed to this policy—I have not heard any European Members on this side of the House oppose the principle behind these Sessional Papers during this debate. All we want, Sir, is that they should be somewhat more realistic. I would like to reiterate that they can only be realistic if their tenure is to be for some considerable period, but if

[Major Roberts]

it is only to be for a very short period, all the work and all the effort put into it will have been wasted.

Now, my hon. and gallant friend, the Member for Mount Kenya, did read to this House a legal opinion. Sir, I do hope that Government will examine that legal opinion and I quite realize that it is only one opinion and that lawyers do not often agree amongst themselves. However, I think it would be of some value if it were to be studied. One thing came rather clearly to me from it and struck me rather forcibly when I heard him read it, and that there does not seem to be much advantage in converting one's leasehold land to freehold. I agree that Government have increased the period of time during which a leaseholder can opt to change his title to freehold. They have made it five years. But I would suggest to them that during these troubled times it would be far wiser if they were to give a ten year period during which one could opt.

Sir, once again we are being asked "to note" a Paper in this House. It is really getting most fashionable in the last few months to note things. It makes it awfully difficult for us on this side of the House to be able to state whether we support it or not; particularly, Sir, in this case, when after this debate we shall have no further opportunity to debate the final details of the new legislation which will come into force as it is to be an Order in Council. Now, Sir, I do note what they have said and I ask them to note what we have said and I ask them to note the K.N.U.F. memorandum. But as I feel so strongly, Sir, that the schemes outlined in these Sessional Papers will be of little value unless we can have that period of time when we know they will work, I must express my feelings by opposing the Motion.

The Minister for Commerce and Industry (Dr. Kiako): Mr. Deputy Speaker, Sir, I remember a statement made yesterday in this House from the opposite side that perhaps it is more difficult to be a district commissioner than to be a Minister. I do not know whether the person who made the statement has ever been either but I can say that when discussing a difficult subject such as the one we have today it is certainly more difficult to be a Minister than to be a district commissioner.

As I rise to speak on this Motion I have in mind the majority of the people in this country and by that I mean the poor people who are unemployed and who are landless, who are looking forward to some solution which will provide them with the means of living now. I can think of people in Limuru, in Kiamba, in the Abuluya areas, in Fort Hall who have lived for so many

months, so many years, without any piece of land they can call their own so that it is necessary for this Council to do something to enable them to make a living. In Nairobi they cannot come to look for work because of the many signs of "hukuna kazi" which you find even in the most prosperous of our industries and businesses. I can think of a person who might have had no land before the Emergency but who might have been doing some business in Nairobi to feed his family and then perhaps might have been picked up by Operation Anvil or Operation Jock Scot. His business failed and he came back recently from a detention camp to look for work in Nairobi and did not find it. He found his family destitute. To that person we must give some answer as to how he can keep on being a peaceful and contented citizen in this country. To me landlessness and unemployment are social and economic disturbances in this country. They are so serious that I am surprised that people who talk of the importance of security in this country are at the same time casting doubts as to whether or not we should resettle our landless families in parts of the Crown land in the White Highlands. I find myself making a mistake calling them the White Highlands because I note in this Paper they will no longer be the White Highlands. The sanctity of the White Highlands has now come to an end.

I feel, therefore, that whatever is done by this Caretaker Government, we must keep in mind people to whom poverty is a big burden on their shoulders. We have for a long time called for the resettlement of the landless. We have for many years looked upon empty lands and have suggested for a long time that we should do something to make use of them by settling the landless persons who find it difficult to find a living in the towns. From that point of view, it was significant that an announcement was made that the resettlement of those landless people will be possible through the scheme mentioned by the Minister for Agriculture. I remember somebody—I think it was my friend the Member for Ukambani—who implied that the introduction of the resettlement of the peasants was really a political move. If politics do not concern themselves with the poverty of the people, then those politics are no good; whether it was done for political reasons or not, if it can benefit the landless fellow in Limuru or in the Abuluya areas—if it can benefit him—then whether it was done for political reasons or not would to me be irrelevant.

The next point I would like to make is this, that these Papers are entitled Sessional Papers Nos. 10 and 6, Papers "dealing with land outside the native land units". I know we have to be permissive in this House and have allowed

[The Minister for Commerce and Industry]

speeches to be made on anything relevant or remotely connected with a topic and there has been a lot of talk as to what we shall do with the African tribal lands and so on. But that is not essentially a part of the two Papers we are asked to note. My own point of view here is this, that what is interesting is that we are looking at those lands which have been outside African land units and we are looking at them with the aim of settling in them Africans who up to now have been concentrated only in the so-called native land units.

Then we come to the question of title deeds. I personally do not understand why confidence in Kenya's future is to be based simply on the position of a legal document which may record a 999-year lease called leasehold or a freehold title. I have more faith myself in the independence of Kenya and that the people who will be governing the country when it is independent will be people who will not wreck the economy of this country. I prefer to have faith in men rather than in written papers and, if I may say so, I cannot believe that those people who have been involved for a long time with the struggle for or 'the activities of bringing about independence in this country and who still continue to want independence to be hastened could be thinking only in terms of independence without having economics in their minds. I believe, and I know that the Minister for Lands will clarify this point of land policy, that is the point of view of saying that this debate today is not a debate to decide land policies in Kenya for ever and ever. That, of course, would be impossible. This Government, like all other governments, cannot completely tie the hands of the successive Governments which will come to Kenya after the next elections and the elections after that. This should be clarified by the proposer of this Motion when he replies, to indicate that Her Majesty's Government or the present Kenya Government cannot tell this country that what we are doing today is the last step in the question of land policy. I think that any Government will have the duty of carrying out reforms according to its own policies, but what is being done today is simply to find ways of meeting the urgent part of the land problem in Kenya. I would like also to request my colleague when he replies to clarify the Government's position with regard to the lands which are considered to be in dispute from the point of view of how disputes with regard to ownership are intended to be settled in the future. My personal feeling is this, that disputes with regard to ownership of any property should be settled through independent courts of law. I do not believe, I do not think, that the Kenya Govern-

ment is unaware of the disputes that have arisen for a long time with regard to lands in this country, but I would rather insist the disputes be handled through a court of law instead of some of us trying to believe the lands are not in dispute when practically the whole history of Kenya's politics has been on the basis of disputes on the question of land.

I would like to go on to look at the question of the timing of the schemes proposed. Already our officers—our political officers, that is—are being visited by many people who want to know how soon they can participate in the settlement scheme. I had a person from Nyeri yesterday who is in Government asking me:—"How-do-I answer them?" People have already seen in Barasa that 60,000 acres, or so many acres, will be dished out to the landless and already people are coming to look for a clue as to how they will be selected and how soon they can get into the Highlands and get themselves a farm. I hope the timing of these schemes will be clarified by the proposer so that people may know how soon the landless men in the streets can look forward to being a peasant farmer with more than subsistence land in his hands. That, I think, is particularly important, this question of timing. As far as I am concerned, the poverty suffered by the landless people today is so great that all must be done to get them land in these areas outside the African land units as soon as possible. I think to oppose that—to oppose the possibility of putting an African peasant in the Highlands or in Crown lands—is to insist on continuing poverty which is not only harsh upon the individual who is poor but also a danger to the security of this country.

The hon. Specially Elected Member, Mr. Blundell, talked of willing buyer and willing seller. This is a concept that is going to be quite difficult to carry out for sometime in this country.

Mr. Blundell: I said so.

The Minister for Commerce and Industry (Dr. Kiako): I am not necessarily speaking against Mr. Blundell. It is going to be a difficult concept to carry out because much of the land in the African units is held on tribal traditional bases and if one individual man in a tribal area decides to sell his land to a person who does not belong to that tribe, I think he would be risking the fact that the buyer may not be able even to use that piece of land. I have a feeling that if my friend, the Specially Elected Member, by some method or another got himself a man from Fort Hall District or from the Kalenjii area to sell him a piece of land that he might find it very difficult to farm it because the people around would not allow or even recognize the validity of the transaction.

Mr. Blundell: The hon. Member would, no doubt, assist me in educating the people round me when I had done that.

The Minister for Commerce and Industry (Dr. Kiako): The hon. Minister is not a farmer and therefore he cannot quite educate you in this regard.

Sir Charles Markham: You are a leader!

The Minister for Commerce and Industry (Dr. Kiako): As much as the changes in this country are being talked about, we must keep on recognizing some of the hard facts in this country and one of them is this, that if these changes in land will involve land-units considered by specific tribal groups as their lands, it will be most prudent on the part of the Government to carry out extensive consultations with the tribal groups concerned before they take any step if we do not want to create new disturbances or new conflicts in this country. I know, for example, in appreciating the cheers I have just got, that if we are to take people who are landless in the Kiambu District and seek to settle them in the Nandi Hills, unless the people led by my friend, Mr. arap Moi, approve, then Government will find it very difficult. Therefore, I believe that what must be kept in mind is the fullest possible consultation with the respective people.

Sir Charles Markham: Join K.A.D.U.!

The Minister for Commerce and Industry (Dr. Kiako): Mr. Deputy Speaker, Sir, I belong to the Kenya African National Union and I hope that we shall not use the debate in this House to try and catch Members for one party or another.

Sir Charles Markham: No tribalism!

The Minister for Commerce and Industry (Dr. Kiako): Before I interrupted myself, I was talking about the importance of consulting the people concerned. I would even like to make it clear that it is still an interesting question in the minds of many of my colleagues as to just what areas Government has in mind for this resettlement scheme. I am sure that both the prospective persons and Members of this House who claim various parts of the Highlands for historical reasons will want to know early what areas are being considered. But may I say that the question of consultation is so important, and I think it has even been mentioned by the proposer. I can assure you that everything will be done in terms of consultation with the people concerned. In fact, I do hope that when the Chief Secretary speaks in this debate he will stress or clarify these various points as to the areas considered, and so on.

Let me now turn to the other question of the politics involved in this issue. One must face the facts that land is not only emotional but it is also economic, and I must say it is very political. Land is so political in Kenya that the speeches we make today or which will be made later and which have already been made—as my friend, the Member for Central Province North said—will not necessarily be speeches based on economic logic alone. I think it was the hon. Member for Central Province North who said that logic is for the lawyers and most of us are not lawyers. What I have in mind is this: it would be wrong for people who perhaps do not want to see the White Highlands broken up or who have not fully appreciated nationalist feelings to speak in any manner which would worsen relationships in this country. As I have said the only fair and firm basis of confidence in this country is the ability of those who take over Government to run it well. I hope there will be no implication by any speakers from now on implying that perhaps once independence comes we are sunk. I am sure when I say that no fair democratic government will ever bring about reforms to wreck the economy of the country, that I am right. I know as the Minister for Commerce and Industry that I have the hard job of proving the basis for confidence in Kenya but I believe in the long run that that confidence will be justified.

Noting these Papers, I would like to summarize what I consider to be the main points in it, not so much because of accusing my colleagues of giving difficult speeches but because I think there has been so much debate sometimes on irrelevant questions that I would like to clarify from my point of view what we are being asked to note. I think first we are being asked to note that as from now the Highlands will no longer be exclusively White Highlands. It is going to be an area to be developed but the exclusive possession of that area by one race alone is a fact that has been fought against for a long time, what we wanted has now been achieved, and I hope from now onwards we shall not hear about things like the sanctity of the White Highlands. That has ended.

The next thing that I note is that for the first time the landless African is being considered for settlement outside the African land units in order to give some answers to landlessness. I would agree with the Member for Nairobi Area who said yesterday that these proposals do not meet the problem fully. We cannot at this stage meet the problem fully but I do note that landless Africans are being considered in order to give some answer long before the land reforms come, some answer as to where they can live. I also note from the speech made by the Minister for Lands

[The Minister for Commerce and Industry] that what is being debated today does not bar a future government from carrying on land reforms which, I hope, will be land reforms for improving the economy of the country and for increasing the productivity of the country. There is nothing implicit in these Papers barring a future government from carrying out such reforms: I do note that.

I should also like to know, or to note—because I do not remember hearing it from the speakers—but I hope in the reply I shall be able to know or to note the feelings about resettlement or the settlement or whatever disputes exist with regard to land. I have personally suggested that such disputes should be settled through a court of law. It is beside the point, but I think it has not been fully clarified because the debate has gone sometimes outside the scope of the two Papers, and I believe while these proposals do not fully meet all the problems we have, and also knowing that more and more reforms will have to be carried out later, I do wish that the settlement scheme for the peasants will start as soon as possible, and then the mechanism of selecting people will be clarified so that the people who today have nothing to live on will have something to live on. I must say, for example, in the Central Province, the land consolidation has done away with the old system which we used to call "ahoi", the sort of people who used to live on somebody else's land and were allowed to live on it, but since the land consolidation has got rid of that system the people who were *ahoi* are now in such difficulties that unless they are employed by the farmers they have very little alternative of making a living, and those people, those *ahoi*, and the squatters, the proper squatters, have been expatriated back to the Central Province and they have nothing to live on, and they are the people who are looking at this scheme with a lot of hope. And I do hope, I do wish that we shall hear more as to when it will be started and what mechanism will be used for selecting them, and I do say that whatever other feelings one has against these Papers or for these Papers, this fact of the settlement of the peasants must not be blocked by this Council if this Council wants to be responsible to the majority of this country, and the majority of this country, I am sorry to say, is very poor, and we must do something to help it.

Mr. Nazareth (Western Electoral Area): Mr. Deputy Speaker, I should like to pay a warm tribute to the Minister for Commerce, who has just spoken, for the speech which he has made. I think that he has rendered very valuable service to the country by what he has said. I know

that he has had to play on an extremely sticky wicket. He has only very recently crossed over from this side of the House, and I must say it was an extremely able and skilful performance that he has not eaten any of the words that he has spoken in the past, and yet he has contributed, I think, very greatly to helping restore confidence in our affairs.

There has been a great deal of general discussion, not strictly within the limits of the two Papers, but nevertheless very pertinent to a discussion of those Papers. When the first of these Papers was published last year I thought that the Government had shown great vision and courage in making the proposals that they were making. A revolutionary step was being taken in throwing open the White Highlands to settlement by people of other races. After the Lancaster House Conference I was hoping that some of the proposals, the limitations contained in the proposals would be removed, and that there would not be so much of the restrictions which appear in the Papers on acquisition of land by people of other races. At the time the first of these Papers was published one of the criticisms that was made was that no practical steps were being taken to promote the settlement of landless Africans in the White Highlands. That defect has now very largely been made good by the statements which have been made by the Minister for Commerce, setting out the ways in which it is hoped to practically settle Africans on the land, and although the details have not been given, we have been told about the necessary finance which it is hoped to get and told in a general way what sort of schemes it is hoped to bring about.

An hon. Member: The Minister for Agriculture.

Mr. Nazareth: By the Minister for Agriculture. I stand corrected, and I thank the hon. Specially Elected Member for the correction.

Now the hon. Member for North Nyanza said that while he was in support of these schemes he did not think that we should take money out of the country or pay for the settlement of Africans on land in the White Highlands. Well, if you are not going to pay for the acquisition of these lands, I can only see one other way in which you are going to acquire the land, and that is by expropriation, and so if there is no other alternative, then surely the only way to make land available for Africans and others in the White Highlands, is to acquire it in the usual way, that is by payment of a fair price for those lands. Therefore, I have found considerable difficulty in understanding the attitude of some of the African Elected Members who propose on the one side that we should settle Africans on these lands, and yet on the other side say that we should not pay for the acquisition of these lands.

[Mr. Nazareth]

Now I shall confine myself mainly to certain proposals in these Papers, which I feel are the subject of legitimate criticism. One is that it does not fully implement the principle of willing buyer and willing seller. Before the person of another race can acquire land in the White Highlands, and even persons of the same race, the consent of the divisional and other boards will be required. Now, if the reason for that provision is that such consent is necessary to protect the land to ensure that there will be proper usage of the land, that we shall get the utmost out of it, I feel that there is sufficient provision in the Agriculture Ordinance to protect the land and to ensure proper usage. If it is necessary, the provisions of that Ordinance could be tightened up.

There is at present a committee under the chairmanship of the hon. Specially Elected Member, Mr. Slade, dealing with landlord and tenant legislation, which also could make a useful contribution to promoting proper land usage. In the result this requirement, that consent should be given by a divisional board to a transfer of land held on leasehold, this, in effect, will be a restriction which will be exercised by the members of one race, certainly at the initial stage. Now the Asian community is the one community which has had no reservation of land made in its favour, and the result has been that it has, in the past, been kept out of a vital industry. Where Asians have farmed land they have often done so with conspicuous success. In my own constituency at Kibos you have farmers growing sugar cane who have got excellent production out of their land. You have had a sugar-cane factory set up in that area which previous to acquisition by an Indian company had been a failure in European hands. If you examine the farms, next door to these farms held by the Kibos Indian farmers, which are held by Europeans, you will probably find, so I have been told by those farmers, that they are not able to get anything like the production that the Kibos Indian farmers get, in fact they have not used the land for sugar cane, although it is excellent land for sugar cane.

Now the Asians do need positive encouragement to turn to farming. They have been discouraged in the past, or they have had no encouragement, and this restriction, this necessity of obtaining the consent of these divisional boards, is not likely to operate as an encouragement to Asians. If it is not strictly necessary, then I suggest that it should be given up. At the present moment there is certainly no great pressure for the acquisition of land, and if the Agriculture Ordinance alone could sufficiently serve the purpose of protecting the land, I see no reason why there should be this requirement of the consent of these divi-

sional boards. It is true that there is the right of appeal to a regional board where the racial representation is a little less strong, and then you have a final appeal to the Governor in Council, all those channels of appeal are open, that is true, but nevertheless, the moment you find that there is a necessity to obtain consent at that very moment you discourage land acquisition by people. It has been said by one of the hon. Members who has spoken that it is of the essence of land transactions that there should be swift decision. If that is so, the necessity of consent stands in the way of swift decision, and the less that is required the better it will encourage people to acquire land.

I asked some of these Kibos Indian farmers whether they attached importance to this question of having restrictions in the way of consent removed, and they said they did. I said surely in these days the prejudice against Asians has largely disappeared, and did they not feel that they would be able, if they so desired, to get the necessary consent. They said no, they thought there was still a great deal of prejudice, and that would stand in their way, so I would ask the Minister to give very careful thought to this, whether it is really necessary to have all these elaborate provisions for consent, which are certainly going to increase expense and delay transactions, when in the present circumstances, I would suggest, that there is no real necessity for that consent.

Now it has been one of the main planks of the hon. African Elected Members that we should not discuss these Papers now, and we should wait for the next Government to come in before discussing land proposals. I am certainly not in agreement with any such attitude. I think it would be a very serious mistake to postpone the discussion until after a general election. Candidates at general elections are apt to make very liberal and unconsidered promises, and the result would be that you would have Members who would come into this House with promises hot on their lips, and they would be compelled to do one of two things. Either dishonour the promises they had made in the course of their election campaigns, and dishonour themselves, or a great deal of damage would be done to the country by carrying out mad or bad promises. One of these things would certainly occur, and it is far better that we should discuss these matters calmly and sensibly in this House than wait to discuss them after a general election, with a good deal of new Members, who will be committed to impossible promises.

There is also the danger that at present a good number of persons are attempting to ride to power on the horse of racial prejudice and emotion. If you examine the present set-up you have one

[Mr. Nazareth]

an important organization, which excludes non-Africans. You have the other, in consequence, not able to be really liberal in its constitution or in its policy. I do not want to enlarge on this subject, but such racial attitudes are not necessary to achieve racial unity since Africans have been assured that they will get their independence. Racial unity might have been necessary if it was essential to promote a struggle for independence, but having been assured that they will get that, and since there is no doubt they will achieve it, this emphasis on racial unity is wholly unnecessary, and meanwhile, by this emphasis on racial unity, by this highly racialistic approach, a very great deal of economic and commercial confidence is being destroyed and the economy of the country is being undermined. A great disservice is therefore being done by African leaders who emphasize the racial approach and insist that matters of this sort, which are of practical importance, which are of urgent importance, should not now be discussed.

The hon. Member for the Rift Valley said that the White Highlands were not due to the white settlers, but they were the creation of Her Majesty's Government. Now I feel that one of the very great services that has been performed by these two Papers is that it has opened up these White Highlands, and I do not think it can for one moment be contended that it was not the European settlers that brought about the policy of the White Highlands. Initially Her Majesty's Government introduced the policy but for many years when it was criticized, and it was attempted to be changed, it was the European settlers who fought for its maintenance, fought for the perpetuation of every restriction contained in that policy, opposed not merely initial grants of land to non-Europeans, but opposed even transfers and acquisition of leaseholds by members of other races. I do not think he can absolve his community from the policy of the White Highlands, but I do not want to dwell on the past. The point is now that the Government of the day is undoing that vicious policy which has been prevailing for so many years, it would be unfortunate if that undoing were delayed for any longer than can possibly be helped.

As I have said, it is the Asian community which has been the one community which has had no land reserved for itself, and in fact, has been excluded from two large areas, the White Highlands on the one side, and the African reserves on the other. The result of that has been that there has been a lop-sided development in the Asian community. I hope, therefore, that when these schemes which are under consideration are put into effect, especial consideration will be

given to the needs of the Asian community, and this lop-sided development which has occurred, which has tended to keep the Asian community out of land activities, will be attempted to be set right. They need special consideration because they have been especially the victims of the past, and I hope, therefore, that when detailed consideration is given to these schemes, the needs and the difficulties of the Asian community will be borne in mind, and that that concentration which has taken place in the Asian community towards the field of artisans, towards professional activities and trade and commerce and very little of it in agriculture, that that will be avoided in the future.

There is one aspect of these proposals which causes me the most serious disappointment. In that I feel that although the Government has acted with vision it has acted without courage. That is in failing to declare null and void, or unenforceable, the racial restrictive covenants on land in townships. The Government itself is giving up these restrictions, no doubt because it considers these restrictions are against good policy, and because they are a wrong to non-Europeans, but on the other hand, it does not propose to stop others from enforcing these covenants, and the reason it gives is that that would be an invasion of sanctity of contract. Now I would urge upon the Government that public policy overrides sanctity of contract. We have many examples where public policy overrides sanctity of contract. Rent restriction is one form where public policy overrides sanctity of contract and interferes with the rent a man can claim. It can interfere with the contract he has already made and the making of future contracts. Similarly, price control in war time. You have many examples of interference with what is called sanctity of contract. To declare null and void one covenant in a contract, a racial covenant, which engenders racial prejudice and constitutes a public danger, is not to invade, in my submission, the sanctity of contracts, but to save contracts, because the morality which underlies the doctrine of sanctity is thereby served and saved. The real reason, I feel, why Government has not taken this further step in declaring these covenants null and void, is that the European community is against the removal of these covenants. If that is not so, I sincerely hope that the European Elected Members would inform the Government that it is their desire that such covenants should no longer be enforceable. If that good fortune befell us I feel sure the Government would be able to take its courage in its hands and declare these covenants null and void. It is to be remembered that these covenants, the enforcement of these covenants, their validity,

[Mr. Nazareth] their continued validity, does operate to cause actual hardship and injustice to the Asian community. They are compelled to pay higher prices for their land, so many of them have paid twice the price Europeans paid for comparable land. They pay higher rates in many cases in consequence, and it has a very practical importance. I think the steps that have been taken, although Government is to be commended for them, in that itself it is not enforcing these racial covenants, nevertheless are inadequate, and a further step ought to be taken in the light of the present political climate of rendering all these covenants null and void.—The evil contained in these racial covenants does not become sanctified by being included in a contract. I am therefore deeply disappointed that after the Lancaster House Agreement this further step was not taken of revising the first Sessional Paper in the second one that was published. I have also thought it very unfortunate that leading African Elected Members have not used this opportunity to restore confidence by giving assurances that land titles will be respected, but on that point I should like to thank the Minister for Commerce for stating that in regard to land titles in dispute, the way in which the matter is to be dealt with is by a decision of the courts. If that is the only way in which titles will be brought into dispute, and if that declaration of the Minister for Commerce is supported by his colleagues I think we shall go a great long way to restoring confidence in the titles granted by the Crown. I hope, therefore, that before this debate closes we shall have an assurance from African Elected Members that they agree with the view of the Minister for Commerce, and that it is not their intention at any time to call into dispute any land titles except through the courts.

Apart from that I do feel that great opportunities have been missed by the hon. African Elected Members in not helping to restore an air of confidence by declaring or defining the area where they say that land is in dispute. To bring into issue the whole of the land in the Colony or the whole of the land in the White Highlands is, of course, to bring economic chaos into the country, and I hope sincerely that they will use any opportunity that may seem to restore the sanctity of titles.

In general I should like to express support for the proposals set out in the White Paper. The Government has taken a revolutionary step, as I have said, in throwing open to other races land in the White Highlands. That was a step which has been fought for for the last 20, 30, 40, 50 years. It has come at last, I think when the Government in fact published that Paper it did

show a great deal of courage. It looks a little outdated after Lancaster House, but when the first Paper was published I certainly think it was published against the strong feeling of the European community. The European community has now become reconciled to it, I think.

Mr. Slade: Question!

Mr. Nazareth: The hon. Specially Elected Member. Mr. Slade, calls "Question!" Well, different people might have different assessments on that point, but if it was in accord with the feeling of the European community, then all the better. At any rate I think that the White Papers do render a valuable service and, therefore, I am willing not merely to note this Paper but I am willing to give it broad general support, and I sincerely hope that the points to which I have directed criticism will be remedied.

The Minister for Tourism, Game, Forests and Fisheries (Mr. Crosskill): Mr. Deputy Speaker, I think the last speaker who has just sat down has produced a very valuable contribution to this debate. Whilst I cannot agree with every word that he has said, in particular, perhaps, the epithet he used when he said that the White Highlands were a "vicious" institution, because I think that the adjective is perhaps not rightly applicable, I do agree with a great deal that he has mentioned. In particular, Sir, I believe that he has put his finger right on the point which is causing apprehension with regard to the White Papers and land transactions in the future.

I believe that the hon. Nominated Member, Dr. Ismail, was quite wrong when he spoke this morning about the "tussle" between the European community and the African community. I believe, also, the hon. Elected Member for the Eastern Area, Mr. Pandya, was also wrong. It is not a "tussle" in respect of the principles at issue in the two Sessional Papers that this Council is debating. I know in my own constituency there are no European farmers whatsoever, I believe, who oppose the principle of the opening up of the White Highlands. They believe that it is now timely and that in order to get a fuller economic utilization of the land the step is right. But, the hon. Member who has just sat down put his finger on the point which is causing apprehension, and that is the doubt as to the manner in which land transactions may be conducted in the future. I do hope that all the African Elected Members who have been listening so eagerly to the hon. Member who has just sat down will do as he has asked them to do, and reinforce the statement made by my colleague, the Minister for Commerce and Industry, when he said that he would use his every endeavour to see that no steps were taken by any future

[The Minister for Tourism, Game, Forests and Fisheries] Government which would disrupt the economy of the country.

The apprehension with regard to land rights has been created by obscure statements which have been made by several African Elected Members, and I do believe that if these could be cleared up, that if everybody in this Council were firmly intending that transactions in the future should only be carried out in a civilized and legal manner, every apprehension would be removed.

My hon. colleague, the Minister for Commerce and Industry, said that he thought that we should rely on the good faith of the African people in the future for our land rights. Well, with due deference to him, I should prefer all to have a title deed as well. Myself, I have a freehold farm and from what the hon. Member for Mount Kenya has said about freehold titles it looks as if I and one or two others in a similar position will have to negotiate a treaty similar to that which the Masai will have to negotiate for the future; but I would rather have a title as well as the good faith; I do believe that it is right that we should have both.

Referring briefly to speeches made earlier in this debate by the hon. Member for Central Nyanza, the hon. Member for Central Rift, and the hon. Member for Nairobi Area, there seemed to me to be one feature common to each one of their speeches, and that was that, if one had not read the Sessional Papers Nos. 6 and 10 and merely listened to their speeches, one would have got the impression that Government was intending to introduce measures to create reserves rather than to open them up for fuller economic utilization. There seemed to be from them scant, if any, recognition of the fact that these Government proposals are introducing what is perhaps the most far-reaching and the most imaginative steps in the history of Kenya. Each one of the hon. Members said that they felt the steps were inadequate. Well, Mr. Deputy Speaker, that is a matter of opinion, but with the almost astronomical sums which my colleague in the Ministry of Agriculture has said he hopes will be available I feel that the step is a very great one, and, as the *East African Standard* said yesterday, the step would be "solid achievement" and about all that the country could digest at the present time.

I should like, Mr. Deputy Speaker, to say a little bit about land reform. Now, land reform is not an instantaneous action, but it is, and it implies, steps which are periodically necessary in the history of any country. Land reform is not carried out at any one time. The process is that

from time to time it appears that further reform is desirable. Now this is a tremendous step in land reform, but it is by no means the only one that we have known in this country. The first step in land reform was taken at the beginning of this century and that was to utilize the land. When Her Majesty's Government came here they found that the land was not fully utilized and they therefore took the step of inviting people from overseas to develop it. That was the first step in land reform in Kenya. Since then there have been many other steps. We have had land consolidation in recent years which has done so much to bring about agricultural progress and development; we have now got planned rotational farming practice; and we now have a lowering of barriers. Therefore, reform is a periodical requirement, and this is by no means, of course, the last step in land reform which Kenya will seek, though I believe it is a very constructive and imaginative step which is being taken. However wisely anything or any commodity is divided up between several people, at some stage or other, owing to various factors, there will become a state of disbalance. There has quite clearly become a state of disbalance with regard to land and therefore it is timely and right that there should be a reform to adjust that balance so that the development of the land can go forward and be more fully complete than it can be with the compartments as they are today. I do hope, though, that we shall also not hear in future about the sanctity of the African land units. My hon. colleague, the Minister for Commerce and Industry, referred to these and I hope that he will support my application for a little bracken-covered, unused hilltop in the Kikuyu Reserve on which I can retire and grow a little tea in the future.

Now the first step in land reform in Kenya, as I have been saying, Mr. Deputy Speaker, was when the Government decided that the land should be used and developed, and when they invited people from overseas to develop it, because they realized that land *qua* land is of little value unless it is developed. Land is rather like food: it is no good to anybody unless it is consumed and thereby produces energy.

Now the hon. Member for Central Nyanza seems to imply that the action by the Government at that time in allowing people from overseas to come in and develop the unused land was wrong, and I felt that he would rather like to see the land marked out as indeed is the area to the South Pole, where there are lines on a map marking spheres of influence which are as yet unused because so far as we know that land is sterile. But in my opinion it would have been utterly wrong had the Government of that day reserved land in perpetuity in areas far larger

[The Minister for Tourism, Game, Forests and Fisheries]

than could then have been utilized by the population of the country. Had they done so the state of Kenya today would have been very different from what it is. I think the railway would have rusted away and that we should have had few schools; we should not have been able to afford the social and economic services which Government now provides, and we should have had a primitive country still being based on subsistence agriculture; there would have been no Nairobi other than a few corrugated iron buildings. Therefore I think that everybody must agree that the Government took a right step, and the first step in land reform was to utilize the land as fully as possible.

The results of that plan, of that policy, can be seen today in the tremendous development of the economy of the country. When thinking of the development I always recall these two figures. One was the Budget of Kenya in 1939, which is not very long ago, and which was then only £1,750,000, compared with that the Budget today is something like £34,000,000. That tremendous expansion and the tremendous improvement in standards of living and the development of wealth in the country has been due to the development and utilization of the land. This development has been not only of value to those people who have been working those farms but it is, and has been, of tremendous value to every man, woman and child in this country of every race.

I would also like to say that the land in those days was not given but it was leased to people, and since then we have now reached the third generation of those farmers. That land now changes hands normally by sale and therefore if any transaction in the future takes place it must be by a similar method of sale and not by expropriation.

I therefore feel, Mr. Deputy Speaker, as I said when starting, that the hon. Member who has sat down has put his finger on the real point at issue, and that is the manner in which land transactions are to be carried out in the future, and it is on that that everybody requires an assurance. I do believe that any suggestion that land should be dealt with in any way, that it should be taken away and not purchased, declares that whoever says so is basing his theory on either a lack of comprehension of the past and of what the development of that land has done to the country, or else through a lack of morality and lack of responsibility. I do therefore hope that the assurances that my colleague, the Minister for Commerce and Industry, asked for will be given by the hon. African Elected Members, who have now come back into the Council Chamber.

Yesterday we heard a very constructive speech from the hon. Member for Meru and another from the hon. Member for Embu and Nyeri. I agreed with most of what they said. The Member for Meru again put in a claim for further use of the forests. He knows the position with regard to that and its possible use in the future if it can be used and where it can be used without detriment to water catchment, because, as the hon. and noble Corporate Member said today, when talking about water conservation, water is going to be the limiting factor in the development of Kenya. He has put in a plea with regard to water conservation and forest conservation many times, knowing full well that that is going to be the limiting factor, and therefore we must not destroy anything which helps us to conserve and collect water. Within those limits, of course, there must be flexibility, and so long as it is not going to do damage then areas which may be forest now could possibly be used in the future; but, as hon. Members know, experiments are now being carried out to determine whether that is so or not.

Finally, Mr. Deputy Speaker, I think I must support fully the feelings for the future expressed by the hon. Member for Nairobi West, and also by the hon. Specially Elected Member, Mr. Blundell, who, I think, made a very fine contribution indeed to this debate. I believe that they are both right in saying that our future must be worked out by common sense, by co-operation and thought among ourselves in this country. I said rather facetiously that the goodwill of the people of the future is not quite sufficient for me to establish my right to my land and that I would want to have a title as well. However, I do believe that goodwill and co-operation is the main plank on which we must build for the future.

Mr. Deputy Speaker, I beg to support.

ADJOURNMENT

The Deputy Speaker (Mr. Conroy): I do not think it is worth while calling on any hon. Member to speak now, and I accordingly adjourn Council until 2.15 p.m. in the afternoon of Tuesday, 26th July.

The House rose at twenty-eight minutes past Twelve o'clock.

Tuesday, 26th July, 1960

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

[Mr. Deputy Speaker (Mr. Conroy) in the Chair]

PRAYERS

NOTICE OF MOTION

AFRICAN LIVESTOCK MARKETING ORGANIZATION
—LOAN GUARANTEE

Mr. Swynnerton: Mr. Deputy Speaker, Sir, on behalf of the Minister for Agriculture, I beg to give notice of the following Motion:—

THAT this Council notes that the Government proposes to guarantee an overdraft of £35,000 to be afforded to the African Livestock Marketing Organization as working capital, in addition to the overdraft of £65,000 already guaranteed.

Mr. Tyson: Mr. Deputy Speaker, I wish to raise an objection on this manner of moving notices of Motion, as I have done before, and—

The Deputy Speaker (Mr. Conroy): Mr. Tyson, you cannot object to notices of Motion; you can only give notice of your objection.

ORAL ANSWERS TO QUESTIONS

QUESTION No. 118

Mr. Blundell asked the Chief Secretary it has been publicly reported that senior United States of America and British specialists met in Washington in November to concert economic, political, cultural and military policies for Africa south of the Sahara. Will the Chief Secretary state whether—

- this meeting took place at Assistant Secretary level?
- this Government was consulted before the meeting?
- the Government has been informed of the results?

The Chief Secretary (Mr. Coutts): The hon. Member will appreciate that the external relations of this territory are the responsibility of Her Majesty's Government and accordingly Her Majesty's Government frequently exchanges views, through diplomatic and other channels, on a wide range of subjects with the United States and other friendly governments interested in Africa. This Government was not associated with the discussions, but I can assure the hon. Member that the talks were in the nature of a general exchange of views and information, and that there was no question of any decisions being

taken or recommendations made with any direct bearing on Kenya's interests.

Mr. Blundell: Arising out of that reply, would not the hon. Member agree that in view of Her Majesty's Government's intention to move this country towards independence it would be wise to associate this Government increasingly with the external affairs of this country?

The Chief Secretary (Mr. Coutts): Mr. Deputy Speaker, yes, but only if it concerned Kenya specifically.

Mr. Blundell: Mr. Deputy Speaker, arising out of that would not the hon. Member agree that this does concern this country in that it would substitute the benevolence of the British Administration for the unholy dollar?

The Chief Secretary (Mr. Coutts): I do not associate myself with the hon. Member's verbiage.

Mr. Blundell: But, Mr. Deputy Speaker, I would like to recommend to the hon. Member that he should ask Her Majesty's Government for the results of the discussion.

The Chief Secretary (Mr. Coutts): We are constantly being told of the results of such discussions.

Sir Charles Markham: Mr. Deputy Speaker, in view of the doubts expressed by the questioner about the literacy of certain Members of this side, could I ask him if he has noticed the spelling of subparagraph (c) of the question?

Mr. Blundell: Mr. Deputy Speaker, I—

The Deputy Speaker (Mr. Conroy): Questions may be addressed to Ministers in respect of matters of administration where they are responsible. The only other Member of this House to whom questions can be addressed is the chairman of the Kitchen Committee.

MINISTERIAL STATEMENT

BELGIAN CONGO REFUGEES

The Chief Secretary (Mr. Coutts): Mr. Deputy Speaker, Sir, the Government is very grateful indeed to many people in this country who have recently had to deal with the influx of Belgian refugees and I would like, with your permission, Mr. Deputy Speaker, to make this statement.

The tragic events in the Congo resulted in a sudden influx of refugees, mostly Belgian, but including Commonwealth citizens and many other nationalities. When Uganda could accommodate no more, the overflow came to Kenya by train,

[The Chief Secretary]

road and air. In addition, several aircraft loads have been flown to Nairobi direct from the Congo, both by the Royal Air Force and civil aircraft. Refugees started to arrive on 12th July, and today, a fortnight later, about 2,500 have entered Kenya of whom about 1,500 have already left by air for Belgium or their home country filling all vacant seats on scheduled flights and a number of specially chartered aircraft.

The brunt of the work of coping with the refugees has fallen on the British Red Cross with the support and co-operation of numerous other voluntary organizations, Government and Service departments, and the Belgian Consulate. To start with, about 300 refugees were accommodated by private hosts, but then as the problem suddenly increased we had to call on the Royal Technical College, to whom I am very grateful for accommodation, then to close Nairobi Government European boarding schools a fortnight before the end of term and finally to accept the kind hospitality of the Roman Catholic schools, St. Mary's and Msongari.

We hope that as there is no greatly increased influx of refugees that all those now in Kenya will have been repatriated within about ten days and I wish now to pay a tribute to those who have helped.

First, as I have said, come the British Red Cross. Then come the various other organizations, and in particular the East African Women's League, who have organized all the clothing and the catering of South Hill Mess; St. John Ambulance, who have manned the first-aid posts of the transit camp 24 hours a day, and the Round Table, which last body have produced volunteer transport at all hours of the day and night. School staffs, too, I think, deserve a special word of praise for sticking to their posts and coping with an unfamiliar problem.

The assistance is not confined to Nairobi, nor to any one race. All down the route food, accommodation and assistance have been forthcoming and gifts of food pouring into the Red Cross in Nairobi have amounted to well over 100 tons. I am particularly gratified that gifts have come not only from the big commercial houses and firms, but from farmers of all races, Africans, Asians and Europeans. All have contributed: a bag of potatoes here, a steer there; half a dozen eggs from an individual African who had walked in from Dagoretti; two tons of maize meal at midnight to make up an emergency load on an aircraft.

I am very appreciative of the assistance and the encouragement that has been received from the hon. African Elected Members and their

organizations. However much happenings in the Congo have horrified us, it has demonstrated that here in Kenya men of goodwill of all races and walks of life come together at once to co-operate readily and willingly to assist those in distress, whoever they may be.

Mr. Maxwell: Mr. Deputy Speaker, am I permitted to ask a question on a point of information? Sir, I think you have a ruling on the bringing in of suitcases, newspapers, etc. If certain Members are permitted to wear fancy headgear, such as I have on my left, am I permitted to bring in a Flit gun?

The Deputy Speaker (Mr. Conroy): Hon. Members are permitted to wear what they like provided it complies with decency. I should say the hon. Member to whom reference is made is in an excellent position to take a point of order on a division.

MOTION

LAND TENURE

(Continuation of debate adjourned on 22nd July, 1960)

Dr. Adalja: Mr. Deputy Speaker, Sir, I note with deep satisfaction the new land policy of the Government. I support it fully and freely and let it be noted, Mr. Deputy Speaker, I do this not at the crack of a whip or the threat of sack, but voluntarily and of my own free will and accord.

During my 34 years of stay in this country the struggle of the Indian and Muslim communities in this country has been mainly centred round four points, common roll, non-racial set-up in the Civil Service, abolition of all forms of segregation and discrimination everywhere and in every manner and the right to own and farm lands in the Highlands. Progress has already been made on the first three points and with the acceptance and implementation of this policy will begin the progress on the remaining one.

I have hardly any comments to make on the Sessional Papers themselves, but I would like to endorse the view expressed by one of the hon. Members on racially restrictive covenants in certain residential areas. These, Mr. Deputy Speaker, are now out of date inasmuch as they are not in tune with the changing spirit of time. They are an unnecessary source of irritation and a reminder of a state of things that is fast passing away. I wonder if they serve any useful purpose except as small satisfaction to a decreasing number of die-hards. Government policy in respect of these covenants might be described as preventive. May I, Mr. Deputy Speaker, suggest it should also be curative.

[Dr. Adalja]

Coming to the schemes mentioned by the hon. Minister for Agriculture, not being a farmer I am not qualified to judge for myself how far and how effectively they will help in solving the difficult problems of unemployment. I am moved to these thoughts, Mr. Deputy Speaker, by the problem of unemployment in the Asian community, a problem which will grow with the passage of time. Quite a considerable proportion of this community is engaged in the retail trade and as artisans in the building industry. In these fields there is already competition which will grow and gather speed and size and these people will not be able to withstand it. These people are bound to be displaced. Now there is nothing wrong with this, it is a development which is right and natural, but it poses a problem which will require solution. As far as I am able to judge there is nothing in these schemes to cover this class, these schemes are meant primarily for Africans and rightly so. Their needs are greater and more urgent, but I would ask the Minister to tell us if he has in mind any scheme or schemes to cater for the needs of this and similar class. I feel there will remain only three fields open to this class—service, secondary industry and land. In all these fields competition will remain; they will not be competition free. Therefore all the three will have to be brought into play if these people are to be prevented roaming in the streets and adding to the already large number of spivs.

Now, Sir, I would like to make two points clear. I do not ask for anything for these people because they are Asians. As such they have no right in the country. Their rights arise from being citizens and nationals of this place, and as a result of their discharging fully and in a satisfactory manner their duties and responsibilities as such. This is the basis of my question.

The second point I would like to make clear is that I do not want any schemes to be designed on the basis of race. I want them to be designed on the basis of economic grouping. Finally, Mr. Deputy Speaker, I believe in the very wise words said some time ago by our hon. Minister for Commerce: "Let us share in poverty." May I add, let us also share in our problems and the responsibility for solving them.

Mr. Deputy Speaker, I beg to support.

Mr. arap Moi: Mr. Deputy Speaker, on the land question I think it is a matter that has been rankling for many years, and it is not for me, Mr. Deputy Speaker, to elaborate or to speak much on what has been said, but what I am going to say, Sir, is that I am not going to take note of this Sessional Paper No. 10 and Sessional Paper No. 6 for various reasons.

The present Government consists of civil servants who are regarded as birds of passage. Mr. Deputy Speaker, I am saying that because the Government at present consists of some civil servants.

Hon. Members: Some!

Mr. arap Moi: And therefore it is not fair and proper to tell this House that their policy or the present policy which they are taking will be carried on by the future government. I am going to say this, Sir. The African Elected Members tried to consult the Kenya Government, and the British Government to accommodate our views, so that in any changes that might take place in future, might alleviate the present problems which confront African people. Nevertheless, the Government did not in any way take note of what we have expressed.

An hon. Member: Shame!

Mr. arap Moi: The British Government has assured the Kenya Government and those who are going to be settled in the Kenya Highlands that what the British Government has decided is that they will see that it remains permanent and might be incorporated in the future constitution. Now, Sir, if the Government wanted to know our views, and if they had put out views in this Sessional Paper, we might have altered our views if we thought they were moving in the right direction. But, Sir, we are told here, or the Government asks this House to endorse or grant title deeds or freehold lease to various people in the Kenya Highlands. Many of us have been complaining and been complaining before the Government for many years, but Government has never settled that problem, and the Government tells us now to endorse or to grant title freehold lease to those who have been given leases for either 99 years or 999 years. Some people seem to be misled to think that the Kenya Highlands are being opened, or the so called "land barriers" have been lowered. In actual fact, Sir, it is being opened and then tightened up properly, which would mean that it would be impossible to undo these things unless one goes to a court of law to challenge such titles.

When one hon. Member mentioned that there were certain tribes who were pushed out of their land, Government Members questioned, but I am going to mention only a few areas where Kalenjin have got very strong views. Tinderet, for example, is one of these lands which we have been claiming for years. The Nandi and other Kalenjin fought from 1900 to 1906. They fought a clean fight—it was a straight fight, but in the end the Governor made an agreement amongst the Nandi to move from that area (Tinderet). They moved

[Mr. arap Moi] quietly without making any trouble, and therefore we are asking now the Government to give back that land, without paying a single cent.

Another portion, Sir, is Kaptagat Forest. I want that land to be given back to the Elgeyo people. And also, I should like to mention Kapkoi, Sergoit, Kipkarten, Kamur, Kilombe, and other areas which I cannot mention which Government knows very well. I say this. The Government tells us that in order to be settled in the Kenyas Highlands you must get a Government loan in order to develop it, or, in other words, you are given a loan to develop that land, and you repay that loan within a certain given date, and the land will automatically become yours. Now, Sir—

The Minister for Local Government and Lands (Mr. Havelock): On a point of order, Mr. Deputy Speaker, I am sorry to interrupt the hon. Member, but could he repeat again those three names he gave us?

Mr. arap Moi: I have only given three as examples, and I do not want to say that only those three are examples, Tinderet, Nambare, Kaptagat Forest, Sergoit, Kilombe, Kapkoi and others, which will be submitted to Government soon.

An hon. Member: Interjection.

Mr. arap Moi: Mr. Deputy Speaker, the hon. Member is giving the recent history. In 1904 the Uasin Gishu were brought back from Uasin Gishu to help the British Government fight against Tugen and, therefore, there were some at Kilombe and some at Kipioim, and during those times they helped the British Government to locate where houses were situated so that they could quell the troubles. That is the short history of Kilombe. One should not relate recent history and say Kilombe belonged to Uasin Gishu and make us believe that this land belonged to certain people and it was only an exchange of land, and what I am asking the British Government is that if a European farmer or settler was given any particular land, the right course to take by the British Government is to pay that particular person that amount and get that land back without any payment. That is what we are asking for. I do not believe, Mr. Deputy Speaker, that these half measures can help alleviate any situation which now confronts Kenya people. I have said there are certain portions of land in dispute at the moment, those should be given back immediately. It should also be on record that areas within the Kalenjin sphere of influence are also considered by the Kalenjin to be theirs. Dr. Kiiano rightly mentioned that if anybody, Kikuyu or Maragoli, is to be settled in those

areas, we do not object to them provided we have proper consultation, and this would mean that unemployment or any troubles that arise in any area in Kenya does not affect any particular area but affects the whole country. I know, Sir, that certain people in Kikuyuland, particularly Limuru, are being asked to leave their areas, some in hundreds, and so on, and I sympathize with them and, of course, the right course for the Government to take is to help them and settle them in some of the Kenya Highlands.

I had one very important matter to say. As human beings we possess love and mercy; those are important qualities of human beings. If the present Government is not sympathetic with the Africans, how can we be sympathetic to Europeans in future if they decide now to brush aside any problem that we bring to the Government. I am relating this, Mr. Deputy Speaker, to Lembus right-holders. When they ask for more land the Government says unless you have a thousand acres no one will accept your claim. I said once in this House, Mr. Deputy Speaker, that Lembus right-holders made an agreement with the Administration in 1907, and for 50 years no single cent from this Government or from the British Government went into their pocket by way of educating their children, putting in roads or building schools or hospitals. If the Member would like to say that they built any in those years he had better tell me so. In this regard, Mr. Deputy Speaker, it would have been much better to release areas I mentioned before in order to restore confidence. Many Members in this House, Mr. Deputy Speaker, spoke of external confidence to restore investment, but what is very important is to restore internal confidence first, so that outside investors will know exactly that there is stability in the country and, therefore, I am urging the Government to alter drastically their present policy on land. I am not a racist but where one talks of a non-racial approach on land and a non-racial approach to certain things one does not talk sense in that. I am not against the Asian community, but they are in a much better position so far as wealth is concerned, but to suggest that the White Highlands should be for all races, Asians, Europeans and Africans, you do so without thinking what is the crux of our problems. Therefore, I am telling the Government now that what happened in the Congo should not happen in this country. My intention is that nothing should happen here in Kenya that would create ill-feeling or anything that would disrupt the goodwill in this country. But if the Government creates that atmosphere, Sir, that will not be my concern.

Now, Sir, in 1908 the Government introduced a Bill regarding land in Legislative Council, and

[Mr. arap Moi] regarding the disposal of agricultural land, the land was classified into four categories: Class A land was sold by the Government at 18 cents per acre, Class 2 was sold at 12 cents an acre, and Class 3 was sold at 6 cents an acre, and the fourth class was sold at 3 cents per acre. The African land unit was regarded as a lower land area and any land granted to Asiatic groups was sold at 12 cents per acre. Now, Sir, the value of land today might be £15 per acre; that is in the first class category. But if somebody bought land in 1908 or in 1919 the value might have been 20 cents an acre, and so on. Now, if I want to buy it today what will it cost? I can easily buy barbed wire, a house and some other things, but so far as land is concerned I do not think that it would be fair for the Government to sell it to Africans at the present rate and, therefore, I am urging the Government to re-think again about this question of land, and I am not going to go into the pros and cons about land. My colleagues have expressed their views that we are not in a position to buy land at the moment, and on the question of rights, Sir, we do not consider that the future Government will be tied up or that their hands will be tied up. We think we shall be free to make drastic land reforms outside native land units.

Lastly, Mr. Deputy Speaker, I do not want to go further and criticize the composition of the Board and so forth because I do not accept the Sessional Paper and therefore it would be improper for me to go into the whole system of the Sessional Paper. Mr. Deputy Speaker, I should like to end by saying that in order to restore confidence among the people in Kenya the best thing is to consult the African people fully. Although the Chief Secretary has stated that the African Elected Members were fully consulted, I do not think that they were really consulted in that sense of the word. The British Government had made up their minds, and the Kenya Government, and in fact the Minister for Agriculture and the Minister for Land had gone to Britain and decided on everything, and the Government asks us to endorse what the Colonial Government has said. I have decided therefore to oppose the Motion.

Capt. Hamley: Mr. Deputy Speaker, I would like to say a few words on this subject but unfortunately I have made no notes and therefore what I have to say may be a bit disjointed. Nevertheless that has its compensations because I shall not have to keep mumbling through my beard which is half the trouble about the acoustics of this House which are sometimes blamed on the construction but which in my opinion is entirely due to the way the Members

bury their noses in their notes. Anyway, Sir, that is by the way.

This debate on land is most interesting to me for one reason, and that is that it has always been said that the land is a most emotional issue for the Africans. It is. It is so emotional that I am afraid that they are becoming men with chips on their shoulders, and if some of my friends do not understand the English idiom I will explain that the man with a chip on his shoulder is a man so belaboured by grievances, real or imaginary, that he is incapable of sound reasoning or clear judgement. I do ask my African friends to be careful that they do not fall into that trap.

I have heard some most extraordinary views expressed here during this debate of people in Kenya forcibly ejected from their land; people in Kenya who have suffered grave injustices. There are different views on this thing. I heard one African Member the other day talk about an African Member the other day talk about a looking back over 60 years of injustice. It is an extraordinary statement, because I cannot see any injustice. I look back over the history of this Colony and I see a totally different picture. I see the picture of the first explorers who came here and who opened up this country. I see the picture of many men of my service, the Royal Navy, who have laid their bones out here in suppressing the slave trade.

Mr. arap Moi: Ha, ha!

Capt. Hamley: It is nothing to laugh about, believe me.

I see a benevolent English Government who built a railway from nowhere to nowhere and provided the money therefore, entirely to put down the slave trade, and, having got that railway going from nowhere to nowhere and running through nothing, invited settlers out here to try and make the thing pay. Nobody is giving them any credit for it. After that I see a long line of British Governors and administrators who have come out here and devoted their lives to Africa for very little thanks. After that all I hear from the other side is 60 years of grave injustice. It is poppycock: there is no such thing. I would ask the African Members not to have a chip on their shoulders but to look at this thing objectively.

There is the stated fact that land is in dispute out here, but the dispute lies entirely with the African Members. There should not be any dispute. Every time the African Members say that land is in dispute they are undermining the confidence of the British settler.

Mr. arap Moi: Ha, ha!

Mr. Muliro: Ha, ha!

Capt. Hamley: Very funny. But let me tell you this: every time you undermine the confidence of the British settler you are undermining yourselves.

Mr. arap Moi: Ha, ha!

Capt. Hamley: The African Members talk all over the country about tribalism and doing away with it. It cannot be done.

Mr. arap Moi: It can!

Capt. Hamley: In Britain for the last 300 or 400 years we have been trying to do away with tribalism in Great Britain. We have not done it.

Mr. arap Moi: Ha, ha!

Mr. Muliro: Ha, ha!

Capt. Hamley: Some of the African Members can find a lot more that is funny in my speech than I am trying to put into it. We have been trying to do away with racialism in Great Britain for many, many years, ever since 1604 at any rate. But we have still got it. We have still got the Scottish Nationalists and we have still got the Welsh Nationalists, who both want Home Rule. Yet you talk about doing away with tribalism here; it is impossible. The only way that you can make this country run is to weld those tribes together, and the way to weld those tribes together is to have a catalyst, to have a bit of yeast that will make the pudding eatable and that bit of yeast, believe you me, Sir, is the European settler. There is no other man who can do it.

Mr. arap Moi: Ha, ha!

Mr. Muliro: Ha, ha!

Capt. Hamley: Very funny indeed. But a lot of people in the world will agree with me. You talk about what has happened in the Congo. What has happened in the Congo? They have thrown out the European. And what have they done? They have asked another one back. And what have they got? Instead of the man who knows the colony and who knows the administration and who knows the ways and the people of the Congo, they have got the almighty dollar round their neck and, believe you me, the almighty dollar has got strings to it. If they had not got the almighty dollar who would they have?

Mr. arap Moi: That applies to the Congo; not to us.

Capt. Hamley: Sir, will the Member not keep quiet, or must I put up with these interruptions? Can I ask for your protection please, because there have been many interruptions.

The Deputy Speaker (Mr. Conroy): Capt. Hamley, I think you are well able to deal with interruptions.

Capt. Hamley: Sir, if they had not got the almighty dollar who would they have? They would have the communists and if they had the communists, Sir, then what would they have, but going back to slave trading, but instead of the individual master they would have the State as their master.

Mr. arap Moi: Ha, ha!

Mr. Muliro: Ha, ha!

Capt. Hamley: So what? It may sound amusing to you, but it is a fact. If you get rid of one European you will only get another one back. Therefore try to get the benevolent one to stay. You are trying to undermine the confidence of the European settler and in doing that you are undermining your own stability.

Now, Sir, I do not look at this question of trying to get the European settler to stay here in the same way as some do. They are talking about investments coming into the country. I do not look at it that way. You have got the investment in the country. The investment in the country is the European settler.

Mr. arap Moi: laughed.

Capt. Hamley: One does not have to talk about trade, commerce and industry and investment that way; as long as you have got a confident European settler here, the other things will follow; but they cannot see it! Their noses are so short that they cannot even see the tips of them! It is time, I suggest, that they woke up; that they realized what has been done for them and what is being done for them. This tribalism which they are trying to do away with will otherwise bring them down in the end.

It is an unpleasant subject, but I ask you to cast your minds back to the days of the slave trade. We talk about the days of the slave trade as the Dark Ages, but who were the niggers in the woodpile there? It was not the European; he was only the middle man. The man who was at the bottom of the slave trade was the African who impressed his own people and captured his own people into slavery. And I will ask the Elected Members to remember that, Sir. The blame does not entirely lie with the slave trader; it also lies with the man who first obtained the slaves. When you are talking about doing away with tribalism in this country and the evils of tribalism, I would ask the Elected Members, Sir, to remember that, and to remember that the stabilizing force, however much they may laugh and however much they may ridicule it, is the European settler. The more they can do to retain his confidence, and stop talking about forcible occupation of land, forcible ejection from land, land in dispute and that sort

[Capt. Hamley]
of thing, the more they will stabilize their own future in this Colony.

Sir, I support.

Mrs. Shaw: Mr. Deputy Speaker, I rise to note with satisfaction Sessional Paper No. 6. I have always believed that no country can be developed to its fullest economic extent without the free flow of skills and capital and no artificial barriers. Here I would agree with the Royal Commission and with your permission I should like to quote a small paragraph from that document: "We think that there is no hope of progress for Kenya except by its development as an integrated economic unit, by the present policy of exclusive tribal reservations and under the various obligations by treaty, agreement and formal declaration of which we were instructed to take account in our deliberations. Kenya in particular has been divided up into a number of watertight compartments, none of which can be made economically self-efficient and the frustrations of the last 20 years have been largely due to the failure to recognize that fact." I think that is a very true summing up of the position of this Colony and I would agree with the Royal Commission's Report in that, although all those ignorant people, Sir, who believe that the opening of the European Highlands is a panacea for all ills will be dismally disappointed. Again I quote: "Pressure upon fertile land leads to conflict which is not essentially racial and would take place between African tribes even if there were no non-African settlement." That is the point, I think, that my last friend made in his very virile speech.

But land, be it African or European owned, must be safeguarded and, what is more, as Kenya's economy largely depends on agriculture its economic value must not be undermined through fragmentation or bad farming methods. European farms in the White Highlands provide so far in this Colony most of the economy together with our plantation industries largely owned and largely developed through European or, in the case of sugar, Asian, capital. Not only that, but the bigger plantations give employment to thousands of Africans and here, as the last speaker said, I would ask him to note the Congo. Look at what has happened in the Congo disaster. Last night, I think, it was quoted on the Kenya Broadcasting Service's news broadcast that as a result of 40,000 of the 80,000 Europeans having left, a total of something like 100,000 Africans were now unemployed. The horror of mutiny, the terrors of the breakdown of law and order, even violence, pillaging and the rape suffered by the unfortunate Belgian population will be nothing to the horror to come. Mr. Deputy Speaker, when unemployment is

widespread, famine stalks the land and disease is rife. What a price to pay for freedom! Indeed, whether all that has been lost in the last few weeks, all that has been built up over years in the Congo, will ever be restored in our lifetime is a matter of conjecture. It will be difficult enough to get the capital to reinvest, let alone the European with the knowhow and the skill to return after what they have suffered—mostly women and children—at the hands of the Congolese.

For, when confidence is destroyed as, indeed, it can be overnight, it takes years to build it up again, and statements such as we have heard this week in this debate from the hon. African Member representing Nairobi Area do nothing whatsoever to restore confidence here, for it has been badly shaken, firstly by a spate of irresponsible speeches made from platforms after Lancaster House; and latterly by the terrible tragedies in the Congo. For what business concern, be it Asian or European, is going to invest large sums of capital in establishing plantations, building up industry and even businesses, when one of our African leaders states that the next Government may find some of the things done today to be totally inconsistent with its own thinking on the question of the development of this country and the advancement of its people. He goes on to say that the next Government will be entitled to take such action as it sees fit to modify decisions taken to date. Not very reassuring, Mr. Deputy Speaker, for intending investors! In fact, as a result of this attitude, taken up by so many of our so-called African leaders today, one of the largest plantations concerned in this Colony has decided for the moment to stop all development. Yet another large concern, this time American, would not invest their money—approximately £1,000,000—in a sugar project, until it had received a guarantee from Her Majesty's Government against expropriation of assets and war risks. Her Majesty's Government, I am glad to say, have agreed to give this guarantee, although the wording still has to be agreed upon. In spite of the uncertainties of the future, this project is, I understand, to go ahead. But British firms will get no such guarantee. There is nothing like that forthcoming for them. The only guarantee that either they or, indeed, any of the minorities in this Colony, can hope for is the goodwill of the people; a goodwill which, I am sure, exists today although we do not see much evidence of it in the speeches made in this Council.

There is bound to be lack of confidence when many Africans say that all existing land titles, let alone the future ones, are in dispute. A great deal, too, is said of what the European settler

[Mr. Shaw] must do and must not do or may not do. Every-must do seems to forget, Mr. Deputy Speaker, that one seems to make a bargain and without goodwill on both sides this multiracial experiment here is doomed to failure.

In my part of the Colony we are fortunate to have the Kipsigis as neighbours: good farmers and good neighbours, except when we suffer at their hands by too much indulgence in their national sport of cattle running. But I am sure there are very few European farmers in Sotik District that would not welcome the Kipsigis amongst us, for their standard of farming is good and, as I say, with that one exception of cattle-running, their neighbourliness is, too. Perhaps we can go with a sort of *quid pro quo* on the cattle-running when they have high-grade stock, too. It might work out!

But safeguards against exploitation, speculation in land and there must be for everyone, for while European farmers who were present at the Kenya National Farmers' Union meeting—I think it was last year, but I cannot remember whether it was December or January—when His Excellency introduced Sessional Paper No. 10, agreed to support Government's principle underlying this land policy they did not agree that the Sessional Paper provided adequate safeguards. So the Kenya National Farmers' Union, as we all know, set up a working party which did an excellent job, touring the country, taking evidence from many farming bodies, as well as individual farmers and all sorts of people all over the Colony. Their working party had a liaison with the European Elected Members' Organization and, after the collation of this matter the memorandum was handed to Government. The modifications agreed to by Government as set out in Sessional Paper No. 6 on page 2, I think, for the most part have been drafted on points put up in that memorandum and therefore will go a long way to meeting the objections put forward by members of the European farming community. I think we owe a great debt to the President of the Kenya National Farmers' Union for undertaking this task and later to both Mr. Peter Marrion and Lord Delamere for what they were able to achieve in conjunction with our Minister for Agriculture by the promise of loans for the benefit of farmers of all races in Kenya and, indeed, loans which will make possible the implementation of the various schemes set out in Sessional Paper No. 6.

Lastly, Mr. Deputy Speaker, may I endorse all that Mr. Michael Blundell had to say in his most excellent speech: a speech full of humour, courage and a faith in the future; a most hopeful speech which was good to hear in these days of

doubt and despondency. To my way of thinking this is not the time for reprisal in Kenya but it is the testing time for the qualities of leadership of men of goodwill of all races. For there is no doubt that the nearer that we get to the polling day, the more irresponsible will become the speeches from political platforms. I call upon all people of goodwill here in Kenya to keep calm, for by our calm confidence we shall cheer the despondent, steady the wavering and shame the quitter, remembering the words of that old jingle, which say:—

"The quitter gives the match away

Part all denying.

I find it better far to stay

And win by trying."

Mr. Hennings: Mr. Deputy Speaker, I rise to support the Motion. Perhaps I may start with a very brief personal remark. I have a very keen personal interest in the present subject, having served over the last 13 years in the Ministry of Agriculture and been closely concerned with land development in both the European and African areas. And perhaps I may mention also that I have been Chairman of both the African Land Development Board and the European Agricultural Settlement Board, which I believe, if I may say so with due modesty, is a unique distinction.

I think many of the speeches we have heard, particularly last week, were very thoughtful and sensible and unemotional speeches on what we all know to be a very emotional issue. They were not all in that vein, but a large number of them were and I think that that fact is a very good omen for the future.

Most of the speeches were concerned with short-term aspects of the future so perhaps I might deal with some of the longer-term aspects. I thought it was a very good thing that two of the speakers this afternoon did deal with the longer-term aspects, the hon. Member for North Rift and the hon. Nominated Member Captain Hamley. They both went back over a long period and I think that is a very good thing.

I see the proposals in these Papers as one stage in a very long and very slow process. It is an economic process, namely the work of transforming a large piece of primitive undeveloped Africa into a prosperous modern state. Now this is something which does not happen quickly. It takes a very long time and it is of immense importance to everybody and particularly, I think, to the African inhabitants of Kenya.

A very good starting point for looking at the economic aspect of this process is the Royal Commission on Land and Population of 1953. I

[Mr. Hennings].

congratulate the hon. and gracious lady who has just spoken, I think she is the first Member who has spoken of this Report which is very relevant and very important to the present subject. I would like just to quote a few sentences which sum up the argument of the Royal Commission—this is not part of the Report, it is part of the despatch which the Governor of Kenya wrote when commenting on the Report, but it is very short and it does sum up the whole argument. He says that the argument is this: "That East Africa's natural resources are relatively few and poor; that they are nevertheless capable of a vast expansion and such an expansion could not fail to transform the whole region; that the key to this expansion lies in encouraging by every possible means a change from a subsistence economy to a modern cash exchange system; that in order to bring about this change every unnecessary restriction and safeguard must be lifted, and the rate of introduction of outside capital and skills must be increased, and at the same time the best use must be made of the internal capabilities and resources of the local East African population." Just to read one sentence again—"The key to this expansion lies in encouraging by every possible means a change from a subsistence economy to a modern cash exchange system; that in order to bring about this change every unnecessary restriction and safeguard must be lifted".

Now looking at the stage we have got to in this process, I see, speaking very broadly, three main steps. The first step started very long ago when the British Government first came to this country and found large areas where Africans were living by agriculture or by their stock, and also very large areas of land which were practically if not entirely empty and unused. At that stage somebody had to make-up their minds what systems of tenure were going to be introduced into the country, and the decision taken, speaking very broadly, was that in the African areas where there were settled African populations the traditional, tribal conceptions of land tenure should be maintained, and in the other areas which were practically unused and empty the ordinary British system of leasehold and freehold should be brought in. Now the effect of maintaining the African systems in tribal lands was to give the Africans in those lands the feeling of security, of living in their own traditional way as they had always done, and enabling them to go on with their ways and to develop gradually into a modern society. The effect of introducing ordinary British systems of leasehold and freehold into the rest of the Colony was—one of the intentions was, that it would bring in enterprise, capital and skill from outside.

Now the Royal Commission was very critical of the retention for so long of tribal systems of land tenure in the African lands. It spent quite a lot of its report criticizing this retention and suggesting that something else should have been introduced earlier. This was one part of the Royal Commission Report which the Government of Kenya did not accept. They pointed out, firstly, that there was no alternative whatever in the early days to retaining the African tribal systems in the tribal lands; secondly, that by retaining those systems, the African had been kept in security, given a feeling of security and protection under his own laws right up to the present. I think rather similarly the creation of what somebody called "the European tribal reserve", the White Highlands, as a result of the Carter Commission in 1932, also gave Europeans more security than they had previously to get on with the job of developing the parts of the country which had been, to all intents and purposes, unused in the past.

So I see the first stage, which is one which is coming to an end now, as the stage of giving the necessary feeling of security and protection to everyone in the Colony, both to the Africans in their tribal areas and the European immigrants and the other immigrants who have contributed to developing the lands which were previously unused and empty.

Now this has been going on, this stage of security, for a long time now, and I think it is fair to say that everybody has had a fair chance of getting themselves established, building up, getting used to the other people, building up their own farms and their own lands. And so we have come now to the second stage, which is beginning to break down the watertight compartments of which the Royal Commission spoke. But I think we should note two things; we are not breaking them down altogether, we are still retaining certain controls, a certain amount of protection; and we are not breaking them down at all in those areas where the tribal systems are still in full force.

What is being done is entirely in accordance with the Report of the Royal Commission of 1953, beginning to break down the restrictions and the compartmentalism which we have had in the past. I think we are able to take this step now, perhaps, for three main reasons. First of all we have gone a long way in some of the African lands to get away from the straight tribal conception of land tenure to individual tenure based on a documentary title. That has been possible as a result of land consolidation in some areas. Secondly, another reason we can take this step is because a great many Africans in all districts themselves, I think, are beginning to

[Mr. Henalags] They are rather looking on it as a place where each tribe can stake its claim and try to keep out other people. That is the impression one gets. It may be a false impression, but I do think there is a great danger in encouraging that conception. It would certainly be going right back against what the Royal Commission of 1953 recommended that we should do. They were recommending getting rid of all the safeguards and compartments—water-tight compartments and moving into a free exchange economy, "willing buyer, willing seller" everywhere. So I think there is a danger in that conception.

I have just very briefly, Mr. Deputy Speaker, mentioned the three main steps which I see. The first step started a long time ago and gave a certain amount of security and protection to everybody while they got on with developing what was a large, primitive piece of Africa. The second step is where we have got today, when we are beginning to break down these compartments and move towards "willing buyer, willing seller" over as wide an area as possible. But still it does not apply to a very large part of the Colony. The third step is a long way ahead when the same system will apply, we hope, all over the Colony and we shall then have moved to the final phase which is what the Royal Commission of 1953 recommended, which is a free exchange economy throughout the country.

Now the last step is still a very long way ahead. I think that is quite clear from a good deal that has been said in this debate. The aim is a uniform system throughout the Colony, and, as the hon. Member of the Motion said, we are "converging" towards that aim, but it is still a very long way ahead. What exactly that means, I am not at all sure that all the African Members who have spoken really have looked at this very closely. It does mean the end of tribal exclusiveness, which is a long way ahead, but we hope it will come someday. It means that "willing buyer, willing seller" will apply in all parts of the Colony and that there will be no tribal elders or anybody else to say "No, this outsider cannot come in". The hon. and gallant Nominated Member who spoke just now talked about tribalism in the British Isles. I am half an example of this because I am half Welsh. My grandfather was entirely Welsh and he used to preach in Welsh and he would be regarded, I suppose, as very tribal. But although these feelings are still there and we do get Welsh nationalism and Scottish nationalism and so on, in regard to land there is just this; that a Welshman can go into England and buy a piece of land there and the English will not be nasty to him; an Englishman can come into Wales and buy a piece of land, or into Scotland, and the Scots will not be nasty to him. This is something which I think, as is quite clear from the debate, is still a long way away. But what I think is disappointing is the impression which one gets that some of the African leaders are really looking on the Highlands which are now being opened up to Africans in terms of tribalism.

They are rather looking on it as a place where each tribe can stake its claim and try to keep out other people. That is the impression one gets. It may be a false impression, but I do think there is a great danger in encouraging that conception. It would certainly be going right back against what the Royal Commission of 1953 recommended that we should do. They were recommending getting rid of all the safeguards and compartments—water-tight compartments and moving into a free exchange economy, "willing buyer, willing seller" everywhere. So I think there is a danger in that conception.

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This is a step forward in the right direction, Mr. Deputy Speaker, and I therefore beg to support.

Mr. Zafrud Deen: Mr. Deputy Speaker, thank you. I thought I would never catch your eye as my view has been obstructed by the peculiar headgear worn by the hon. Member sitting in front of me.

However, the principles enunciated in the preamble in Sessional Paper No. 10 is the turning of a new page in the life of this country. We are emerging from a dark period which disfigured the face of Kenya. It has taken well over half a century to put right an unspeakable wrong which was perpetrated by legislating the Highlands of Kenya on a racial basis. I can understand the feelings and heartaches of Europeans who are seeing the citadel built on the sand dunes of false sanctity now disappearing by this act, but let me remind the House it is not only that were not allowed to own land in the Highlands, it was the relegation to a third-class citizenship which caused the biggest controversy known to us and against which an unremitting campaign was launched for a long time.

It is not, perhaps, easy for some people to understand the insults and injuries suffered by

[Mr. Zafrud Deen] non-Europeans by excluding them from occupying urban and agricultural land in the Highlands. The law segregating the subjects of the Crown was conceived with complete disregard of the human rights and the dignity of man.

When you study the political history of this country, the events of 1903 are well known. In the words of the then Commissioner for the Protectorate, Sir Charles Elliott regarding the Masai, he says, "I can admit that wandering tribes have the right to keep others and superior races out of large tracts merely because they have acquired the habit of straggling over more land than they can utilize". Sir, we hear the voice of Lord Lugard stressing this same point in the same terms. The land which we are told was unoccupied and was later included in the Highlands of Kenya was in fact utilized by the African tribes in what is usually known as a rotational system. Members may well draw their own conclusions as to how the original conception of these Kenya Highlands and the rest of it took place. The removal of the racial barrier of land in Kenya is in keeping with the march of time and we breathe a sigh of relief that at long last this principle has been accepted without question?

Sir, the problem does not rest in this partial solution. Land in this country, as in any other country in the world, is a national asset and it must be utilized for the benefit of all. There are two points which may be borne in mind, by redistributing land for the purpose of resettlement and making economic use of it. The first is that every precaution will have to be taken to avoid speculation, nor must it be allowed to some form of feudal system to take place which will aim at eliminating the smallholders of land. The second and the most important point is that genuine farmers and those who need land most must have priority over all others. They must be able to acquire land without cumbersome processes such as the present Sessional Paper stimulates. It is feared that the mechanics of redistribution of land will defeat the very object it is trying to achieve. If the object of the Sessional Paper is to do justice to the people of the country, then the interests of owners of the undeveloped land become secondary. I believe, Sir, that all undeveloped land should become State property, with of course, adequate compensation for those from whom this land is taken. The problem of redistribution, however, is formidable but will find its own solution.

Sir Charles Markham: Which party are you joining?

Mr. Zafrud Deen: And lastly I would urge that let us not put on trial a machinery which may

fail nor should it be the only object of the exercise to stabilize the present land values in the Highlands at the expense of remodelling the social order and the policy seeking progress in a new mobility of ideas and people.

Sir, before I sit down I would like to say a word about some remarks which have been made regarding land owned by the Asians. I think I am not wrong, Sir, in saying that the Asian community kept the flag flying for the last 50 years or more in trying to open the Highlands for people of all races and I would once again say that once the land hunger of those who, I believe, need land most is satisfied, then there should be no racial barriers, no question that land in the Highlands should be owned by Europeans, Asians or Africans.

Sir, I would once again say that having consulted and read through the Sessional Papers, the mechanics of the Sessional Papers appear to me very cumbersome for ordinary people who cannot seek the advice of the legal profession and it may be that they will be debarred from owning land in the Highlands.

The Minister for Labour, Social Security and Adult Education (Mr. Ngala): 'Mr. Deputy Speaker, Sir, I think I must make it quite clear that the Sessional Paper that is under discussion now does not concern the native land units, it says very clearly in its title that it concerns land outside the native land units and about two speakers this afternoon have spoken of willing buyer willing seller and I think they had the native land units in their minds. But I would like to make it quite clear that this Paper does not touch the native land units as they are today.

The Kenya Highlands have been a bone of contention for a very long time, Sir, and the present Motion has the unique merit of opening the door to the Kenya Highlands to enable many Africans to own, occupy and cultivate land in the Kenya Highlands. For this reason I think the Government has taken the right step and it is a move though only the first move but it is a move in the right direction. I do not think there would be any African who would be in a position to oppose this move sensibly and particularly in the view of the many landless Africans who need to be settled on plots of land with a great deal of security.

The Government realizes that this is only the first move. It is not and Government does not pretend to regard it as a final land policy but I think the credit must be given to Government as it is the first time the Kenya Highlands are open to Africans and I hope several other moves will follow after this very historic move.

[The Minister for Labour, Social Security and Adult Education]

Now I would like, Sir, to point out a few things as far as the Coastal Strip is concerned. The Coastal Strip has been mentioned in the submission of the Minister for Lands, strictly speaking the Coastal Strip seems to be outside this particular Motion but Government knows that within the Coastal Strip there are lands that are regarded by the coast occupants as a disturbing dispute. Now I think these lands within the Coastal Strip together with the lands that have been mentioned by my friend, Mr. arap Moi and any other Members, I think Government should have real close consultation with the Africans in these areas before any changes can be made effectively so as to get the real understanding of the people. It is the intention of the Government to have this close consultation with the people in these areas so that when these schemes are implemented they can be implemented with the greatest smoothness as far as the Government is concerned.

Now I also appreciate the steps that the Government has taken, particularly in view of the unemployment that does exist in the country today. I believe in doing as much as we can to reduce the unemployment that does exist in the country. I believe that many Africans can be self-employed on pieces of land where they can live with a great deal of security and this move of providing families with pieces of land on 50,000 acres for African settlement is a move that will help to alleviate the unemployment problem that is in the country today and I think this is something that should be appreciated by all the people who have an interest, the unemployed people in the country today.

Now together with the Coastal Strip, I think I must mention the agreement of the Masai people. These two agreements should be treated equally by Government, with the coming on of African government in this country it will be appropriate for this Government to see what can be done appropriately but I would like to make it quite clear that I feel strongly that neither the Masai nor the Coastal Strip can be regarded as isolated cases in Kenya by an African government but this is a matter which depends very much on consultation and negotiation when the time is appropriate.

Sir, I think I need not touch on the question of freehold and buying of lands in different places because Government already understands the strong feelings that people have in the country about the conversion of leases into freeholds or the strong feeling that African people have on the question of buying land. Now these are details

which I hope the Minister will make the Government policy quite clear, but I feel very strongly that the Government is well understanding the Africans' difficulties on these issues and I hope it will be possible to consider these particular issues of great detail and all the same of great importance to people who are really concerned with land changes.

With these few words, Sir, I would like to support this as the first move in the right direction, but recognizing that Government is fully aware that it is on the final land policy in the country.

Mr. Khamisi: Mr. Deputy Speaker, Sir, I also rise to say a few words and, very briefly, too, about the two Sessional Papers. To me, Sir, the Sessional Papers have not contributed as much as we had expected the Government would do towards the question of the land in this country.

In the first place, Sir, the Sessional Paper No. 10 had nothing at all about the resettlement of the poor people in the country, and even the Sessional Paper No. 6, which amended certain parts of Sessional Paper No. 10, this also had nothing at all, and did not solve the problem of landlessness or unemployment which would have resulted if the Government did take very serious steps towards solving this problem among the peasant Africans. Sir, it did not also touch the coastal region, or the people in the coastal region, who are also having the same difficulty about the question of land, about the leases of the land there, and the several parts of their tribal lands which were acquired by Government and named as Crown land without any compensation whatsoever to the people.

Now, Sir, I would like to make it quite clear that the land in Kenya, most of the lands in Kenya, are in dispute, and particularly, being a bit parochial, the lands in the coastal region and in the Coastal Strip are very highly in dispute. There are two things only, two objects in these Papers, which I would like to welcome.

The first of them is the opening of the Highlands. I think if it is going to be carried out as swiftly as possible it will remove one bone of contention in African politics.

The second thing which I would like to agree is contained in a speech which was given by the Minister for Agriculture, wherein he stated that the Government is going to try and solve the question of landlessness among the poor peasants. Now, Sir, those are the only two things which have emerged from this debate which are of any use whatsoever to the poor people in this country.

[Mr. Khamisi]

The peasant Government scheme, if at all it is going to be effective, should not be carried out in the Highlands alone—it should also be carried out in the coastal regions, because up and down the coast, north and south of Mombasa, there are very many Africans who are dispossessed of their lands, and who have no means of subsistence, who cannot find employment anywhere, and who depend almost entirely on any piece of land that they obtain—mostly two or three acres—and quite close to them they see very large tracts of Government land and forests which are lying idle and not used by anybody, but they are not allowed to step in even for subsistence cultivation. I think this is a very bad state of affairs. I would like, if Government wants to have any confidence from the Africans, that the first step would be to solve the problem of landlessness among these people. If that is solved by providing all the land that is available, which is known as Crown, or which is known as forest reserves, to these people so that they can at least know that there is some piece of land somewhere where they can till and plant subsistence crops for their own consumption. As you know, Mr. Deputy Speaker, there is no such security for Africans at present in this country and, therefore, the reason why we are pressing that these lands should be opened is to enable the Government at least to say to the peasants that there is a piece of land where you can go and till and remain secure until you die, and where you can obtain your daily bread.

Now, Sir, one of the most disturbing things in the Sessional Paper, is the question of the title deeds. I, for one, do not understand how you can tie on the question of title deeds with the question of confidence in this country. I am very doubtful, indeed, whether title deeds will restore confidence if, at all, there is no confidence among the people who are farming in this country, or those who are investing money into this country. Up to now, for the last 50 or 60 years, since the British came into this country, farmers have been tilling their land and producing crops, with the existing leasehold titles which they possessed, and there has never been any cry for any change of these deeds, except now, when it is clearly known that the Government will come into the hands of the Africans. Therefore, this shows that there is some doubt amongst these people about the security which they have. Well, the African leaders have said that a Bill of Rights is going to be introduced, which will secure the holdings which the farmers have but, of course, whether these title deeds are going to be converted into freehold or not, land reforms are definitely bound to come, and this is a thing which must be under-

stood by all people. Whether investments will be retarded or not, land reforms in this country are absolutely essential and they will come.

Sir, particularly in the coastal areas these title deeds have caused a lot of trouble. I know of cases which have been brought to my knowledge at Malindi and the area surrounding that place, where the Asians and Arabs who own land have now demanded rent from the Africans who have been occupying those pieces of land which they have left lying idle, although they can produce pieces of paper to claim the ownership of those areas. Now, Sir, where a man has got title deeds and does not use that land and sometimes it is 300 or 400 acres, I feel it is wrong to stop others from using that land, despite the fact that he, who owns that piece of paper known as the title deed, does not make any use of that land. He does not produce anything for the benefit of the country or for his own benefit, and he is holding that land probably for speculation in years to come, and he has now woken up to find that in a few months' time, or perhaps in a few years, the Africans will be the bosses in this country and, therefore, he feels that he must, at this time, reassure his claim of ownership by demanding rents from these peasant Africans. Now there are very many people who have been living in those areas for many years, and it is only up to three or four years ago that the owners have stated that they claim those lands, and have been able to produce titles, and sometimes evicted the people from those areas. I feel this is not going to help improve race relations in this country.

Now, Sir, I think, Mr. Deputy Speaker, that the greatest service that can be done in the Sessional Papers for the Africans is to make available at present land on which they can cultivate for their subsistence and particularly in the coastal areas. The Government has the habit of claiming, or doing everything in the Highlands, and they have the habit of completely ignoring or forgetting to do anything for the people down at the coast. It may be because the Central Government is far away from the coastal regions; it may be that the climatic conditions here make the Government feel that Kenya is only the Central Province and the lands around the Central Province here and the Highlands, but we in the coastal region have every right, like any other citizen, to see that something is done for our people in those regions.

Now, Sir, having said that, I would like to comment very briefly on the speech that was made by the hon. and gallant Nominated Member. He first of all started by saying that he did not believe there were any wrongs done to Africans in this country for the last 60 years, and then he went on to enumerate the wrongs

(Mr. Khamisi) by saying that the settlers have come here, and the British or the Europeans had slave trading and all this. Those are the wrongs which we are saying should be removed, and so he contradicting himself by saying there were no wrongs done to Africans, and yet he seemed to know the wrongs very well indeed. Of course, we are grateful to the British Government that they did stop the slave trading.

Now again, I would like to correct my friend on this side of the House, the hon. Specially Elected Member, when he referred to me personally as an immigrant like himself. I feel that is quite unfair. He has been very, very unfair. Although I have some affinity with Nyassaland, Nyassaland is part of Africa. It is part of the African continent. I did not come here by ship or air.

Sir Charles Markham: By Egypt!

Mr. Khamisi: Of course, Egyptians are Africans.

Sir Charles Markham: They would like that!

Mr. Khamisi: Well, surely I am different from my hon. friend on the right here and the Specially Elected Member because he comes from Europe. He does not come from any part of Africa. He comes from Europe and remains as a European here and he will die as a European. He will never die as an African, and for that reason he will remain an immigrant up to the day of his death. I am not an immigrant at all in this country. I was born here; my parents were born here; my great grandparents were born across the border from Nyassaland to Tanganyika and then they crossed the border from Tanganyika into Kenya.

An hon. Member: Interjection.

Mr. Khamisi: Well, it is not anything strange at all. According to the Africans there were no boundaries between Nyassaland, Tanganyika or Kenya. These boundaries were put here by the immigrant races in order to divide and rule the people.

Sir, I would like also to repeat finally what I said in this House and outside this House, and that is that land in this country, as in all parts of Africa, is being held by the immigrant races in trust for the indigenous Africans, and the sooner they understand that the better for all.

I am very much perturbed even with the first scheme which the Government has taken, and the Minister in his speech—the Minister for Agriculture—has stated that the Government yeoman settlement scheme would be open to persons of any race. Well, I think he must

have forgotten that there is land hunger amongst the Africans, and that they should get the priority, because they are the indigenous people in this country and they ought to get priority of the land over any other people who can lay claim to land elsewhere. My friend here, the hon. Specially Elected Member, has got a farm in England, in the United Kingdom, where his parents still live up to now, so he has no right to have land in two or three continents, whereas people in this country have no land. The first priority should go to the Africans, and I believe that even if it is a question of producing wealth for this country, the Africans are just as capable, given the necessary chance, financial chances, as the immigrant races are, and they are quite capable of producing wealth for this country. The question of protection is not only restricted to a man because of the colour of his skin. My friend here, the Member for Ukamba, has got a big piece of land—

Sir Charles Markham: Sir, I must ask the hon. Member to substantiate that remark because I want to know where my land is.

Mr. Khamisi: Well, Mr. Deputy Speaker, Sir, every time I pass from Mombasa to Nairobi and from Nairobi to Mombasa I find private land, Markham and Company.

Sir Charles Markham: On a point of order, Sir, I wish it was mine. Unfortunately it is not, and I am willing to substantiate that because that was a company in which we had an interest in ten years ago, but my vast acreage, Sir, consists of 5,32 acres.

Mr. Khamisi: Mr. Deputy Speaker, Sir, my hon. friend is lucky to have 5.32. I have not even two acres.

Sir Charles Markham: That is not a vast holding.

Mr. Khamisi: Well, in that case, in comparison to his land and mine, which I have not got, but he has got a big piece of land—five acres—I have not got even two acres. I have got only a plot where my hut stands. So, Mr. Deputy Speaker, the conditions for granting this yeoman scheme are also very difficult. First of all the Africans will be perturbed to see that people of other races who have had the opportunity and the facilities to own land are now given another facility to own land in this scheme. I should like to see that the African should first of all get priority and the question of landlessness and land hunger solved to the satisfaction of the African people before this scheme is extended to people of other races.

Mr. Deputy Speaker, Sir, with those few remarks I note the Motion before the House.

Mr. Swynnerton: Mr. Deputy Speaker, Sir, before I say what I have got to say I would like to congratulate the hon. Deputy Chief Secretary on the very clear maiden speech in which he outlined the needs of this country in respect of land yesterday, today and tomorrow.

During this debate, Sir, there have been a number of responsible statements made particularly by Elected Members, which have been related to economics. As you know, Sir, I am much more interested in economic development in this country, and the bias of political aspiration when it is directed to that economic development than I am to pure politics.

The hon. Member for Nyeri and Embu said no Government will forget that land reforms must not affect the economy. He has been congratulated before on his speech.

The hon. Member for Nyanza North said that the new government must consider hard economic facts. Farmers need not worry; the property of individuals will be respected. However, he spoilt that statement by saying that Africans should not be required to pay for land, and that, I noticed today, was reiterated by the hon. Member for North Rift.

The hon. Member for the Western Electoral Area, I think gave the answer to those hon. Members when he said that land is land, and people who want land must buy it. It has an economic value.

Then the hon. and noble Corporate Member for Agriculture stressed the importance that private settlement schemes would have for this country. He thought that if the general basis of land distribution and resettlement was based on private settlement schemes it would create far more harmony between the races than any amount of Government resettlement. Again, I think he spoke a word of wisdom.

The Member for Central Province North also said that there was no intention to take over developed land. He then went on to say something until which I think all of us in this country would agree thoroughly. He said he was not against inter-tribal movement on land, but it must be slow and orderly and must not interfere with the local tribal way of life. I believe that is what we would all like to see in these land reforms in this country, that it goes forward in an orderly manner and that the people who want to take part in this development may go on doing so without having their way of life disturbed. He also mentioned that he was very happy to have a tea company developing in his area, this tea estate which is developing in the Nyambeni Hills. As hon. Members know, the Meru tribe have, in fact, leased 500 acres of land to the parent company

for that purpose, and that, I think, is a very welcome inter-tribal movement, and it is the sort of movement which will encourage capital development and investment in the African lands for the benefit of the people, for their cash income and for employment.

By contrast with those statements, Sir, there were one or two statements which I thought could be considered to be creating alarm and dependency in the country. The hon. Member for Mount Kenya talked about the possibility of farmers abandoning their farms and disposing of movable assets, and asked how did Government propose to deal with this possibility. I hope, Sir, that the conditions in this country will not be such as to force farmers to abandon their farms. We have heard a number of responsible statements in this House on the situation in the Congo, and we have been assured that that situation is not likely to arise here. If farmers should abandon their farms and at the moment Government is not aware of anyone intending to do so, and if the hon. Member knows of anyone intending to do so we would like to hear of them, but if farmers do abandon their farms, Government would have to consider the position in relation to such abandoned land because obviously such land could not be allowed to lie idle. He asked also was it Government's intention to force farmers to stay in Kenya by economic circumstances. Government, as I said, hope that all reasonable farmers will stay on in the country, and the measures which are being provided as outlined by the hon. Minister for Agriculture, are just such proposals as are designed to encourage those farmers who want to stay in the country to do so, and only to provide assistance to those farmers who have good reasons for leaving in order to create a market in which they may sell their land, but not a market in which every farmer will be compensated completely for all the alienated land in this country.

The hon. Member for Aberdare asked for a scheme of compensation for farmers in full if events should prove the necessity for that. Again, I think in the light of the statements made by the hon. Members for Nyeri and Embu, Central Province North and Nyanza North, I trust that situation will not arise, and again, I think the hon. Member is looking forward to a future which I hope will not occur.

The hon. Member for Ukamba referred to Kaffir farming, and two hon. Nominated Members on this side, Mr. Jackman and Commander Goord, asked for assurances that farming would not degenerate—that settlements would not degenerate—into subsistence farming, and they had doubts on peasant settlement. Well, Sir, I would just like to read a small section from the speech

[Mr. Swynnerton] of the Minister in seconding this debate. He said that "the aim of the peasant settlement scheme was support for the farming family at a reasonable standard of living and a cash income in addition, and the size of the individual holdings will be determined accordingly". That is not a proposal for Kaffir farming or for subsistence farming, Mr. Deputy Speaker. I think the aim was put over very well by the Specially Elected Member, Mr. Blundell. I would like to relate those holdings to the type of holding which we are aiming for in the African land units, the minimum economic holdings which will give a living to the farmer's family and give him a minimum cash income of £100 a year. Many farmers have much bigger areas; many farmers get much bigger incomes off the minimum economic area, and I would hope that in any resettlement scheme that the same aim would apply.

However, there may be individuals who may allow their land to deteriorate. But in that case we have got the powers under the Agriculture Ordinance behind us and in the Sessional Paper it is stated that those powers will be strengthened in regard to standards of land use and husbandry.

The hon. Member for Ukamba also referred to a statement which he said the Minister had made to the European Agricultural Settlement Board on the economics of the yeoman settlement scheme. The discussion with the Settlement Board was confidential but nevertheless he was only discussing the yeoman farmer settlement scheme at that time: the peasant settlement scheme had not arisen when he had that discussion.

Sir Charles Markham: He said that that was the minimum.

Mr. Swynnerton: The hon. Member for Nairobi Area was taken up by the Mover in this debate on a statement in which he said that 60,000 acres only were going to be used for the settlement of the 15,000 families. I see that the *East African Standard* in its editorial for 22nd July fell into the same trap. It says, and I quote, Sir: "The intention is to obtain some 60,000 acres for the settlement of between 10,000 and 15,000 African families in the three-year period." The Minister said, Sir, that the figure was 60,000 acres a year for three years and he hoped that in that time it might be possible to settle between 10,000 and 15,000 families. That is, if the scheme gets up to its schedule, some 180,000 acres would be settled in these areas in the peasant farmers' settlement scheme. As the Minister said in a previous debate and in this debate the yeoman farmer settlement scheme would be of the same order, that is, perhaps

150,000/180,000 acres over the three years. Those two schemes taken together with any pilot schemes might total as much as 300,000/400,000 acres over three years, but in a moment, Sir, I want to sound a word of caution.

That resettlement on that acreage of land serves two purposes. It provides the market for land which has been so strongly urged in this country. That area would equal something of the order of 10 per cent of the mixed farming land in the country or 5 per cent of the mixed farming land and ranching land. It also provides for substantial resettlement. We have heard a lot in this debate about the landless and the unemployed and, spread over the three schemes, that is the private schemes, the yeoman schemes and the peasant settlement schemes, might settle 15,000 families or somewhere around 100,000 people. Now, Sir, I do not pretend that that would solve landlessness or unemployment in this country, but in so short a time it would be a very big contribution towards the demand for that purpose.

Now, Sir, for the words of warning, first of all on the rate of resettlement. I think that the rate of resettlement will, or may well be, a good deal slower than those figures indicate. It is a very big task to acquire land for resettlement, to lay out land and to find settlers to settle upon that land. It is a very big task, Sir, to find the staff for the settlement organization, to find the very large additional staff for the field side of resettlement and for supervision of agricultural services which will be required. In most projects with which we have been connected we have found that it takes some time to build up the organization and the rate of development.

Another warning which I would like to mention is the question of the cost. Undoubtedly some of the cost will be uneconomic. Staff and overheads will have to be met and those costs will have to be provided from any finance that we get. If it has to be carried against the cost of resettlement, the cost may well have to be charged at rates which are uneconomic to settlers on the schemes.

One other word of warning, Sir, is that when farms are purchased, already there is labour on the land, and we have to consider how best we are going to utilize it in any resettlement scheme if we are not merely going to replace Peter by Paul.

The hon. Specially Elected Member, Mr. Blundell, made two statements which I should emphasize, Sir. He said that resettlement must not detract from current development in either African or Scheduled Areas, and he said that in taking up the extra burden we must not distend or dilute services to the detriment of existing

[Mr. Swynnerton] that, too, Sir, is extremely important. We must not run down our current development in order to switch our emphasis to another form of development. Anything we do on the resettlement schemes must be directly towards improving the economy, intensifying it, but not detracting from any other project which we have in hand.

There has been a question, Sir, as to the best use for money which we might get for the development in this country. Hon. Members might ask from where, for every £1,000,000 invested, we would get the best return. The answer depends on whether your outlook is personal, political or economic. To the farmer who wishes to sell his farm, obviously he considers that what money is available should be used for the purchase of farms which may come on the market. But for every £1,000,000 spent on the purchase of farms another £1,000,000 at least will have to be found for the redevelopment of that land. If the person concerned is an Elected Member for a constituency where there are large numbers of people on subsistence holdings and where outlets for employment are limited, then his interests will be on resettlement at any cost, however economic and however uneconomic. On the other hand, if you look for the most remunerative investment for that £1,000,000, Sir, then, at the present time, it must lie in the development of improved farming and cash crops in the African lands themselves, because, although they may be heavily populated, their potential has hardly been touched at the present time, and it is for that reason, Sir, that I consider that the hon. Specially Elected Member, Mr. Blundell, made a very pertinent and important point.

Now, Sir, the hon. Member for Nairobi Area said that the economy of the country would not go on its knees without European farming. I think the hon. Member, in his orbit round the world and when he does touch down here occasionally, must have missed those debates when we discussed economic facts, because my friend who was Acting Director of Agriculture at the time, Mr. Brown, put some very vital figures to this House. Perhaps I could give you some figures which will bring his figures slightly more up to date. The surplus from European farms and plantations in 1959 was valued at £34,000,000, of which half comprised sales of plantation crops and the other half of sales of crops from mixed farms and ranches. The surplus from African farms sold outside the districts amounted to £9,000,000 in 1959. That was an increase of £1,500,000 over the previous year, and, as I said in a previous debate, I hope that we can go on accelerating that increase at least

at that rate in the years to come. But, Sir, if you do cut out, let us say, the mixed farming and ranching in this country there would be an immediate drop in production of £17,000,000, and I think the hon. Member should not make that sort of a statement.

He also ignored the fact that labour in employment in agriculture and forestry was 42 per cent of the total labour employed in this country: 252,000 out of a total of 597,000.

Resettlement does not necessarily mean that all the labour will be re-employed. In resettlement, maybe those particular people who will go on to the land, but the main provision must be for the landless and unemployed. Sir, the contribution of European farmers to employment is a very vital one, and I think again the hon. Member had probably forgotten that, despite his position in the labour movement.

The hon. Member for Aberdare said that the Government had been considering that the mixed farming section of the European community had tended to become obsolescent. Well, that mixed farming in the country probably contributes £14,000,000 or £15,000,000 surplus value a year to the country and I would like to refute very strongly what he said, Sir. The Government has supported, under the Agriculture Ordinance and the preceding Ordinance, very strongly the mixed farming industry in this country, and today it is supporting that industry at a higher level than it has ever done in the past. The Government approved in 1960 £1,081,959 in short-term advances to farmers against the Guaranteed Minimum Return. That compares with the average for the nine years 1942-50 of £133,000, and the five years from 1951-55 of £749,000. In the last five years it has been running at £944,000, so this year it is another £140,000 above that. I think that the hon. Member's statement is one which could well be withdrawn.

Government, in addition, has guaranteed prices for maize and wheat, supported prices for barley and oats, and has fixed the price for beef and mutton. The Government has provided rehabilitation and development loans since 1951. The rehabilitation loans amounted to £874,000 in 1955, and the development loans to date are £988,000, and together with what is provided up to 1963 the total over the period will be £2,162,000, which has gone out from Government for development and rehabilitation loans, excluding anything from the Land Bank. Again, Sir, I think the hon. Member can hardly say that Government considers the European mixed farmers as being obsolescent if it gives them that amount of support.

[Mr. Swynnerton]

Now, Sir, the hon. Member for Mount Kenya referred to alternative lands outside the Highlands. He took the line "Why pick on us?" Well, Sir, there are, as he said, large areas of undeveloped or partly occupied land in the native land units. Arising from a Motion which was debated in this House about a year ago, we hope to be able to table, in due course, a Paper showing the position of unalienated Crown land in Scheduled and Non-Scheduled Areas and the undeveloped and under-developed areas in the Scheduled areas and the native land units. I must warn hon. Members, however, that there is very little useable land in the unalienated Crown lands. So far as the native land units are concerned I would like to give a few examples of land which could be more intensively occupied or farmed. In the Mau area of the Narok District there are 700 square miles of good agricultural land, lying undeveloped, for cultivation. There are large areas of good land, under-used owing to sparse population, in the Elgon, North and South Nyanza Districts. There are large areas of good land which are not immediately useable owing to physical impediments in the shape of water shortage, tsetse infestation, badly drained soils, but which could be developed at a reasonable cost in relation to future productivity in Meru District, the Kerio Valley and in the Kwale, Narok and South Nyanza Districts. Within this category lie most of the settlement schemes which the Government has fostered since the war and, Sir, in which Government has undertaken large areas of tsetse bush clearing.

The hon. Member for Ukamba spoke in much the same terms. He queried why the Sessional Papers Nos. 10 and 6 referred only to the Highlands. I would remind him here, of course, that a year ago we debated the Native Lands Ordinances which laid down the conditions for the registration and purchase of land in those areas. Undoubtedly, Sir, the stage is set for softening these tribal barriers as the hon. Member for Central Province North told us a few days ago.

A number of Members also referred to "empty lands", "land lying idle" and "empty areas" in the Highlands—the Member for Central Rift, the Member for Nairobi Area and the Member for Central Province North. I would make two points on this, Sir. In the Scheduled Areas, out of 3,661 registered farms, plantations and ranches totalling 7,280,000 acres, only 101 farms have been considered to be under-developed or undeveloped, totalling 193,708 acres, as a result of an assessment undertaken by agricultural committees and the Board of Agriculture. When people refer to the empty spaces in the Highlands, as the hon. Member for Central Province North referred to

in the Nanyuki area, as the hon. Member for Nairobi Area referred to on his ride from Kisumu to Kiambu, they have complete disregard for the ecological conditions of this country; complete disregard for the rainfall in this country. They seem to think that on 20 in. of rain you can cultivate as intensively as you can on 50 in. or 60 in. or 70 in. of rain; that what you can produce on one acre in Meru you can produce on one acre in Nanyuki. Over 4,000 square miles of land in the Highlands have a rainfall of less than 30 in. or 25 in. That land is only suitable for ranching. That land may carry one beast to eight acres, but very often a beast to 15 or 20 acres. Any person who gets one acre of land in that area would very soon start crying out that he was landless and that he was living below the subsistence level.

I would say, I would trust, also, Sir, that probably 100,000/150,000 acres in the rest of Kenya is of the same quality and that is the reason why there is so much attention given to the land of higher potential by people wishing to find opportunities for resettlement. Of those 100,000/150,000 acres only limited parts of them are suitable for ranching at the level which I have mentioned of a beast to eight acres or a beast to 15 acres. Very large parts of those areas are only suitable for nomadic pastoralism at a subsistence level and will be, I should say, "until the cows come home". There may be limited areas where irrigation can be developed, but we have got to consider seriously when we talk about resettlement the type of land on which you can cultivate and the type of land on which you can herd *ngombes*.

The hon. Member for Ukamba referred to Mr. Sam Hordern, and I am very sorry to see in today's paper, Sir, that he has died, because we all enjoyed his visit tremendously when he was over here last year. He referred to Mr. Hordern's envy of the large unoccupied areas of Kenya compared with Australia, referring to such areas—perhaps he did not actually quote Mackinnon Road—but I am sure he was referring to that sort of area. Most of that land, Sir, lies in the category to which I have just referred, i.e. land in which the development costs would be quite out of proportion to the return per acre. I think the hon. Member may have seen a paper by the Acting Director of Agriculture, Mr. Brown, which indicates that the gross return in those areas would be in the order of Sh. 2/80 for the breeding of immatures for sale and fattening elsewhere. Now, from that gross figure of Sh. 2/80 per acre has to be deducted the capital cost of putting in water, putting in roads, putting in housing, buildings and so on and also the recurrent costs have to be deducted of herding, veterinary medicines and so on. So that

[Mr. Swynnerton]

by the time all that has been taken off the chances are that that Sh. 2/80 gross return may well have been converted into a loss of pounds per acre.

The hon. Member for Ukamba also said that land must be considered, as a whole, as a national asset and that therefore Government should have produced a blueprint for all farming land throughout the country. Now, Sir, the hon. Member has been long enough in the country to know that Government have been doing that ever since 1946. In 1946, probably just before 1946, Government produced the Development Plan for 1946/55. That plan was so successful that before it ended Government had to produce a new Development Plan but shortened it to three years and brought in the 1954/57 Development Plan. Since then we have had the 1957/60 plan and only recently a limited number of Members have debated the plan for 1960/63. In addition to that, for the Highlands the Government have had the Troup Report and this House has for the last six years debated our plans for the development of the African lands. The Agriculture Ordinance itself, Sir, is a plan for the control and the development of agriculture in this country. The organizations concerned with agricultural development, the Board of Agriculture and the African Land Development Board, also have been operating to blueprints which they themselves have had a hand in preparing. I think the hon. Member, Sir, has been a bit behind the times in criticizing this particular aspect of the Papers. My own opinion is that the Government have been going forward with constant evolution and forward planning.

I would like to say a few words, Sir, on procedure. The hon. Member for Mount Kenya said that if large numbers of farms were offered, how would priority of purchase be arranged. The hon. Member for Aberdare asked for fair prices and said that the Government must not buy on the cheapest market. The hon. Specially Elected Member, Mr. Blundell, said that in purchasing land machinery must be set up for the adjudicating of land values. Now, Sir, the farmers who will wish to sell their farms will have the opportunity of submitting their applications to the Settlement Board which is to be set up. A number of farmers have already done so. Farmers who wish to do so and have not done so may do so in the future and in due course no doubt the matter will be advertised.

The question of allocating priorities will depend on a number of things. Where we are providing a market for land, are we doing so to enable people to get speculative prices for their land and to get out; or are we doing so for what might be considered to be compassionate cases?

Let us, say, where a husband dies, the wife is left with the farm and the decline in the market value means that she is going to suffer a substantial loss. I think we have got to consider this very seriously because the Government's proposals are not based on a scheme to condone scuttles or speculation. Undoubtedly, Government will have to consider the prices which will be paid for land but to be reasonable they will have to be related to a reasonable period in our development. In other words, if a person thinks his land will grow tea and asks £200 per acre for it although its value is only £10 an acre, I think it would be unreasonable for him to expect to get the £200 an acre.

There is another point on this. I have heard plans where people wish Government to purchase land in block in order to isolate resettlement so that the tribes or the people concerned should not be unduly affected by their neighbours. Now, Sir, that from our point of view would be very reasonable because it would be much easier to administer a group of farms being developed than single farms piecemeal about the place. But we still have to consider the compassionate case. We cannot exclude the person who may wish to sell a farm for a very good reason and cannot find a sale for it or preclude him from selling that farm if only farms in blocks are going to be purchased by Government.

Then there is the question of the suitability of the land for the various schemes. The Minister for Agriculture in the debate on his Ministry's Estimates did say that the yeoman farmer settlement scheme must be related to a good economic return which would meet repayment of development loans and land purchase loans as well as giving a good income to the settler. He said that therefore that land must be related to land of relatively high potential if that was going to be achieved. So far as the present settlement scheme is concerned, the type of land will have to be very carefully considered. The size of holdings will have to be considered if the economic return which I mentioned earlier is going to be achieved. Undoubtedly a working party will have to be set up to consider land that comes on offer or land that has to be purchased and the type of use to which it is to be put in relation to that.

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

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

However, the statement of the Specially Elected Member, Mr. Blundell, will be carefully considered, i.e. where he said that adjudication

[Mr. Swynnerton] machinery should be set up for the adjudication of land values.

Now, the hon. Minister for Commerce and Industry said that Africans wanted to know how they could participate in settlement schemes and how soon—the emphasis was on “how soon”. The answer to that, Sir, is 1961. We have to get the legislation through on our present exercise. The divisional land boards have to be established; farms have to be inspected. Some of the farms which are offered may be bought and then the process of subdivision has to be gone through. And that cannot be done in a day. The question of how African farmers or African landless and Africans on smallholdings will be able to apply for land—I am not sure whether my hon. friend, the Chief Commissioner, is speaking in this debate but he certainly has plans ready whereby Africans may put in their application for the yeoman farmer settlement scheme. The peasant farmer settlement scheme is too recent for him to have taken any action in the matter as yet. But just as soon as the legislation is through and we are ready, we shall get on with getting applications for resettlement and vetting the applicants and then take them into training for the settlement schemes.

The hon. Member for Kiambu said that he thought the turnover of agricultural subcommittees was not quick enough. Now, I am quite sure that he heard what the Minister said in his speech seconding the Motion. The committees or subcommittees are elected by resident farmers and occupiers of land in scheduled areas. The Minister indicated the very rapid rate of turnover; in fact, 75 per cent in the next 18 months. That means 98 will come up for re-election towards the end of this year and 110 towards the end of next year. That, Sir, is quite fast enough to throw out your agricultural subcommittees and to reappoint them. Farmers are vitally interested in the agriculture of this country and in continuity in its administration. It is very essential to have continuity in any board or any committee. Otherwise, the whole organization of agriculture in the country is likely to become disorganized.

The noble and Corporate Member for Agriculture asked whether loan money would be made available for private schemes and he thought that Government should give greater encouragement to them. Well, Sir, that will certainly be looked into when we have our funds available—or if we get our funds from international sources—and if we get our extra funds for the Land Bank—undoubtedly private schemes will be taken into consideration where a person is dividing his own farm into subdivisions and is settling people on

them and requires money for redevelopment. He will undoubtedly be able to apply for assistance with loans.

The hon. Member for Nyanza North stressed that all money should not be concentrated in the Highlands and he wanted longer-term loans for farming. Sir, the schemes which were described by the Minister for Agriculture are new schemes. They are not schemes which are designed to take money away from the proper development of the scheduled areas or the non-scheduled areas as it is going on at present. These finances that are coming in are yet another facet of our development but not an alternative. So far as long-term loans are concerned for the African lands, there are at the moment available fairly substantial sources of loan money—the £1,000,000 which we recent debated, which has come from the World Bank; £100,000 which has come from the International Co-operation Administration; and substantial funds at the disposal of the Joint Loans Boards. The length of time of repayment must be determined by the value of the asset; i.e. if an asset which has been developed out of a loan produces a return quickly, well, then that money should be turned over quickly. If it is an asset which gives a return slowly, for instance, an investment in lands rather than an investment in coffee or cows, well, then the length of repayment must obviously be determined accordingly and over a longer period.

The hon. Member for the Western Electoral Area referred to standards of husbandry and he said that the Agriculture Ordinance should be tightened up for proper land use and husbandry and he referred to the Landlord/Tenant Legislation. I think, Sir, he must have omitted to read the Sessional Paper No. 10 because both the tightening up of control of husbandry and land use and the provision for Landlord/Tenant Legislation is mentioned there, Sir. I think perhaps he overlooked that particular bit of it.

The hon. Nominated Member, Col. Jackman, asked how were the peasant resettlement schemes to be operated in relation to agricultural committees and subcommittees. Well, there are two ways of looking at that question of his, Sir. The agricultural committees and subcommittees will have a say in the subdivision of land through their divisional land board function, in standards of husbandry in the application of the Agriculture Ordinance. If he was asking how the new settlers would be represented through agricultural subcommittees and agricultural committees, that will be worked out between now and the time when the legislation—the amending legislation to the Agriculture Ordinance—is drafted, just to see how they could get their votes and representation

[Mr. Swynnerton] in a manner which will relate to their acreages and their value to development.

Sir, arising out of this debate, there will be very substantial amendments coming forward to the Agriculture Ordinance and therefore this House will have a further opportunity of debating the details of the administration of agriculture in this country, as the Minister said and as I hope, before the end of this year.

Mr. Deputy Speaker, I beg to support.

Mr. Ayodo: Mr. Deputy Speaker, the point at issue is that we are being asked to take note of Sessional Paper Nos. 10 and 6 and certain Members of this House are trying to get the Africans to recognize and perpetuate European ownership of land in the White Highlands, or the so-called White Highlands. In trying to do this, Mr. Deputy Speaker, reference is made to what has been done for the Africans in Kenya by the Europeans and also to the historical background to the problem. We know Mr. Deputy Speaker, that we do not have very good history books on Kenya but we want it known that we know enough to enable us to tell some of the reasons why Kenya was invaded by white people. We know some of these things and nobody should try to deceive us now. Before we can praise the explorers and before we can praise the missionaries and before we can praise the settlers, we must be told the circumstances that obtained in Europe at that time because these people did not leave England, Europe, because they solely wanted to help Africans. We know why they left their homes. We know why England went to India, for example, why England went to America. These are not secrets, we know why England came to Kenya.

Now, unless we are told these things very clearly we will find it very difficult to appreciate arguments raised in favour of the people referred to. We know, for example, Mr. Deputy Speaker, that trade was the most important motive for these explorers to go out and find out the possibilities in Central Africa. That is no secret and we also know that David Livingstone, for example, interested himself in missionary work but he gave full recognition to trade possibilities. These are not secrets and we know, again, that the railway line that has been referred to in Kenya was not built for the mere fun of it. The British people are not fools to vote so much money for the construction of a railway line without being reasonably certain that something would come in return. Trade is still the motive. We know these things. We know, for example, the reasons why the British people finally decided to open up the White Highlands because they

thought they were going to lose on the construction of that railway line. That is the reason and nobody should come here and tell us that the White Highlands have been opened for our good. It almost makes us angry because we know the reasons behind all these things. I think it would be much better and very manly if our friends told us frankly, “We came here to try and earn a living. We came here because conditions in England were very difficult and we thought that we would make an easy living in Kenya. But because you are here, let us try and work together”. Then we would be in a position to discuss these things reasonably. But when intelligent people come and tell us that they are all here for our good and that they are not interested in themselves, we are going to say no. And we are saying no.

Mr. Deputy Speaker, I will remind some of us of what has been done in the name of civilizing Africa by the Europeans, even in this country. I am sure that all Members of this House know Mr. Cecil Rhodes and the methods he used in civilizing the Rhodesians. I am sure that most Members of this House know such people as Karl Peter. He may not be British, but still the motives were the same, whether German, British or American. The motives were the same. Nobody can tell me that Karl Peters was civilizing Tanganyika. A few minutes ago the hon. Member beside me made or gave a very good quotation of what some big people in Kenya said in 1903.

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

[Mr. Deputy Speaker (Mr. Conroy) resumed the Chair]

Nobody can persuade me that these people came here primarily to civilize Kenya. The evidence is before us, Mr. Deputy Speaker, and I think it is high time we recognized it before it is too late.

A lot has been said about tribalism in connexion with land. Reference has also been made to the existence of tribalism in England. Mr. Deputy Speaker, we are shocked that people of British or with British intelligence should come here and tell us that we cannot eradicate tribalism here because it still exists in Britain. What nonsense! We know it might exist, but everybody here knows that anybody in Britain today and in Europe today who tries to break the constitution of the United Kingdom is wasting his time. Those people have recognized, have seen, the value of working together and even if they refer to, say, Welsh ideas and the Welsh language, it is not to an extent that would disrupt the British stability. This we do know. But for big people to come here and suggest tribal ideas to us at this

[Mr. Ayodo] stage is shocking, indeed. After all, what do we live for? Unless we believe that tribalism can be eradicated, then I do not see what we are doing in this House. Unless we believe that Kenya can work as a nation and that the peoples of this country can work together and make a good country, I do not see why anybody should come to this House at all. So I say to our friends who keep referring to tribalism and encouraging secretly tribal ideas that this should change and should stop. We have been suspecting that perhaps some of our European friends encourage tribalism among Africans. We have been suspecting this. But I think that the statement that has been made today proves this in quite a big way, that this may be true. We only appeal to them that they should stop these ideas and such ideas as minority groups and tribalism and so on because they will not help us solve the problem of land in this country. They will not help at all.

Mr. Deputy Speaker, because I oppose this Motion and I do not want to take note of the Papers, I want to conclude by referring to the statement made by the hon. Member for Nairobi West. In his speech he said that this body—I may not be quite right there—but he said that the problem of land in Kenya should be handed over to the highest possible authority. I support that idea most strongly, but add—but add—that that authority must represent the Africans justly, and very, very effectively, or else it will not be an authority at all. For the time being, Mr. Deputy Speaker, I think that this discussion is untimely because we are not that authority and until and unless an African majority sits on that side of the House this problem should be left pending.

Mr. Deputy Speaker, I beg to oppose.

Mrs. Hughes: Mr. Deputy Speaker, if I can call it such, this "combined turn" by two of our Ministers is to my mind possibly one of the most sincere and, indeed, most realistic schemes that has been put before us for some time. It was put forward very lucidly, I think, by the Minister for Lands, and it has been referred to as a political measure. Well, Sir, if it is a political measure, then I say that this is politics in the best sense of the term. I believe that this experiment to help all our people, despite what some of our Members have said, and to bridge the very great gap that exists at present between the "haves" and the "have nots". I believe it could snowball and be an inspiration born of reality and it would also, I think, capture the help and financial assistance of those who wish us well. It obviously has got the sympathetic support of Her Majesty's Government and the people of Great Britain.

Now, Sir, it has been said in this debate that the sums mentioned were far too small in conjunction with the problem and the size of this problem. But I do suggest that it is vital to go forward in a scheme of this sort very slowly and quietly because with any new experiment of this nature the difficulties that are bound to arise might be overcome without a too violent, though adverse, effect on the lives of the people concerned, and also without too much wastage of large sums of money.

I would suggest that no more groundnut schemes on empirical lines must be entertained but thought given to the simple basic needs of the people of this country. I sincerely hope that the private schemes which the Minister for Agriculture mentioned will come under the Minister's control and his supervision so that those schemes too may not suffer from fragmentation or abuse, and I am certain that he will bear this in mind.

I presume, and I am perfectly certain after hearing the speech of the Director, that much research and thought is being put into the various types of crops, apart from subsistence crops, that are being grown, and all the necessary facilities such as water resources and so on, which are needed. Sir, I think much more than this is needed and it is obviously desirable to ascertain the local and overseas markets for these crops, but I suggest that consideration should be given to the establishment, adjacent to these schemes, of local cottage industries, particularly I think those industries that would be suitable for women, and they could be allied to the particular agricultural and natural resources of the areas that have been developed. Together with that, I do think there is a need for residential training centres for the children, not only to continue their education but to support the local industries without breaking away from their homes and their home background. I believe this is very evidently necessary all over the country.

These schemes, Sir, in my opinion, could be further extended with similar schemes for secondary industry, in the rural as well as the urban areas, which in many cases might be co-ordinated with the local agricultural industry in that particular area.

Sir, can I go still further and at the same time ask the Ministers not to forget to provide a little bit of fun in the lives of people, by healthy entertainments and sport in these centres, so that we can develop a balanced social structure throughout the whole of the Colony.

Sir, it may not seem important but I do think they are points which do need consideration and implementing as soon as possible because I feel

[Mrs. Hughes] that all these facets are necessary if we are going to build up the confidence and security of all our people here. Goodwill and appreciation of the parts that are taken by all the races can only be established on practical application and forward planning for the economic necessities and the building up of the standard of living of all the people in this country.

Sir, in the case of Sessional Paper No. 6, I note that the appendices which were originally in Sessional Paper No. 10 have not been included in Sessional Paper No. 6. I presume there is a very good reason for this, and I would like to hear why this has not been done.

The Minister for Local Government and Lands (Mr. Havelock): Economy.

Mrs. Hughes: Economy! Well, Sir, I suggest that this is rather serious omission because in Appendix "B" the first three paragraphs—26 (1), 26 (2) and 39 (1)—I do not believe that these paragraphs which deal with the constitution of the agricultural subcommittees are wholly acceptable to the farming community, and I would like to know whether these are being reconsidered or whether they have been mentioned in some other part of the Sessional Paper. Sir, I would like also to ask the Minister whether Appendix "C" could be issued as a White Paper for further discussion by the House, and I would like to suggest that it be based on the later United Kingdom Agricultural Act and not on the 1947 Act, because I think it would be wrong to give greater flexibility here than in the United Kingdom in respect of acceptance by tenants of responsibility for good estate management.

Sir, I would like to end by saying this. I was in America and England this year about the same time as the "two Macs" as they were very affectionately called by everybody, even in America after they had been there a few days, and I think I can guess a little of the tremendous amount of work and the factual evidence that they must have put into this to gain the assistance of international bodies such as the World Bank. Then this was further followed up last month by the trio with the Minister for Lands included. Sir, I believe that instead of carping criticism we should say a very big "thank you" to them for the very great service that they have done for Kenya. I feel it is a privilege to assist them in the building up and attaining the respect and the confidence that they have generated abroad, and it can only be to the benefit of ourselves as well as to the future generations in Kenya.

Sir, I would like to support this Paper, if that is what I am supposed to do, or just note it, and

hope that all Members of this House will give it their practical support to see that it is a success.

Mr. Hassan: First of all, Sir, I would like to deal with one or two small matters raised by the African Member from Mombasa. He said something about the African plight in the coastal area living on the pieces of Crown land. I am a member of the Coast Land Advisory Board and we have never disturbed the Africans on any piece of Crown land when it is found out that they are making their living by small units of agriculture, and for him to say that they are shifted from there is entirely wrong. We have not used any discrimination whatsoever in the application of a member of any race for the use of Crown land. Everyone is given a very careful consideration. As a matter of fact one of the Africans applied for a piece of land and when his application went through all the stages and was passed, unfortunately he came to Nairobi and cancelled his application.

The second matter he raised was with regard to the Africans squatting on European and Asian lands, particularly in the Malindi area. Well, I know all about it. The African comes every six months when the rains start. They dig up some plots there and plant maize, cotton and other things. Whenever the crop is ready they collect it and go away. They were paying very small remuneration to the landowner and they never stayed permanently there. It was only during the last year that those people claimed the ownership of all the fruit trees on the Asian and European farms, and the matter to my mind is still being dealt with by the Government. With a view to dealing with such a situation the farmers demanded from them written leases of certain rents whenever they came to squat on that land. Without that legal-formality it was impossible to shake off their claim for fruit trees.

The White Papers Nos. 6 and 10 put on this Table by the Minister—I have paid tribute to him for taking a very bold and courageous step to start his scheme for the settlement of the landless people in this country, and I think I would support it very strongly and would remind him that the landless element in this country is much more particularly among the Africans, and if this scheme which is 60,000 acres per year, if the acreage is doubled for next year it will help considerably to deal very quickly with the landless element, because the landless element has increased considerably due to the consolidation of land in the Central Province.

The Asians have been asking for the last 60 years that the policy of enforcing possession of land based on race and colour is not to the good of the country, and now that the Government

[Mr. Hassan] has done away with it it is a matter of great satisfaction to the Asian community.

Sir, one thing I feel now is that the situation in the country demands today that we should resort to the plain speaking with all the sincerity for the good of all in this country. The settlement in this country was started, to my knowledge, from 1906, and I know, Sir, that a few settlers that we had in this country, although they tried their level best, they could not be given leases for more than 10 to 20 years. Due to these small leases the Government could not possibly dream of having a success of the European settlement and at that time the Government thought of inviting Asians from India to come and settle in this country. Officers who went to India to bring farmers on State-aided schemes failed because the Asians refused to leave their country and come and settle in this country. The then Government laid it down that the settlement should be encouraged on areas surplus to the requirements and needs of the indigenous population of this country. At that time the Government decided to offer long leases and assistance to overseas farmers and the European farmers were encouraged and invited to come and settle in this country. I was one of the members of the Government and I helped in the Veterinary Department to assist the farmers in different corners of Kenya where they were allotted farms, helped them to buy stock and disease-free oxen to plough their lands, and also to deal with the sickness wherever it appeared among their cattle. The success they made was amazing. There is no doubt that a very large number of them invested millions in this country in the first few years. They failed, and the others followed with the help of the experimental farms, the Agriculture Department, and with the help of the Veterinary Department to deal with the diseases of stock, the success was made by the European farmers in developing this country with modern agriculture and modern animal husbandry. I think it is just as well for everybody to admit this fact in this country, that they with all their skill, initiative, capital and labour made a success of their agricultural settlement in this country. It cannot be denied that the Government contribution towards the success of the farmer was much more than the skill and the capital of the farmers themselves, and credit must be given to the Government for that help. Government put up roads wherever farms were allotted, put up the railway lines which never paid for years, land banks, statutory boards, reduced railway freight for agricultural implements and, above all, the price control, and every technical assistance necessary to help make a success was given by the Government. I think we should

also admit the contribution from the Africans. They provided cheap labour to the farming community in this country; they provided cheap foundation stock to the stock farming in this country. Not only that but they co-operated with the farmers and allowed them to control their farm produce for purposes of marketing, so that one community should not undercut the other community for the sale of their farm produce.

Sir, we must admit that the contribution for the success of the European farmer was colossal from the African side. Then comes the Asians and other consumers of all communities: they co-operated and have been consuming the major portion of the produce of the farmers here and paying prices which are not only equal to any overseas country but a little more. So when we look at the whole system of farming in this country we come to the conclusion that every element in this country co-operated and made a success of the agricultural production in this country. The Government started this country as a protectorate in the first instance. I was engaged by the Protectorate Government. Later on it was changed into a Colony, and I must say that I do not like to say anything against the present Government, but the previous Government conveyed an impression to those who settled in this country that it was a British Colony and it shall always be a British Colony.

It conveyed an impression that the present Government shall perpetuate the help and assistance and the European influence in this country, but, today, Sir, we find that this system has been changed completely. There are farmers today, Sir, who feel that not having been told of this revolutionary change at the time of our taking up this settlement, they might have gone to some other country and invested their capital. It is necessary for the Government to satisfy those people and I think the majority of people are those who were brought in hurriedly during the last six to seven years in this country to help and to increase the number of Europeans here. I remember when our politicians in this Council said, "We want to increase the number of Europeans to 100,000", and when I said that it was a wrong policy, if that were to be adopted, because I said that Kenya was a very small country, and such a large number of people brought in very quickly in this country will create a lot of problems and headaches which we are facing today. We had about 200,000 acres of unalienated Crown land in 1954. At that time we said that 200,000 acres should be made available for landless Africans in this country, but the European Agricultural Land Settlement Board was established, and they made a short job of this land. I think that very little acreage is left

[Mr. Hassan]

out of that 200,000, and a considerable number of new settlers were brought in to settle in this country.

Now, Sir, what we want in this country is co-operation of all; and we should forget what has happened before. From Lancaster House we came up with this spirit to co-operate together and to try to undo certain anomalies which, according to the wrong policy, were creating difficulties for certain communities, in order to try to help them. This scheme, and this White Paper, put up by the Minister is a scheme, the right scheme, and I think everyone in this House should have welcomed it because, after all, a start had to be made and there was no other way to make a start. There are some Members who say that it will be a failure. Settlement on land is not always successful. I know that a large number of European settlers came here with large amounts of capital, and they failed, and others succeeded. But now the scheme is started by those who have tremendous achievements concerning agriculture in this country behind them, and who have established schemes of this nature in different parts of Kenya. I hope and believe that there is more hope of success than failure. It only needs the good wishes of everybody so that the Minister can get on with his scheme.

I would like to mention something about the capital which is brought in by big companies, like the tea farmers at Kericho. I was asked to visit that place with a party last week. I have only been in Kericho twice since 1930 and this was my first visit since then. I compared the country, what I had seen before to what it is today, and I can say the progress made by the tea companies is simply amazing. That country did not look like the country I had seen in 1930. When I went round the estates I found out that they had established 25 primary schools for the children of their labour, and there were 2,200 children of the labour being educated in those schools without any fees. They were given uniforms, and I saw the best teachers available there, and they appeared to show in physical training and other sports far better displays than I have seen, even in the Government schools. I do not think I have seen any better schools in any part of Kenya. Also there is a hospital which is one of the best hospitals I have seen in a rural area, with X-rays, health services, infectious diseases wing, a wing for children indoors, for maternity cases, and with very efficient nurses and qualified doctors provided for that. Not only that, but I saw a 300-acre area adjacent to the tea estate being cleared up, almost ready to be planted with tea for the Africans. That is the advantage of the capitalist firms who come to

this country. They had some Africans who were very highly trained in tea planting, in tea picking, pruning, in getting the tea through the factory, and those experienced and trained fellows were supervising the clearing and planting of tea in that new 300-acre area. That is what was actually intended by the settlement of people from overseas companies, that thousands of Africans should get employment, that their children should get education, and, after getting training, to have the tea plantations similar to the tea plantations of the firms that were to be established in Kericho. Of course, Sir, the small farmers who came to this country to make their living had not the means to do this much for the Africans, but what I was informed by the Director was that, due to this political trouble in this country, extension of tea planting had stopped. We really do not know where we stand, and I would like to remind the Members that this is the impression among those people who have done so much good for the Africans and for Kenya in this country, and that these political pin-pricks are not doing any good for the development of this country, and the time has come when we should forget what has happened in the past in this country and try to join our heads together and help and assist in the sound and concentrated agricultural development of this country.

With these few words, Sir, I beg to note.

Mr. Kiamba: Mr. Deputy Speaker, Sir, for the last 40 years in this country, in the course of African politics, the Africans have always demanded the return of their land which was taken by the Europeans, and now we hear that the Government is talking of reopening the White Highlands. It is a thing that could be welcomed by the African people even at the present moment, provided that it were free. The Africans will not understand the idea of being asked to pay off debts for that which has been taken from them, and which they believed has belonged to them. Then, at the same time, it will be very difficult to make the African believe that the other man had the rights on the land. We know that this is being pushed on because people have fear of the future Government of this country which is going to be African in all respects. What they fear is that that Government may not be a good Government. They think that it will be a Government which will go and steal the land from them. But the future African Government would not be able to do that because it claims that it will be able to let these people work on the land if only they have a reasonable acreage of land, and that is what we call need and not greed. The other people feel that because the Africans will be in the majority they will have

[Mr. Kiamba] no say in the Government of the day. Now, if we mean to be democratic in every way, Sir, we know that the people will have their own votes and that they will cast them in the way they like, and by doing so they will have the man of their own choice: there is no need for them to have a fear on such a kind of Government. Therefore we cannot let the land be used by the privileged few; we have got to settle the masses of the Africans in a good way and by being able to convince the Africans then those same Africans must be in the majority in the Government that will be doing all that kind of work.

Well, we may carry on and pass this law now, but we know that in all countries all Governments are doing the same thing, but there is nothing to convince me that the future Government would be bound by the laws that are made by another Government if they do not like them. They will either have to endorse them or change them if they do not like them, and there will be nothing to stop them from doing that.

With these few remarks, Mr. Deputy Speaker, I note the Paper except the freehold titles, and except for the fact that the people who go to the land will not be asked to pay for the land that once belonged to them.

Alt Commodore Howard-Williams: Mr. Deputy Speaker, Sir, I shall be brief, unfortunately too brief because I am late in the debate.

First of all I would like, Sir, if I may, to declare an interest in that perhaps I have 1.3 acres of land direct from the Crown.

I note this Motion with disfavour. To begin with, Sir, for yeoman farmers, surely we should really say Kaffir farmers or, better, peasant farmers. In Kenya we are breaking up the land instead of consolidating. Surely that is not the way for the new Kenya.

What do we achieve for our £14,000,000? Perhaps some 200,000 unbroken acres. For that sum we could pipe Lake Rudolf into the Athi Plain; for that sum we could pipe Lake Victoria Nyanza into the Rift Valley and irrigate many millions of acres and in time provide work for millions of Africans. I feel that perhaps on this issue the Government is not thinking anything like big enough. We should think very carefully of what we are doing.

The hon. Member for Nyanza Central, I think it is, showed us the way of independence when he said that the next Government would regard all the land as theirs. If we face facts, they will be independent and they will be able to *kamata* the land. They will be independent and they will be able to throw out all the loans that

have been granted them. They can repudiate as easily as can we repudiate, not we but the Home Government, the sacred treaties with the Masai and the Sultan of Zanzibar and their own nationals here. They can indeed, if they wish, invite a Russian mission to train their troops here. Not that they will necessarily do those things; but they can do them, and it is up to the Home Government to have its eyes wide open as to what is the potential.

There is now a scramble for Africa, Sir, a new scramble. We are vacating our privileges and our rights and Russia and America, as we all know, are coming in. It is a vacuum which has got to be filled: Which means that there will be a potential of civil war. Therein lies chaos and anarchy: witness the Congo, Sir, which has not yet begun its troubles as we shall unfortunately witness.

This scheme of Government's, Sir, in my opinion, is throwing money down the drain, some £14,000,000 of it. Little men in Whitehall are not thinking big enough; they are not thinking straight; they are not even thinking.

I view this measure, Sir, with disfavour.

Mr. Slade: Mr. Deputy Speaker, Sir, at the outset of what I would say I would like to congratulate the Assistant Chief Secretary on his maiden speech which was, in my view, a very valuable contribution to this debate. It was no more than I expected of him but none the less valuable on that account.

* Sir, in accordance with current practice this Motion invites us to note the Sessional Papers concerned. On this occasion, in spite of the form of a Motion, I should like to record that for one definitely approve these Sessional Papers.

Sir, I would like to pay a very sincere tribute to both the hon. Mover and his hon. Secondor for their speeches in opening this debate; and not only for the form, that has been the limit of the tributes of some other hon. Members, but for the substance and the spirit of what they gave us. I think, Sir, that it was very much to our advantage that there has been this delay in consideration of the original Sessional Paper, for two reasons. One is that it has enabled the Minister for Lands to take note of every thing that anyone had to say about the original Sessional Paper and enter into full discussions with them, with the result that we have here in the amended form something that represents very nearly common agreement. But a second advantage—perhaps an even greater one—is that as both the Sessional Papers merely provide the legal machinery for the development of the land concerned, there has now been time for that Minister and the Minister for Agriculture

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to find the wherewithal for the practical implementation of that machinery; and I regard, for that reason, the speech of the Minister for Agriculture as quite as important as the speech of the hon. Mover, because it is indeed putting flesh on the bones and giving us a practical project.

Now, Sir, it was suggested that some of us on this side, the hon. Specially Elected Member Mr. Blundell and his colleagues, had to share responsibility with the hon. Mover for what has been put before the Council. If that is so, it is something which I am only too glad to acknowledge. I think it is so, actually, Sir, that we can share some of the responsibility and some of the credit for these proposals, and I am very glad to do so; and also, along with others, to acknowledge the contribution which has been made by the Kenya National Farmers' Union.

Sir, I hope I will not be repeating what other hon. Members have said if I summarize once again very briefly the true value of what is before us now. In the first place, as the hon. Deputy Chief Secretary pointed out, this is giving practical effect to the recommendations of the Royal Commission on Land. That is to say the full economic use of our land assets. But it is going further than that. It is starting to provide the market support which with changing conditions we now need, to enable those farmers who are anxious about the value of their land to know that there will be at least one big buyer in the field who, by his very existence, will prevent speculators from cashing in; at rock bottom prices. Further than that, it is making a start for the resettlement of landless Africans which we badly need. And lastly—and something which I regard as very important, Sir, which has not been mentioned yet—it provides for the beginning of integration of our farming activities as between races and; L'hope, between tribes. The value of this is not economic but it is political and social and just as important. A great many of our troubles today, and in the past, have stemmed from our living apart and not knowing anything of each other, wherefore we are afraid of each other. Others have said in this Council on other occasions, "We have only got to have common interests and we are through the barrier". Farming side by side is one of the best forms of common interest that anyone could devise.

Now, Sir, I would like to record complete agreement with what the Deputy Chief Secretary said when he pointed out that the isolation in which we lived in the past in our African land units and the White Highlands was not a bad thing; that it was in fact a very necessary thing in the early stages of the history of this country. It could not be avoided if you were going to give the people

of this country in the various races and tribes an essential sense of security. But now it is no longer a good thing, now I am certain we are right to move from it, and move as fast as we can to a complete integration of interests and activities. Having said that, Sir, I do ask this Council to realize that the Sessional Papers and the Ordinance which it passed last year for the control of dealings in, and African lands only represent a very small start. I do want to ask the Government to take this matter very seriously. If we are really out to achieve a uniform system of tenure of land and use of land without racial or tribal boundaries throughout this country, the areas of greatest economic potential, the areas of greatest potential in every respect for this purpose, are those which lie in the African land units and to which the Director of Agriculture has referred. This Sessional Paper does not touch those areas. It deals with areas which are very largely developed already, and which as again the Director of Agriculture has pointed out, are in many parts areas of very low potential.

Again, Mr. Deputy Speaker, that Ordinance of last year dealing with control and dealing with African lands touches only lands which have been consolidated; and those of course are and will be lands of most intensive population, because that is where the demand for consolidation rises and those are the areas where there is least scope for further development because the people are so thick on the ground already. The only development there can be by improving standards of farming as opposed to settlement of further people. But what about these other areas, the areas which are still empty, or hardly developed at all?

Now, hon. Members who cast hungry eyes on the White Highlands must look at their own African land units and the land units of their neighbours. This must be a two-way affair, if we care for this country instead of trying to get votes from people of our own tribes. The fact is that we are not as yet proposing any legislation which will touch those vital areas such as, I understand, the hon. Member for Central Province North referred to, I am sorry I did not hear his speech because I understand that he indicated how much development, even by other races, of empty lands in land units will be welcomed. How right he is; because if you encourage capital of another race or another tribe to come into your land and provide factories which will provide money for development, you are immediately helping your own people, either by providing for the use of what they grow or by providing them with employment. People must, as my hon. friend who has just spoken said in another context, they must think big in this matter.

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But now, Mr. Deputy Speaker, I do want Government to tell us what they really intend to do about these empty areas, to encourage tribes who belong there to welcome people and capital from other races and tribes. It is in the hands of the Native Lands Trust Board now; it cannot be in anybody else's hand, I suppose, in the absence of consolidation and individual title, but something must be done to make sure that we do treat it as one whole, and not just a raid on the White Highlands or a raid on any particular land unit. I do support those who urge that this should all be covered by one piece of legislation, by one Order in Council which deals with the White Highlands and the African land units, whether consolidated or not consolidated; Different Parts you like, to deal with the different conditions of title and so on, but one piece of legislation to show it is one problem.

Mr. Deputy Speaker, I would like just to refer to the question of peasant settlement which the hon. Scudder described. I think he has made it clear, and the Director of Agriculture has emphasized, that this is not intended to be mere subsistence farming. But it is very important that if land in the scheduled areas is to be handed out for peasant settlement schemes, it should be for something more than mere subsistence farming, if we are going to preserve any meaning for that very important distinction between scheduled areas and non-scheduled areas. Hon. Members will remember, when we debated the Agriculture Ordinance in 1955, how much was made of this distinction between scheduled areas and non-scheduled areas. It was emphasized that the scheduled areas are those which have achieved a certain standard of individual farming which justify treating the individual farmer as very much an individual, and the application of certain rules and controls which are suitable at certain levels of farming, whereas the non-scheduled areas are all the rest, and that we hope, in the course of time, more and more of the non-scheduled areas will become scheduled areas. The essence of the exercise is that you always maintain certain standards in the scheduled areas; and it is vital, Sir, that these areas and peasant holdings are still required to maintain those standards.

Sir, if I could touch for a moment on the question of freeholding of title in the White Highlands, which seems to have caused some anxiety to some of my hon. friends on my left, to the best of my knowledge—perhaps the hon. Mover can confirm this—the reason for offering freehold titles to farmers in the European settled areas arises directly from the decision which I have always regarded myself as a wrong decision, that individual titles in African consolidated areas

should be freehold titles. When that decision was made, as I understand it, Government said that if the African is to have an individual freehold title, there is no longer any reason to refuse the European an individual freehold title. That seems to be sheer logic, Sir. Hon. Members probably have forgotten, most of them, that in 1940 as a result of pressure by European farmers, there was a Government Commission to consider whether or not freeholds should be granted to European farmers. The Commission either decided against it or else Government decided to ignore the Commission's recommendation. The outcome was that Government said, "We will not grant freehold titles because we think that a leasehold title is really more appropriate in every country for a farmer, in particular so that the farmer may realize that in the end the land belongs to the country and not merely to himself and heirs". But having changed that policy for Africans, I think I am right in saying that Government has changed it for Europeans also. It is nothing to do with making the Europeans more secure because in fact freehold title is no more secure than leasehold. The only practical difference is that the freeholder does not have to pay any rent. For the rest it is, I should say, purely sentimental. My friend the hon. Member for Mount Kenya on legal advice, has suggested that leaseholders have a more secure position. Whether that be so or not, there is certainly no security against the activity of a hostile government in a freehold title than a leasehold title.

Now this question of security of title, Sir, brings me to another part in the speech of the hon. Mover to which not very much reference has been made. It is a very important part, where he told us of what the British Government are doing at this moment in considering the vital question of securing the titles of land in this country. I hope and believe that by that he and the British Government mean all titles and not merely farm titles, because security of title is equally vital in the question of a prospective investor in business as it is to the farmer. Sir, I welcomed very much the statement that the hon. Mover made in this respect, the assurance that the matter is being investigated at the highest possible level by the British Government. It is not only economically essential that this matter should be cleared up as soon as possible, it is also quite clearly a moral obligation of the British Government to get it cleared up; whether or not there is the legal obligation to which the hon. Member for Mount Kenya referred, there is undoubtedly a moral obligation to those to whom the Crown itself has issued titles purporting to be for 999 years. The Crown is the British

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Government, the British Government has encouraged people to settle and develop this country in the belief that they had title for 99 or 999 years, and it must ensue now that they have indeed that title or compensation if it is taken away from them.

I must say, Sir, in spite of the time that has been taken by the British Government to work out the right answer to this matter, the right answer does seem to me very simple indeed. We have already agreed at Lancaster House—all of us—mention of it has been made often by the hon. Member for Nairobi Area and others, we have already agreed that there should be a Bill of Rights written into the Constitution which will provide among other things that there is to be no expropriation of land without payment of compensation, and that there is to be resort to courts of law, both to claim that compensation and to ascertain the amount that should be paid. All that remains is to ensure that no independent government disregards that Bill of Rights or that if any independent government does so, the British Government makes good the deficiency. So all we need require is that the British Government should underwrite those particular provisions in the Bill of Rights which the British Government itself offers to us, as the consolation for departing from the protection of the British Crown. But it is no consolation unless it is underwritten. But if the British Government guarantees those expropriation clauses, and if the independent government is so irresponsible as to proceed with expropriation and hope the British Government will pay, that can be covered just as easily by the British Government at the time of independence requiring security from the Kenya Government as cover against any payment under the guarantee, security in the form of those many millions of pounds belonging to the Kenya Government which lie abroad and will still have to lie abroad in order to secure the currency of the country. That seems to me the simple answer, Mr. Deputy Speaker, to the question which is now puzzling the British Government.

It has been suggested, Sir, by some hon. Members in this debate that it is quite unnecessary for anyone to be worried about security of title. I hope, indeed, that is so; but I am afraid, Sir, that some speeches in this debate do not prove it to be so. How can anyone suggest that people are unreasonable in asking for firm material security of title when hon. Members, such as the hon. Member for Nyanza Central, declare, all lands in the White Highlands belong to Africans and have been taken by force from them, and other hon. Members declare, "Never

mind what we are saying or doing now, an independent government will take those lands, deal with them as they think fair, regardless of existing titles"?

Sir, I would ask the indulgence of the Council in examining these declarations for a very brief spell, to consider their validity. I understand that the hon. Member for Nyanza Central is not making any firm legal claim. He is making an historical claim which dates back 50 or 60 years or more. I do not suppose he is anxious to take his historical research much further than that. There have been tribes in this country who are nearly extinct—or quite extinct—who not so very long ago held the land which is now occupied by those represented by hon. Members in this Council, so there is a limit to the wisdom of historical research. But, if we are going to resort to historical research, I suggest that we look at an enquiry that was made 30 years ago, when memories were much more fresh than they are now. It is only too often, Mr. Deputy Speaker, that we ask learned and quite impartial people to make intensive investigations, exhaustive enquiries, into the matters which concern us, and receive vast reports, and then make it our business to forget them. We are almost getting to that stage with the Royal Commission on Land, I think. We have certainly got to that stage with the Report of the Carter Commission of 30 years ago. Let me repeat, Mr. Deputy Speaker, that that report of that size, on the specific subject of land claims and the proper allocation of land in this country, was made 30 years ago, when the sort of claims that are being described to us now were only 20 or 30 years old, instead of 50 or 60 years old as they are now.

I am not going to weary hon. Members with many quotations from this report—the report entitled "The Report of the Kenya Land Commission"—over which Sir Morris Carter presided, and I would only quote three passages which may put the matter in perspective. In paragraph 1828 of chapter 7, referring to certain claims: "In the tribal aspect"—in the tribal aspect—"they are claims that the tribe in question was formerly in occupation of territory of which it has been deprived. We have conducted an exhaustive enquiry into these claims, and the results of our investigations have been stated in the first two parts of our report. The arrangements which we have proposed for the settlement of this question should be held to constitute a full quitance of all tribal claims of right, external to the boundaries of the tribal territory as they will become as a result of the additions as recommended." Now, Mr. Deputy Speaker, those recommendations were various readjustments of tribal boundaries for the benefit of the tribe

[Mr. Slade] concerned, and in other cases compensation for land which might have been taken from the tribe in the form of other land instead, and that was the final recommendation of the Commission—that that should settle all claims. But let us look at the sure of the claims, which is much more important, and the proportion of these claims to the White Highlands as a whole. Of particular interest is paragraph 1847. I say "of particular interest" because this most preposterous demand made by the hon. Member who represents the people formerly known as the Kavirondo. Now, 1847 says: "We do not find on the evidence that any section of the Milanie Kavirondo"—and that, I think, is the tribe to which the hon. Member belongs—"any section of the Milanie Kavirondo has made good a claim to have lost any land over which private rights existed. The question of private rights outside the reserve, therefore, in our opinion, does not arise. The tribe as a whole may possibly"—I am sorry to say—"be held to have suffered a very small loss of territory in respect of Mr. Maxwell's farm"—that is the hon. Member's father—"but we do not consider that the loss is such that it need be regarded at this date, except that we have recommended that the Kavirondo should be allowed to bid for the farm should it come on the market."

As hon. Member: Interjection.

Mr. Slade: I am sorry to hear it.

Lastly, Sir, the only other quotation I want to make is the most important one in paragraph 1855—still Chapter 7—Chapter 7 of Part III. I should say: "The space given to the discussion of this matter may convey the impression that the numbers of natives affected are more than is, in fact, the case. The only place where the problem has arisen in anything like an acute form is Kikuyu, and there it is believed that the number of persons who could justly claim the benefit of section 86 and corresponding sections—those of the Crown Lands Ordinance dealing with private rights of Africans—"and are still living on the farms is not more than 200 or 300 inclusive of women and children." And that, Sir, gives one an idea of how much was involved.

Now, Sir, in contrast to what was said by the hon. Member for Nyanza Central, we have a much more realistic attitude from the hon. Member for North Rift, because he has said that we have certain specific claims which have never been satisfied—claims for a specific area which we say have always belonged to our tribe, and which we have been dispossessed and which we want back. Now that is much more helpful. If there are indeed serious claims by members of

any tribe, or any individuals, that they have been dispossessed of land—they or their fathers—and that they have never been compensated, and that the Carter Commission never dealt with them adequately, well let us still investigate. Let us make sure whether or not those claims are valid; and let us go further than is suggested by the Minister for Commerce and Industry, who says that we ought to be content with such claims as can be brought in courts of law, because indeed those claims cannot be brought into courts of law. No court of law, I suggest, is going to repudiate a Crown grant. Certainly no court of law is going to examine a land claim of more than 12 years old, where there has been undisputed possession meanwhile. That is the statutory limitation as regards any claims at law, but do not let us stay on that. Let us unreservedly examine the whole issue: not what claims there are—two pieces of land such as are described by the hon. Member for the North Rift—and let us try and get them all settled as soon as possible so that talk of land reform in a menacing sense may be ended once and for all. And we shall certainly find, Sir, whatever the final answer may be, that all the areas concerned, in the kind of claim that the hon. Member for North Rift has in mind, are very, very small compared with the White Highlands as a whole, and has no real bearing on the subject matter of this Sessional Paper at all. But for all that, let us clear them out of the way, and thereby clear out of the way all question of land reforms except the proper land reforms, of the kind covered in these Sessional Papers, and let us adopt the course which the hon. Member himself suggested, and which will never upset anybody's security, that is in such cases as we may find claims justified, to try to buy the land and sell it, or give it back to the Africans concerned, or where you cannot buy the land, buy other land equally good instead.

Now, Sir, I have not really much more to say, except to place great emphasis on these two different attitudes by the two hon. Members to whom I have referred, for this reason, that we are on our way to early independence, and in spite of what some people suggest today, independence is something that all of us who belong to this country have always wanted. It is only a question of that independence being of the right shape and coming in the right conditions—that is all. That is all to which we must now put our minds, but we have not a chance unless we realize that it does depend on us. As the hon. Member for Nairobi West said, it is up to us to sort this out. We cannot do it by shrieking elsewhere for help or protection or anything else. We have got to work it out; and it matters to all of us, the African just as much as the European and Asian, that we do reach

[Mr. Slade]

agreement between ourselves which is what we tried to do at Lancaster House. There is no hope of the conditions being favourable to independence unless we strive very hard for peace and prosperity meanwhile. And my hon. friends on my left have got to realize that on this particular matter of land Europeans feel quite as deeply as Africans. It is not only an emotional issue for one race or tribe, it is an emotional issue for all of us, and we cannot afford to let emotional issues build this country to pieces. Now do you really want—you will have the great responsibility of the governing of this country—do you want to chase or frighten away people on whom you are depending for the prosperity of the country to a very great extent for many years to come? Or do you want to face the alternative that they do not get chased or frightened away, but stay and scrap instead, and you have no peace on which to build your independence. It is madness to invite either.

I do beg hon. Members to beware of rash statements that may lead to those very things. I do beg them to listen to the words of the hon. Member for Nyeri and Embu who said how these adjustments we need must be reached amicably, and to listen to the words of the hon. Member for North Rift who, in fact, seemed to me to propose that same thing. There is one thing very clear to me, Sir, clearer day by day, that we have indeed a very great struggle ahead of us, and it is not, and it must not be, a struggle one against the other, race against race, or tribe against tribe. We have a bigger struggle than that. It is the struggle, in which we must all join, against certain forces of evil which are very busy at work throughout the world and here in Kenya; those forces that deliberately foster hatred and fear between peoples and communities. We see what it can do in the Congo, and we see what it can do in many other countries in Africa and many other countries in Europe. It is busy here. There is no other explanation to my mind, Mr. Deputy Speaker, when you find hon. Members encouraged to make such preposterous claims as that made by the hon. Member for Nyanza Central, claims calculated only to arouse hatred and fear. There is no other explanation that I can see as a cause for the extraordinary wave of unreasoning fear that is sweeping through my community, than the deliberate stimulation by some unity, than the deliberate stimulation by some unity of hatred and fear. There is no other reason that I can see for the fantastic and wicked suggestions which I have heard going abroad. I saw recorded in the paper today that the hon. Member for Mount Kenya had been accused of bribing Africans to resort to me the administration of bestial oaths. It made me laugh when I read that in that particular newspaper report; but I

understand that it is not limited to the evidence of those two witnesses, it is a widespread rumour in the Nyeri District, that the hon. Member has been resorting to such practices. I do not think African peasants think of those things for themselves. They are put in their heads by others, and it is those others—those forces who lie underneath making all these opportunities for hatred and fear—who will destroy this country unless we join together to defeat them instead of playing their game by fighting each other. And here, Sir, I do believe the Government has put before us the opportunity to take a real step forward, a step forward on the right path. So let us take it with both hands.

I beg to support, Sir.

Shekh Mackaw: Mr. Deputy Speaker, I would like to take this opportunity of paying my tribute to the hon. Minister for Lands for presenting to this House Sessional Papers No. 10 and No. 6. Also, Sir, I would like to congratulate my friend, the hon. Specially Elected Member, Mr. Blundell, who is not present here today, for his excellent speech which he made here in this House. Mr. Deputy Speaker, Sir, I have one or two points to say in this House today.

My first point is that there is plenty of land for development and the Government should help the progress of the Africans, and frankly I say that the Government should give them assurances in this House that land will be distributed and allocated to them of five acres for each African. The African should work on it and develop it. I am sure that the African will help keep himself from hunger. Sir, this is the only solution for the prosperity of the economy of Kenya.

Also I should like to say very frankly that if the four races work together for the development of this Colony, surely and certainly we will establish a democratic Government in Kenya.

My second point, Sir, is that the Central Land Advisory Board will be composed of six Africans, six Europeans and six Asians, including one Arab representative. I would like to point out to this House, that the Arabs are the first farmers at the Coast and I would like the hon. Minister to appoint at least two Arabs to the Advisory Board.

With these two points, Sir, I beg to support.

Mr. Tyson: Mr. Deputy Speaker, Sir, I would like first of all to follow up a point which was made by the hon. Specially Elected Member,

[Mr. Tyson]

Mr. Slade, in connexion with the Carter Commission Report, I do so particularly in view of some remarks which were made by the Member for Central Nyanza last Thursday in which he was pleading for the appointment of a commission of enquiry to come and look into this matter because definitely we are the people who are claiming the land from the Kenya Highlands. If he had studied the report of the Carter Commission he would have seen that considerable evidence was taken from every tribe in regard to the claims which were made, but the most important paragraph to my mind is No. 2144 which, if I may quote, Sir, reads as follows: "Before closing our report we wish to make a final recommendation. In regard to all claims based on an allegation of right, the public opinion, both native and non-native, is looking to us for recommendations which will secure finally. These we have striven to provide and we hope that, if our recommendations in this regard are accepted by Government, steps will be taken to ensure that these claims will not again be reopened." I do suggest, Mr. Deputy Speaker, that that emphasizes the point already made by the hon. Mr. Slade, that we want to get finally in this matter and not reopen a case which was fully considered 30 years ago.

There is one other point, Sir, which I would like to raise. It is a small matter, but it has the makings, I think, of difficulty if not dealt with at the proper stage. Underlying the two White Papers there is the question of valuation which crops up in many places. It will crop up in connexion with the fixing of rentals under clause 20—it is referred to in clause 20—and there are a number of items which will come up in connexion with the further provisions under Schedule C of Sessional Paper No. 10. We know from our experience in the urban areas that there are bound to be differences over the question of valuation. There are bound to be differences of opinion. We see that from what happens in our valuation courts. I do suggest, Sir, that in the drafting of the legislation which is visualized in these Papers care should be taken to provide for machinery as to how these disputes which will inevitably arise are to be dealt with. My suggestion is that there should be an appeals tribunal rather on the lines of the Agricultural Holdings Act in Great Britain composed of three representatives; probably a lawyer as chairman with one representative of what one might call the tenants' interest and one representative of what one might call the landlords' interest. I think one tribunal will have to be sufficient because otherwise we might have inconsistent decisions in different parts of the Colony. There are very important items which

are going to arise not only in connexion with the valuation of the land itself but also in connexion with the valuation of improvements and we are by no means amply supplied with qualified staff to carry out this work. At the same time, it is imperative that we should so organize things that when the legislation comes into force the machinery will be such that these differences of opinion or disputes can be settled as smoothly as possible.

I support the Motion, Sir.

ADJOURNMENT

The Deputy Speaker (Mr. Conroy): I do not really think it would be fair to call on any hon. Member at this stage and I therefore adjourn Council until 2.15 p.m. tomorrow afternoon, Wednesday, 27th July.

The House rose at twenty-seven minutes past six o'clock.

Wednesday, 27th July, 1960

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

[Mr. Deputy Speaker (Mr. Conroy) in the Chair]

PRAYERS

PAPERS LAID

The following Papers were laid on the Table:—
Weights and Measures Department Annual Report, 1959.
Mines and Geological Department Annual Report, 1959.

(By the Minister for Local Government and Lands (Mr. Havelock) on behalf of the Minister for Commerce and Industry (Dr. Kiano))

Survey of Kenya, Administration Report, 1959.
(By the Minister for Local Government and Lands (Mr. Havelock))

PERSONAL STATEMENT

Mrs. Shaw: Mr. Deputy Speaker, Sir, for the purpose of the record I ask your permission to make a correction to what I said in my speech yesterday as regards guarantees to be given by Her Majesty's Government to the American Government. I intended to quote a paragraph from a letter addressed to me from the Permanent Secretary to the Ministry of Agriculture dated 30th June, but unfortunately I did not have the letter with me; so with your permission I will quote the relevant paragraph now:—

"I am directed to refer to the Minister's letter of 18th June enclosing a copy of the record of the meeting held at Parliament Building on 14th June regarding sugar development in Songhor and Muhoroni and to say that we now have been informed that the United Kingdom Government has agreed to negotiate with the American Government on the extension of investment guarantees to cover expropriation and war risks. It will probably take some time to get an agreed form of words and C. Brewer and Company are being advised of agreement in principle to negotiating the extension and that the actual preparation of the revision of the agreement is only a question of time."

MOTION

LAND TENURE

(Continuation of debate interrupted on 26th July, 1960)

Mr. Maxwell: Mr. Deputy Speaker, Sir, arising out of this debate on Sessional Papers Nos. 10

and 6, I crave your indulgence, Sir, and that of the hon. Members of the House if I digress somewhat. The other night I had a dream and I dreamed that the hon. Members for Nyanza Central and the Nairobi Area and myself were getting on famously. I found myself warmly congratulating them—I am quite serious about this—I found myself warmly congratulating them on their moderate, logical and reasonable attitude, not only towards the sanctity of land titles, but other matters in general. I actually found myself indeed treating them in a most friendly way. They were themselves overflowing with friendliness and they went so far as to say that they fully appreciated and were thankful for the great part that the British Administration and settlers had played in opening up this country and restoring order out of chaos dating back to the close of the last century. They were grateful, too, for the great financial assistance and the technical skills introduced by the Europeans and the Asians in developing this country. I naturally for my part freely admitted that without the assistance and full co-operation of the African population such rapid progress would not have been possible. Furthermore, they implored the European and the Asian communities to continue with the good work.

We had a short conference which was amicably concluded on the basis that all races in Kenya would work together in harmony, peace and the spirit of goodwill for the building of a prosperous and united Kenya on the solid foundations already laid. Based on merit and ability there would be equal opportunity for all, irrespective of race, colour and creed, for advancement in every sphere of activity; in fact, a Government in which all races would fully participate and the duties of high office fulfilled fearlessly, faithfully and, as I say, without fear or prejudice. Furthermore, there would be no attempt by any one race to dominate another.

Unfortunately, Sir, the minor details had not been worked out before "I awoke from a deep dream of peace". In fact, it was but a dream air bubble.

Sir, speeches made last week by the two hon. Members to whom I have earlier referred do nothing towards restoring confidence and the sooner they and many other African politicians mend their ways the better for all concerned. It was Joseph Conrad who said: "There is a weird power in the spoken word; a word carries far and deals destruction through time as bullets fly through space." Also that same writer had this to say about ambition: "All ambitions are lawful except those which climb upward on the miseries and credulities of mankind." For some hon. African Members, and including, their

[Mr. Maxwell]

erudite hon. Minister for Commerce and Industry, who, I agree, begged somewhat to dispute the legality and sanctity of land titles issued by the British Crown, is in my opinion going just too far. There is a weird power in the spoken word, as Conrad said, and I implore the many African politicians to keep guard or watch on their lips in regard to remarks on the subject of land titles because land is not only an emotional but can indeed be an extremely explosive issue.

I would like to ask the hon. Member—unfortunately he is not here—for Nyanza Central who gave the Luo tribe the title to the land on which they have settled surrounding the Kavirondo Gulf. Is it not a fact that a mere 200 years ago or so, the Luo, an offshoot of the Acholi tribe, were a tribe settled in the upper regions of the Nile? Who gave them permission to obtain title to land along the south-western regions of Kenya, and who, furthermore, gave them permission to penetrate as far, say, as Musoma in Tanganyika? If the hon. Member to whom I am referring, Mr. Odinga, believes that Africa is the exclusive and sole property of the African—the black man—then it surprises me, Sir, that he has not seen fit to beseech the Almighty to remove, say the Egyptians and the Ethiopians from this vast continent.

The hon. Minister for Land and the hon. Minister for Agriculture, have very cleverly and disarmingly attempted to wed the question of the change in land tenure to that of a land stabilization fund. Although these matters are allied now, they are, indeed, two separate issues, the latter arising from the former, coupled with the calamitous Lancaster House proposals.

Sir, let us face facts fairly and squarely. Firstly, the European landowner was asked to accept changes in the land policy in the European settled areas, despite the promises and pledges of the past. Secondly, came, as I say, the Lancaster House proposals. The combination of these proposed changes, aimed at whittling the European rights and influence, plus the African attitude towards the sanctity of title has not unnaturally brought about a feeling of lack of confidence and alarm in the hearts and minds of the majority of landowners, Europeans, in the security of their investment in this Colony. That, Sir, is the reason why we are now demanding, and rightly so, a satisfactory land stabilization fund fully guaranteed by the British Government.

Sir, the Kenya National Farmers' Union has submitted to Her Majesty's Government detailed plans for the inauguration of a land stabilization fund, and with this plan the majority of Euro-

pean landowners are in agreement. But it would seem from the proposals put forward by the Minister for Agriculture that he is totally unaware of the magnitude of this problem that faces us. He mentioned a mere £6,000,000 for land purchase and £8,000,000 for development. With your permission, Sir, I will refer to an Act which was introduced into Ireland in 1903 under Balfour's Government. The British Government agreed to lend up to £5,000,000 per year for a period of 60 years, in fact, the total sum was £180,000,000. £5,000,000 in those days was probably the equivalent of £15,000,000 today. Sir, the sum that Her Majesty's Government and the Government of Kenya has in mind is totally inadequate. The European farmers, and those engaged in mixed farming particularly, will not be lulled into a feeling of false security by the oratory of either or both of the hon. Ministers concerned.

Sir, let me make it quite clear that if Her Majesty's Government will make a positive and firm statement now that any form of self-government, let alone independence, will in no circumstances come about until such time as a very large number of Africans can prove by example and not by mere words that they are capable of running a complex, modern system of government in a responsible, efficient and just manner. I personally estimated a period of not less than 15 years, and, probably, 20 years, before we can produce a sufficient number, excluding the hon. gentleman on my left, of responsible Africans. Given this statement, then it is extremely doubtful that a land stabilization fund would, indeed, be required.

Sir, I now propose to sum up briefly the outlook of the European landowners, and I am speaking for the majority of European landowners. The Europeans came to Kenya under certain conditions laid down by the British Government, which they were encouraged to regard and believe as binding. For instance, land titles were issued on either 99- or 999-year leases, and in some cases, freehold, and they were accepted in good faith as valid. Our titles are now being disputed by many African politicians, and if our titles are not valid, and the Government was wrong in granting them, then the responsibility rests fairly and squarely on the shoulders of Her Majesty's Government to compensate us. Again, if the titles are valid, and Her Majesty's Government hands over to those who will not honour agreements or titles entered into by Her Majesty's Government, then clearly it is the duty of Her Majesty's Government to pay us out for our farms on a fair and reasonable basis of valuation, plus a factor for disturbance and rehabilitation, because it is not only the loss

[Mr. Maxwell]

of land with which we are concerned, but loss of livelihood. Again, apart from the fact that a very large number of Europeans have no desire whatsoever to remain or live under an African-dominated state, a state that might, indeed, not remain within the Commonwealth, or might indeed, declare itself a republic, there could be many ways of getting a farmer out. For instance, apart from expropriation, there could be high taxes or cesses on agricultural production on any quantity over a given amount from any one farm. Again, there could be high land taxes on a sliding scale on, say, anything over 100 acres, being taxed to such an extent that it would be unprofitable for the European farmer to remain. Again, there are many ways in which our way of life could be interfered with, our schools, our hospitals, and many of our social activities. Whichever way you look at the matter or the situation—and I am not a pessimist—it is highly unlikely that a tolerable life will be possible for the European farmer if and when so-called *uhuru* or independence comes.

Mrs. Shaw: Question!

Mr. Maxwell: They hold the view that we shall be forced to get out for one reason or another. Consequently we insist that we shall be able to do so with our assets intact and not leave everything behind us. We have a glaring example of what had happened in the Congo. I admit that we have certain Members of this House who say that what happened in the Congo could not possibly happen here. They are not realists, and certainly we have no intention of being caught similarly. It is tragic to think that many of us who have lived the best part of our lives in this Colony should contemplate having to leave. I say it is tragic to contemplate it, but if conditions become intolerable then we wish to be able to leave, as I say, with our assets intact, peacefully and without molestation.

Her Majesty's Government has fully declared its intention to protect the civil servant. This we welcome, and are indeed glad that Her Majesty's Government realizes its obligations and responsibilities in this matter, but I would remind Her Majesty's Government that the same consideration is due to those of us who do not happen to be in Government service. Her Majesty's Government has great responsibilities towards the immigrant races who were encouraged to settle and make their homes in this Colony, believing always that it would be under British rule and justice, and quite rightly now, we refuse to be lightly abandoned. Make no mistake. Sir, Her Majesty's Government is exposing us to grave risks. Therefore it is only honourable and just

that Her Majesty's Government must underwrite those risks now in cash, because assurances only, as we know on our cost, have proved to be of little value.

Mr. Deputy Speaker, Sir, I shall conclude by admitting that I am somewhat of a quandy due to the fact that my attitude is largely influenced by the outcome of the Lancaster House proposals. If the proposals put forward by the Minister for Land had indeed been backed by a satisfactory land stabilization fund on the lines that have been put forward by the Kenya National Farmers' Union, then with reservations I would indeed have supported Sessional Papers Nos. 10 and 6; but in view of the fact that the hon. Minister for Agriculture has put forward such an unrealistic finance plan and a scheme for resettlement, with which I cannot agree, I must logically oppose the Motion before the House.

Mr. Jamidari: Mr. Deputy Speaker, Sir, when I heard the first few speeches in this House during the debate I was overtaken by a sense of gloom and disappointment. I felt, Sir, that this debate had failed to achieve any end whatsoever, and I was wondering if there was much point in continuing to remain in attendance in this House here to hear any more of the speeches, but then the hon. Specially Elected Member, Mr. Blundell, spoke, and the hon. Minister for Commerce and Industry spoke, and I felt, Sir, once more, that we were not wasting our time after all.

Sir, whilst I welcome and I support the general principles contained in these two Sessional Papers, I feel that something more has to be done if confidence is to be fully restored in the people inhabiting this Colony. Sir, it is a great pity that whilst these two Sessional Papers do quite a good deal towards stabilizing land values in the agricultural areas, they do practically nothing at all in relation to the urban properties owned by the small investor, who might have put his savings of a lifetime in a small house or a small property in a town. I do appreciate, Sir, that stabilization of land values in the agricultural areas to a certain extent, but indirectly, of course, must also result in the stabilizing to a slight extent of the town properties, but certainly not fully. I would like to dwell upon this aspect a bit more, and point out to the House the present state of affairs as I see it, and as other members of my own profession see it, for in this profession which I practice we have opportunities of having contacts with the business community and the land-owning community in the country, and we are aware of very great fears, and in fact, very great panic that today exists in the minds of the small property owners

[Mr. Jamidar] in the country. Sir, there is a very real sense of insecurity. The private investor is not prepared any more to lend money on mortgages. Most of the building societies have stopped doing business, not for political reasons, but for the simple reason that the small depositor is no longer forward to deposit his money with the building societies, or if he has any deposits, he has started withdrawing these deposits. Property transfers are very rare indeed, and Sir, whenever there is a forced sale in an auction when a mortgage is intended to be foreclosed or otherwise one finds generally that it is difficult to fetch values even 60 per cent. of 1959 values. Quite often it is less than 60 per cent, and there are no genuine willing buyer willing seller transfers of land, not in any appreciable numbers. Prices of equities are recorded at lower and lower levels every month practically. In view of all this that is happening I feel there is a very real need to reassure the small investor and to reaffirm the confidence of the small man in the future of this country. Sir, many of the small investors have deferred their development plans, and I would like here to refer to a case of which I am personally aware, where for the last four months I have been working on a man trying to encourage him, trying to build up his morale for an intended investment of about half a million shillings. I thought I was doing fine for four months. I kept up his morale until last week—until last Saturday—when finally he came to my office and broke down: "In spite of all your advice, and all that you have to say about the future of the Colony I am now abandoning my plans because I do not think you were being honest with me when you gave me this advice." I accepted that as a personal defeat for myself because I thought I was doing wonderfully well when talking to him, cajoling him, getting him to have faith in the future of the country, and finally he broke down. And, Sir, this is not an isolated case. There are a number of other cases known, but they do not all come to light because there are large investments still going on and probably the total somehow remains the same, but it must be accepted as a fact at the moment that there is very little confidence in the small man in the future of this country.

I am wondering if something can be done about it. The Asian community remains generally very cool headed in matters of business, but I can assure the House that it is really very genuinely worried today about the prospects. Sir, because we are not very vociferous in our expressions of fear and panic, in our expressions of gloom and despondency, it may be assumed in some quarters that we are absolutely content with what the

future seems to hold for us, but it must be remembered that it is because of the nature of this community that does not believe in letting itself go in making expressions of all forms of gloom and despondency that these matters are not being brought sufficiently to light. We do not like this panic which can thus aggravate a difficult situation, but the Government must take note of these fears which, however, to exist.

I would also like to make a reference here to the position of the minority tribes. They are as much worried, if not more, as the Europeans or Asians. One very strong tribe has even gone as far as demanding a delay in the grant of independence until that tribe feels that they can hold their own in Kenya. In these circumstances it is the moral obligation of the Government of Kenya, the Government of Her Majesty, which has brought us into this situation, to make a firm declaration that they will stand solidly behind us and get us out of this situation, that it is capable of getting us out of this situation, and that it will have, and that it will be ready and willing, to exercise adequate sanctions if and when the need arises.

Sir, the present leadership of this country, more than any other person or institution, could, if the leaders wanted, restore confidence in a matter of weeks. I am disappointed at the tenor of some of the speeches here which seem to be aimed at destroying any confidence that might be left rather than building it up. I know that the next General Elections are nearer and speeches must be directed to the end of winning these elections. Therefore I would request the people in this country not to be over-much terrified at what they hear now and what they are bound to hear for the next six months or so. It is quite likely that these speeches and these assertions which are being made today may not be made after the next elections. At the same time it must also be remembered that there is going to be a very difficult task ahead for these leaders, who at this moment are drugging the masses with political opium, to explain the consequences of the wild words and the wild actions that they may promise to their constituents. It is going to be very difficult indeed to explain to these people why these promises were made and which will never in fact come to reality and which will never be realized.

Sir, it is appreciated that politics is a dirty game, but it would not be wrong to demand some standards of conduct and speeches from politicians. It is surprising how we would demand and enforce the highest standards on a man and from a man at a gaming table, a mere game of chance. But we are prepared to put up with any breaches

[Mr. Jamidar] of premise, breaches of trust, and dirty politics, any dirty methods used by politicians. That the game of politics should be regarded as less important than a mere game of chance is a shame to the sort of conditions we have built up in the world today.

Sir, whilst much regard must be paid continuously to whatever is being said about these disputed lands in the European areas, one wonders how much truth there really is in these assertions that the Europeans stole our lands, that they ousted whole tribes from occupied lands and taken wanton possession by robbery and loot of the African lands. There is a good deal of literature on this subject and it would be very great service indeed if specific instances could be cited and these grievances brought to light, that all these cases should be brought to the notice of the whole world so that they can be dealt with if they are genuine. Then they could be dealt with in accordance with justice. In the meantime by making these irresponsible statements—if they are irresponsible, and I do not know because I am waiting for the truth—they are doing a great deal of harm and they are creating racial hatred and great mischief in this country. I, Sir, am not an Anglophile, nor am I a "Europeanophile", if there is any word like that; but I would like to find out if my friends here feel that the Europeans have done no good whatsoever for this country. It is quite certain and it is quite true that they have made great mistakes and have subjected the non-Europeans to great humiliations and so on in the past. They have subjected us to great distress. I am not asking anyone to forget or to ignore these things, but are we at the same time to forget, Sir, the contribution that this community has made to this country in the opening up of the country and in the building up of the economy of the country? Are these people not an integral part and element of our society and can we really do without them, without irreparably damaging our society, our social structure, and economic structure.

Mr. Odigaa: Interjection.

Mr. Jamidar: Are you trying to say that we should go back to India?

The Deputy Speaker (Mr. Conroy): Order, order!

Mr. Jamidar: May I say, Sir, that shortly before the Lancaster House Conference the problem of this country was how to drive the European out of this country and now, Sir, if we have any sense of responsibility whatsoever we must realize that the problem is no longer that, but the problem is how to try to keep the European here.

Sir, even if the original settlers in this country were misguided, and even if they misguided the Government of Kenya, it must be remembered that the present settlers on land are the legal owners of land, having received their titles from the Government, the lawfully instituted Government of the country, that they have acquired land either by virtue of legal inheritance or by virtue of lawful purchase or by some other lawful means; that even if mistakes were made some 60 years ago the present owners are not directly personally and individually responsible for those mistakes; and they must be treated with justice and fairness. Does anyone take into account how much human misery can be caused by the uprooting of a whole community for the misconduct and misdeeds, if any, of the third or fourth generation ancestors or predecessors in title. If this human argument fails to appeal, does anyone consider what would happen to the economy of the country? Would the country be worth living in with its economy shaken from its foundations and its social structure wholly unhinged? There are hopes that after getting rid of the local Europeans the Americans will come in, pouring in their millions, to stabilize our economy. It may be so, I do not know. But must we destroy our existing economy merely in the hope that the Americans will come and help us to rebuild it once again. Can we not maintain our economy as it is, create confidence now, and see if we can improve it here and now and stop first destroying it before we start building it up once more. Sir, I am not quite sure if it is relevant, but this debate brings back to my mind the old lines from Shakespeare:—

"Thus doth conscience make cowards of us all

And the native hue of resolution

Is sicklied o'er with the pale cast of thought."

Col. Cowler: Mr. Deputy Speaker, Sir, land is obviously a subject which provokes strong feelings, and it is not surprising that many Members of this House should express views which are of great concern to them. It is the right place to criticize. It is the right place to put forward proposals, but what I think is wrong, Sir, is this continual reference to gloom and despondency. The surest way to destroy any confidence is to say that we have not got it. I would therefore like to invite hon. Members' attention to what I call realities.

My first reality and fact is that I regard Kenya as one of the finest countries in the world and I defy anyone to dispute that. My second reality, Sir, is that there are different races living here today. At this moment there are various races living and working in Kenya. My third reality is that the Europeans and the Asiatic communities in this country have a very fine record. The

[Col. Cowie]

Europeans have converted most of the land from barren wastes into something extremely productive and it is a very great achievement. The Asians have contributed a very great deal in building up trade and commerce and craftsmanship. Now those are facts; and my fourth reality, Sir, and the most important one, is that I do not believe that any one of these races will either leave Kenya or be pushed out. Now let us accept that once and for all.

It therefore leads on to this state of affairs, that in the next few years the trials and difficulties of piloting this country through on a partnership basis will require statesmanship; it will require the emergence of statesmen of a much higher calibre than we have seen in this Council for some time, and I do implore those people who have the ability and the wisdom and the reason to come forward and assist in building a structure in which we all share. There will be disputes as to what particular share each partner should have. There will be many difficulties, but in the next immediate period I think we will require the calibre and resources of our best men, but it is quite futile trying to put our heads in the sand. I think we should be careful to see that no rots creep in to this structure which we are trying to build.

In that vein I would invite particular attention to unemployment. I know that this subject has been mentioned in various speeches by Ministers and others, as it affects only the employment of certain groups of people on the land.

But, in the meantime, there are thousands of spivs roaming this town and others, and any country in the world that has people who are unemployed, hungry and with nothing to do, find they get into mischief; they resort to plunder, robbery and even murder. Now, there is the source of one of our greatest dangers. If something could be arranged, even on the basis of compulsory persuasion, to take these spivs, who are otherwise unemployed, out of the towns and give them something definite to do, some money and some food to eat, we would remove one of the greatest threats to the structure we are trying to build.

We have talked much of security and as I see it the best way to create that security is to come in and support a scheme which is entirely constructive. This measure which we are debating postulates opening up the White Highlands of Kenya which is far in advance of anything that we could have expected. It is a more significant measure than we have had in the past 60 years and it is in my view a step in the right direction. Some people say it does not go far enough; others

will say it goes too far. There will never be complete agreement. But where people surely can merge is to say that it is a right step in the right direction and, therefore, deserves our full-hearted support.

I believe, Sir, that this particular pattern of development may be something which other countries in Africa will copy. It is the first time that I have seen a really honest and sincere endeavour to meet the claims of different partners in what is a co-operative partnership, and if that succeeds—and it can only succeed with the support of all races—then, it will form a kind of pattern for the rest of Africa.

In that vein, Sir, I do say this, that any hon. Member of this Council who is a man of goodwill and a man of good intentions cannot fail to support a Motion to "note" certain proposals. The word "note" gives every Member a certain right of reservation. It does not say "support"; it does not say "adopt"; it says "note". It is an opportunity for debate and that debate has been full and free. Therefore, any man of goodwill must come in in the final resort and support this Motion.

Lastly, Sir, I would like to add my praise to the Minister for Lands and his colleagues not only on this side of the House who are the architects of this land reform. He and they are the people who have successfully negotiated the arrangements with Her Majesty's Government. They have promises of funds which many say are inadequate, but they are a large figure. All credit must go to him and them for the achievements they have made.

I therefore give my undivided support, Sir, and mention that as far as I know there is no Whip on this Motion.

Mr. Webb: Mr. Deputy Speaker, Sir, a certain number of hon. Members have raised in this debate constitutional and legal points and have suggested that there may be legal or moral obligations upon Her Majesty's Government as a result of her past policies in regard to Kenya. I would not, Sir, have thought it necessary to intervene had it not been that the hon. and gallant Member for Mount Kenya gave a focus to this suggestion in a legal opinion which he read to the Council.

Sir, yesterday the hon. and learned Member, the Specially Elected Member, Mr. Slade, made suggestions which if implemented would, of course, render all that I might say and all that has been said otiose, but since that opinion was read out in this Council I think it right that it should be, if not answered, at least commented on. Sir, that opinion conceded that no compensation would be payable as a matter of law in

[Mr. Webb]

certain circumstances, but did not suggest that in possibly two cases claims might be sustainable at law. Since, Sir, it is some time since that opinion was read, I might briefly state the two cases in which, as I understood it, such a claim might arise. The first was that where there was a transfer of the reversion of leasehold interest by the Crown to an independent Kenya Government, this would not impair the privity of contract between the tenant and the Crown and that, therefore, any breach of contract by the Crown or the assignee would entitle the tenant to redress against the Crown despite the transfer. The second suggestion was that if freehold was expropriated on the basis that the Crown did not have the right to make the original grant of title the dispossessed landlord would probably have a claim for damages against the Crown.

Sir, I think, with the greatest respect to the learned author of that opinion, that he treated this matter rather as one of contract between private persons and perhaps ignored that one of the parties to it was, in fact, the Crown. The further point is that a grant of independence would be an Act of State which is a prerogative Act although it would be confirmed and ratified by an Act of Parliament. It may also be, Sir, that the learned author overlooked that the Queen may well be the Queen of Kenya after independence, so that land would still be Crown land and the Crown would still be entitled to the reversion of freehold titles. In this case also, Sir, legislation would still be enacted by the Queen.

This leads me, Sir, to a further point which the learned author of that opinion made. He quoted from section 76 of the Crown Lands Ordinance which deals with implied covenants by the lessor, in this case the Crown, particularly the covenant that the lessee should "quietly hold and enjoy the premises; without lawful interruption by the lessor or any person claiming under him, except so far as the laws in force for the time being in the Colony may permit". Sir, the learned author of that opinion suggested that "the Colony" must there mean the Colony of Kenya as we now know it, and that if Kenya became independent that provision would only refer to the situation immediately before independence. I think, Sir, that this is possibly an oversimplification. That law will still run as part of the law of Kenya even after independence unless it has meanwhile been superceded; and if a law was made which in some way affected the quiet enjoyment of the lessor it might, of course, not be susceptible of challenge.

Sir, it is these very considerations which have made Her Majesty's Government decide to pro-

tect the interests of all landowners and lessees by legislating in this matter by Order in Council. And until the investigations to which my hon. friend the Minister referred in moving this Motion have been completed at the highest level and with the most learned legal opinions, it is really quite impossible for us to say what the form of that legislation will be or the manner in which it might be entrenched. The hon. and learned Specially Elected Member, Mr. Slade, I think it was, referred to the Bill of Rights and that, of course, may be relevant in this context. This last matter is also relevant possibly in answer to the question which was posed by the hon. and gallant Nominated Member, Col. Jackman, and also to the general problem which was raised by the hon. Member for Nairobi West and, I think also, by Mr. Slade in relation to title generally.

Sir, apart from those general points—and I must say that this is no more a matter upon which one could be definite than any other legal problem usually is—indeed, if we lawyers could affirmatively answer the questions put to us our profession would rapidly come to an end. I only thought, Sir, it right to make these suggestions about the opinion which was read to us by the hon. and gallant Member for Mount Kenya in order that by silence it should not be thought to be necessarily accepted.

Sir, the hon. Member for Kiambu raised two points of specific detail in relation to the control of land transactions in respect of shares and mortgages. Sir, the problem of controlling share transactions is admittedly extremely difficult. The proposals which have been made in the Sessional Paper have been the result of a very great deal of thought and they are the minimum which we consider practicable having regard to realities. But I am sure that I am speaking for the Government when I say that if events prove that that limited degree of control is being avoided and that evasion is defeating the object of the legislation, then Government will reconsider very seriously the whole question of the control of companies and their land owning.

Sir, various other suggestions have been made about how this might be done. I think again, Sir, the hon. Member for Kiambu suggested that controlled companies should be dealt with in the same way as private companies, and it has also been suggested to me that the shares in private companies and in public companies not quoted on any stock exchange might be controlled. It is not very difficult, Sir, and it is more than complicated by the number of companies which are incorporated outside Kenya and over which, therefore, we have a very much lesser degree of control than over those which are incorporated

[Mr. Webb] in Kenya. The reference, Sir, to controlled companies is, of course, to companies of that class which was specially created for the purposes of income tax legislation and it has many advantages in laying down what is really a family concern although a public company. But the matter is extremely difficult, as any lawyer will readily appreciate.

The other matter, Sir, which the hon. Member for Kiambu raised as a matter of detail concerns mortgages and my hon. friend the Minister will deal with this particular point when he comes to reply.

Sir, I beg to support the Motion.

Mr. Trivedi: Mr. Deputy Speaker, I have listened to this debate on the land policy of the Government and the Sessional Papers with great care and attention and I am convinced that these Papers are for the welfare of the inhabitants of the Colony as a whole. These Papers certainly restore confidence and the Papers are certainly far-sighted. I support the measures for the reasons and grounds given by the hon. Mr. Slade, the hon. Mr. Blundell, the hon. Mr. Hassan and the hon. Col. Cowie.

I beg to support.

Mr. Usher: Mr. Deputy Speaker, Sir, it is my great pleasure to congratulate the hon. Member who has just sat down. It is many years since I had the pleasure of hearing his voice in another place and it is always a pleasure to hear him speak. His brevity is an example to us all.

I had not intended, Sir, to intervene—if I may use a common cliché—in this debate, but I am provoked or incited or perhaps inspired by certain remarks made by my hon. friend, the Member for Mombasa Area yesterday. Of course, it immediately raises in my mind the question which I must put to the hon. Member. To what extent do the proposals before the House apply to the Protectorate and, if at all, to what sort of land in the Protectorate?

Now this is set out in general in paragraph 5 of Sessional Paper No. 10, and I quote: "In the coastal strip many persons already had rights in the land before the British Government concluded its agreement with the Sultan of Zanzibar in 1895 and the occupants were not disturbed, etc." Now let us see what those lands really consist of. They consist of freehold land and unadjudicated claims. I might at this stage perhaps tempt the Minister to say how he is going to continue the business of clearing up these unadjudicated claims since the court was instituted as far as I can remember—I may be wrong in

this—in 1914 and we are still adjudicating or perhaps we have stopped adjudicating?

Now apart from those lands which may be said to be held in trust for the Sultan of Zanzibar, there are other categories of land. Firstly, the unalienated Crown land, Crown freehold of which, I think, there are few examples. I know one; it is a plot owned by Mr. Christie in Mombasa, that of course was granted as a freehold title under the 1902 Crown Lands Ordinance. Then, of course, there are the grants of leasehold.

Now the Crown land on the coast consists under the agreement of land which is unclaimed, common land and waste land, and I must, Sir, point out in special reference to what was said by my hon. friend the Member for Mombasa Area that there is not by and large or anyhow within accessible distance of any town any great amount of Crown land.

I should like now to turn rather more specifically to the points made by my hon. friend yesterday. He said that the present Government scheme should be carried out in the coastal region because up and down the coast north and south of Mombasa there are many Africans who are dispossessed of their land, who have no means of subsistence, who cannot find employment anywhere and who depend almost entirely on the piece of land that they have, mostly two or three acres, and quite close to them they see very large tracts of Government land and forest which are lying idle and not used by anybody, but they are not allowed to step in even for subsistence cultivation. I have already said that Crown land, apart from forest land, is very small in quantity, that is to say, in the accessible parts of the coast. I perhaps might interpolate this, that I had the pleasure of spending part of last week-end with my hon. friend the Minister for Tourism, Forests and so on. He took the opportunity to go and have a look at the forest area lying between Lamu northwards to Ras Kiamboni which, as hon. Members will know, is on the southern boundary of Somalia. There he discovered, I think, something like 2,000 square miles of forest of various kinds and it is not possible for us to know what value that land could be as forest land, or indeed as agricultural land. But while we are on this subject, I do suggest that it might be a very good thing if an agricultural survey could be undertaken because the potential accommodation is obviously enormous there.

Now in regard to what my hon. friend the Member for Mombasa Area said, I do not know, because he did not specify, whom are the people who have been dispossessed. I think he may have been referring to some recent claims made on

[Mr. Usher] behalf of the Wadigo, who have been said to have some kind of claim to all the South Coast area. That claim is, I believe, quite without foundation. In point of fact, there is a Wadigo reserve within the Protectorate lands of some 70 square miles and, of course, there are there, as in other parts of the coast, numerous reservations of land like the Wasin Arab land, the ex-slave settlements such as Tezo, the Mahajiri reserves and so on. There are many such reservations of land which are occupied by people who I would call Africans as distinct from the Arab and Swahili, and in this I am thinking of the three tribes and the Nine tribes. There have been many Africans apart from the Swahili and the Arabs settled on the coast for a long time and nobody wants to disturb them, but the recent incursions, certainly in my time, have been largely from the interior, incursions like those of the Giriama and what are generally known as the Nyika tribes and people who generally want to get away from headman and tax and all the rest of it and live a quiet and undisturbed life. Well, I do not blame them and there they are. But I would take Government to task over one thing: it has in recent years given grants of leasehold of unalienated Crown land and when the grantees have got them they have found them just full of these squatters and people who will neither work, nor will they shift, nor is the Government disposed to shift them, even supposing that they have not proved quiet enjoyment of that land for 12 years and so gained a right of prescription.

Now so far as employment is concerned, I think my hon. friend was really quite wrong if you examine the figures of employment for the coast you will find that the coastal tribes supply, I think, only about 37 per cent of the total labour force. In an absolute sense it is not even that because the members of the coastal tribes are not regular workers; they like three months on and six months off. There again, I do not blame them, but that is the way of it and there is no apparent hardship that could be removed by settlement of these Africans in the way that he suggests.

He spoke also of the Malindi Arabs who have taken in recent years—I think he said in the last three or four years—to demanding rent from Africans who have settled on their holdings. I have some sympathy with that point of view; nevertheless, I believe, and I am advised certainly, that the real reason is that the owners of the land woke up to the fact that these people were getting rights of prescription and that they had better regularize the matter from their own point of view by raising some rent. Whether

it is large or small I do not know, but that I believe is the cause of that particular grievance.

I merely want to conclude now by saying what I believe to be the real state of affairs, that we do hold the Protectorate lands in trust for the Sultan of Zanzibar and his subjects; that his subjects, as I say, are the Arabs and the three tribes and the Nine tribes of the Swahili and those people who were settled in the land at the time and who may be settling and gaining title there now. I believe that the conclusion of the Carter Commission was right, that it would be better not to create special settlements on the coast, but to let people gain their titles in the normal way by buying and selling. The example which comes from Islam of tolerance and good manners has informed all dealings in land on the coast and we believe that all peoples who have settled there, made their lives there, feel that that is so and that that must be their attitude also. We have no racial problems there whatsoever and long may it remain so. I do hope that those who are so anxious to direct the winds of change outside their proper sphere will keep their wind to themselves.

I beg to support, Sir.

Mr. Jones: Mr. Deputy Speaker, Sir, I did not intend to intervene in this debate and for three good reasons. One, Sir, was that I hoped it would end last night and I did not want to do anything to interfere with that but as the wind of change has got one in for today so that has got that out of the way. The second was, Sir, that I could not claim any of the credit for getting money out of Her Majesty's Government but I would like to say, Sir, that I think that those people who have got the money deserve the credit and in my view what they have got is enough. I am sure, Sir, that it will tax all the resources of the Government to spend that money in the time and if that money were to be given even to a profligate commercial concern, they would have difficulty in disposing of it effectively. And my third reason for not intervening is perhaps the best, it is that I do not know anything about land, or did not. When I mentioned that reason to an hon. colleague last night he said: "Do not worry about that, it has not stopped any of the others!" So, Sir, although like the Deputy Chief Secretary I am Welsh and we are supposed to sing songs about the land of my fathers, I personally until yesterday knew nothing about the land problem in Kenya. I thought I was getting along, listening to some very able speeches then the hon. Member for Mount Kenya read out a legal opinion which bowled me right out because I have only got a little bit of land, I have got it because I did not know what I was doing prob-

(Mr. Jones) ably for it is freehold. I am told by the legal opinion which the hon. Member for Mount Kenya read out that it would have been better if I had got leasehold and so I was very pleased to hear today, Sir, that the legal profession is going to continue in business and as the hon. Acting Attorney-General said today, you can always get another opinion.

Sir, what I would really like to say, and most forcibly, is that in this debate we have heard a lot about alarm and dependency and what is going to happen to all of us, just because it has happened over the road. I do not want to do anything to decry the merits and the virtues of the more venerable Members of this Council, but I would like to point out that what happens to old horses in Belgium does not happen to old horses in England.

Sir, I would like to give my wholehearted support to these very fine proposals because until they are seen to be working there will be no real happiness in this country. I support, Sir,

The Chief Secretary (Mr. Courts): Mr. Deputy Speaker, Sir, I thought I might start by giving some impressions of this debate because I do not intend to deal with this debate in detail which I propose to leave to my hon. colleague the Minister for Lands. I, like the last speaker, know little about land and own none in this country and therefore I feel I can be impartial in my observations.

It seems to me that on a subject which as everyone has said engenders such emotions in this country, on the whole, with the possible exception of a few outbursts which were to be expected, the standard of this debate has been very high and people have, to a large extent, confined themselves not so much to the details of the two Papers but to their own personal feelings on the subject of land and they have examined the proposals to a very large extent from their own personal and particular point of view. I was particularly interested in what the hon. Specially Elected Member said in an aside to the hon. Member for Ukamba about a hot seat. It seemed to me that many Members speaking in this debate have very hot seats indeed, and are looking forward with both eyes very much fixed on the election which is coming next year and that appeared to me to colour to a very large extent what they wanted to say in this debate. Indeed, some of them went so far as to say that the Government should not have introduced this Motion at all. Now it seems to me that the answer which we have had from this debate is that we were abundantly right in producing our Sessional Papers, in introducing them

in the way in which we have done and in giving this Council the opportunity which it has now had in thrashing out what, after all, is one of the most difficult subjects that anyone has to deal with in this country. Even the hon. Member for Meru said this: "Even the Government"—I do like that beginning—"Even the Government here is trying to do a lot of sensible work to help bridge the gap between what is to happen in the future for the improvement of our country." Sir, I regard that as high praise indeed.

Now, Sir, the hon. Specially Elected Member Mr. Blundell referred to "The Imposed emblem of an alien and colonial rule". Speaking as one I hope that my observations will at least be impartial but in talking about the hon. and Specially Elected Member I would like to raise a point which he himself referred to, about the statement made by the Prime Minister in dealing with the Central African Federation and he asked why the Prime Minister had not mentioned Kenya. Perhaps the hon. Member was unaware that this matter was dealt with by the Minister of State in Parliament on 28th March and for the purposes of record, with your permission, Mr. Deputy Speaker, I would like to quote what the Minister of State said on this particular point. He said: "I have heard on many sides that there is great apprehension in Kenya because when the Prime Minister was making his speech the other day in which he told of his African visit and the various countries he had been to—he was talking about the Federation and he gave an assurance that the Federation would not be let down or deserted. This was a perfectly normal thing and one would have thought no more of it, but the cry went out in Kenya that 'We were not mentioned, therefore we are going to be deserted.' I can only assure your Lordships that the Prime Minister when he was talking of the Federation did so because that was one of the countries he visited, but it equally applies, and I give full assurance on this to people in any other African territory in which Europeans live including Kenya, who of course are included in the words of the assurance which he gave." And I hope that is a very full reply to the point which the hon. Member raised.

Now, Sir, I want to deal, as I have said earlier, not with detail but with three specific points in this debate, first of all with title, secondly with the question of treaties which as been raised and thirdly with the point about the lands in dispute. As to the question of title—and here I would like to congratulate very heartily the Deputy Chief Secretary on his maiden speech in this House, it seemed to me that he analysed this particular problem probably a lot better than I will now try to do myself. But I also

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would like to congratulate the hon. Nominated Member Commander Goord, who in his usual quiet manner talked a great deal of sense about the points which we have been debating.

There seems to me, and must inevitably be, a great deal of confusion when one is talking about title to land when we have, in fact, two entirely different systems operating in the country. One is individual and the other is communal. One of the Elected Members, I cannot remember who, said that the Crown did not own the land. Well, if the Crown does not own the land, the question is, who does? And when I ask that question I am asking really who owns the residual title of the land, in other words if land becomes vacant who ultimately owns it? As long as the British Government rules in Kenya, obviously the residual title of that land is held by the Crown, and as Commander Goord so properly pointed out, when we move to an independent state in Kenya, obviously the independent state of Kenya will hold the residual title of the land. Therefore, it seems to me that people are confusing this issue because one lot of people are talking about their own particular piece of land, which they themselves own. For instance, once again to quote the hon. Member for Meru, he said that what is important is whether a man who owns a piece of land can have it. That seems to me, looking to the future, to be absolutely vital, because as we move away from communal tenure of land, surely the evolution that we have is going to be towards individual title to land. If we do not do that and if we do not accept that every person who owns a piece of land and has title to that piece of land is able to own and continue to own and have that piece of land, then in my mind nothing will result but chaos. The problem at the moment is, as I have said, being looked at through two eyes, one eye has a focus of individual tenure on it, and the other eye has a focus of communal tenure on it, and as I have said we are getting completely confused. But if we do not accept the thesis which I am trying to put forward that we are going from a communal tenure to an individual tenure where everyone will be quite certain that he can keep his piece of land, then what in the name of thunder is the Government doing in trying to settle a whole lot of people on pieces of land in these proposals now put forward? What I feel is that Government is absolutely right in going forward to this next stage in our development. The hon. Member for Nairobi Area said that this Government was incompetent to take these decisions. All I can say, Sir, having said what I have said about hot seats and the difficulties of people of those seats in the future and at the

next election, I would say that the only stable thing in this country at the moment is the Government and I am very glad to say that it is so.

With this stable element and looking round us as we see difficulties here and there, I think it is right that the Government should go ahead with the proposals that it has and not be subject to the statements that it should be for another government to bring in proposals to be put off from a course which it believes to be eminently right.

Now, Sir, I am going to turn to this question of treaties because it concerns particularly the Masai and I will also mention the question of the Coastal Strip. When his Excellency the Governor made a speech the other day at Kajjajo and I have it in front of me, the text of his speech, he was reported, I think I am right in saying, although I am not certain about this, as having confirmed that the treaty with the Masai no longer had any competence within this country of Kenya at the present moment. Sir, if he was reported that way, and if people feel that is so, it is quite wrong. The hon. Member for South Rift quoted part of his speech, but he did not quote the whole of it. With your permission I would like to quote exactly what His Excellency said. He said, "With your help," and I would like to underline these words, "With our help, when the time comes for us to hand over power, you will need new treaties or agreements and understandings with the Kenya Government of the future, in which I hope you will play your part." He did not, therefore, say that the present treaties were going to be thrown away. He said, further, "With our help," which means the help of the British Government, "we will be able to help you to negotiate a new treaty or a new understanding or a new agreement with the Kenya Government," and the same thing appears to me to apply equally well to the question of the Coastal Strip, unless, of course, this may happen and I do not know, but unless the Coast Province of Kenya is joined with Zanzibar and becomes an entirely independent territory of its own, unless the Masai become an enclave in the middle of Africa, possibly under the United Nations Organization, or arrangement of that nature, the two pieces of land to which I am referring will be part of Kenya and you cannot have two parts of Kenya making treaties with an outside power, therefore, what His Excellency said seems to me eminently right, that when the time comes and with our help you will be able to negotiate a new agreement with the new government.

The hon. Member for Nairobi Area commenting on this said, "If the Masai cannot be given

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guarantees, why are we being asked to guarantee Europeans?" which seemed to me, Sir, a specious argument because, in fact, as I have pointed out, up to the time of transfer of power, Her Majesty's Government will be guaranteeing its treaty with the Masai and, indeed, beyond, with the steps which I have already mentioned and, indeed, that seems to me to be exactly the same position as I have tried to argue with anybody who owns a piece of land on an individual title in this country at the present moment. And here we are up against the same old problem again, it is individual title or individual rights versus tribal rights and what we have got to do which will help everyone whether they be individuals or people tied up in tribal and communal titles, is to finish up with an individual freehold title which the Government of the day will respect.

Now, Sir, turning to the question of land in dispute, I would like to take the speech of the Member for North Rift first of all in order to deal with this particular point. If anyone was a hot squatter I feel that he was in his attitude to land and in his speech about land. He made three, to my mind, quite fantastic remarks. His first remark was that the Civil Service was running the Government. Sir, I acknowledge the compliment which he has paid to us, but I would like to point out that of the 15 Ministers that we have at the moment only five are civil servants and in the government of the future only four will be civil servants.

Secondly, he said that the Government in producing these Papers did not take note of the views of the African Members. He knows very well, Sir, that indeed we took very careful note of their views; that indeed meetings were arranged with the African Elected Members on this subject, and even His Excellency himself had either two or three meetings with the African Elected Members, and we therefore did take note of the views of the African Members. Indeed, part and parcel of the proposals which are before the House represent the fact that we were trying to meet the views, not only the African Members, but Africans as a whole, in suggesting that we should do something to settle the landless population of this country.

Thirdly, he made, I think, if I may say so, a wrong remark about the Lembus Forest. In the first place the whole of the Lembus Forest has been handed over to the Tugen tribe. There were certain conditions attached to that handing over. As he knows it is a forest area, and he is well aware that the tribe itself had said that we must protect the water catchment area for the Perkerra River. The tribe itself accepts that. We first of all said that we thought that the tribe

might have 16,500 acres, but we then increased that to 20,000 acres, despite the fact that we had considerable doubts as to whether or not that particular area would spoil the water catchment, and yet he has said that this is not enough, that he wants more. What I want to tell him now is that we have told him that on a technical basis we cannot give him more of the tribe more in the forest area. If he feels that there should be other parts where the right-holders which are going to be established on those lands should be settled, then that is another matter. That is something into which we can go, but he must not stand up here and say that we have refused to give these particular right-holders enough land in the Lembus Forest, because that is not correct.

Now, Sir, on land in dispute generally, I would like to support very much indeed what the hon. Specially Elected Member, Mr. Slade, said yesterday evening, in an excellent speech, because we have in front of us, and all of us can get hold of it if we want to, the Report of the Kenya Land Commission. I think, Sir, that we must stand on the Carter Land Commission as a piece of impartial evidence. I would like to answer the point about Tindoret, although I am prepared to accept that the hon. Member for North Rift will probably want to argue about it again, but I would like to draw his attention to paragraph 104 on page 273 of the report which says this, and I quote: "The boundary of the Nandi Native Reserve was originally defined in 1907. The proclamation referred to is 'as accepted by the chiefs of the tribe at the close of the punitive operations in 1906'. It was subsequently found that some of the land included had already been leased before the reserve was proclaimed, and revised boundaries were gazetted in 1910 after the agreement of the Nandi chiefs had been obtained. The area enclosed by these revised boundaries was some 70 square miles larger than that defined in 1907." In other words, the Carter Land Commission said: "Yes, admittedly some of the land was leased to other people, but with the agreement of the chiefs it was later revised, and the final area was 70 square miles larger than it had been previously." These are the points, Sir, which I feel that hon. Members must make when dealing with the question of lands in dispute.

Now, Sir, coming to the main point which of the Government that we agree that there are spheres of influence. I think this was the expression which the hon. Member himself used, and I am prepared to admit that in considering the question of settlement, and in considering what we are going to do under these proposals, we must look at and be prepared to accept that

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there are spheres of influence amongst tribes as there are at the present time, and that we have not yet got away from real tribal feeling. The hon. Member for Embu and Nyeri said that if the Government is going to settle the prior and legitimate claims of such tribes as are adjacent to the areas they should be met first of all, but, Sir, as I have tried to say earlier in this attempt to analyse the difficulties of communal feelings and individual feelings, if we are going to settle people further on land in which a particular tribe has got a sphere of influence, it must be on an individual and not on a communal basis. It must be so that these people can feel that they have got an individual title to a piece of land, and they go forward into the new world in a proper sense of evolution as I have tried to explain.

Also, Sir, I would like to give an assurance that there will be complete consultation all the way along the line with the tribal authorities before people are settled. As I envisage it I would suggest that it might happen this way: that if somebody has a piece of land to sell he will offer it to the Settlement Board. The Settlement Board will make careful enquiries, and if necessary consult with the tribal authorities concerned, and then decide which people will be settled on that land, and further I suggest that it will be after discussion with the tribe for the individual to reimburse the Settlement Board with the expenses which they might have on this land.

Sir, these are the points which I wish to make in this debate. Finally, I would like to say this, that we believe that it is necessary in the context of Kenya to take a step forward; we believe it is necessary to let down land barriers in order to take the heat-out of racial relationships; we believe it is necessary for two entirely separate reasons which have been explained to this House to settle people on the land, and we are taking this step possibly in a world which may appear dark to us all at the present time, but I support the hon. Nominated Member, Mr. Cowie, when he says that if we are not prepared to have faith in the things that we believe in for this country, then there is no hope for any of us of whatever colour or whatever race. And Sir, I think, that we have been very greatly supported in this debate by the majority of speakers who probably feel the same way as I do.

I beg to support.

The Minister for Local Government and Lands (Mr. Havelock): Mr. Deputy Speaker, I do not believe there is a cricket match or the Derby today, so I can go on after quarter past five.

Sir, I think that the Government's attitude—the Government's proposals—in spite of receiving considerable criticism from all sides of the House—I think they have been justified because a lot of the criticisms have cancelled each other out, and I hope because of that I will not have to speak for very long.

The hon. Director of Agriculture, or Permanent Secretary to the Agricultural Minister, the hon. Solicitor-General, and the hon. Chief Secretary have all answered a number of points, and I will try not to repeat anything they have said, although I must admit that with the large volume of notes I have here it may be a little difficult to sort them all out.

But, Sir, may I start with the hon. Member for Mount Kenya? I think indeed that a lot of his points have already been answered or commented upon, because he might not want to accept them as answers, by other speakers, but there are one or two which I would like to deal with, mostly points of detail. For instance, the hon. Member said that there was no indication in the Sessional Paper with regard to undeveloped land in Masai. Well, Sir, I would point out to him that the Sessional Papers deal with land outside the native land units.

The next point he raised was to the effect that in the conversion terms of freehold the actual stand premiums had been ignored. Well, the stand premiums paid were, of course, paid on an agricultural value. They were not paid as if the land was to be used for anything else, and indeed they do form part of the purchase of the freehold. They are in addition, admittedly, to what would be paid in terms of rent in either a lump sum or over a period of years, and indeed the value of that land when sold originally was calculated, as the hon. Member must know, in terms of stand premium and the remainder of the value in a rent over 99 or 999 years.

Another point he raised, Sir, and one that other hon. Members raised as well, was that regional boards would be dominated by Government nominees or Government dominated boards. I think other hon. Members suggested that even divisional boards were also so dominated, and I think I understand what the hon. Members are getting at, but I cannot accept it. First of all, of course, the actual Government nominees—the actual Government servants—on these boards will be in a very small minority, and they are really there in a technical advisory capacity, but I think the idea behind the words spoken—the criticisms—by hon. Members, is that members of agricultural subcommittees and agricultural committees are in some way dominated by the Government. Admittedly, when

[The Minister for Local Government and Lands] the representatives come to the full agricultural board they are chaired by a man who is the whole-time officer, or rather paid by the Government to do the whole-time job, but I cannot see that it can be maintained that members of agricultural committees coming up from the sub-committees—elected to the subcommittees—are dominated by the Government. All indeed that they get from the Government are allowances, certain out-of-pocket expenses, and if that is the reason for suggesting they are dominated or influenced by the Government, well then exactly the same reason could be drawn and used for an accusation against hon. Members of this Council, that they were dominated and influenced by the Government.

— An hon. Member: We are.

The Minister for Local Government and Lands (Mr. Havelock): I am very glad to hear that hon. Members opposite are. The one hon. Member in this House, Sir, whom I cannot consider is dominated by the Government is the hon. Member who has just interrupted.

Sir, the next point, again a point made by a number of other hon. Members, was that divisional boards should be allowed to refuse applications for any reason. I think the idea behind that is that they have to give reasons as to why they refused, and that an appeal can go to the regional board who can take the reasons which they have set out and given as the basis of their judgment as to whether to let the application go through or not. Well, of course, I think hon. Members fully realize the facts behind this, that the one reason that is indeed excluded from what is set out in the Sessional Papers, is the reason of race, and lands are treated in a different way: I think a more unsatisfactory way.

In fact, what happens is that the divisional boards, I understand—according to the law—according to the Ordinance—can refuse on any grounds, or shall we say, it is not stated that it has to have any particular grounds to refuse on, but the regional boards can be directed by the Governor, and the regional boards can direct the divisional boards, and that, it is in fact, what is happening. The regional boards have been directed by the Governor that transactions will not be refused on grounds of race, and by the regional boards—the divisional boards—are so directed. I do not think that is nearly as satisfactory a position as the one which is suggested for the Highlands in these Sessional Papers, which is that the Governor cannot direct either regional boards or divisional boards except to state that certain classes of transaction will not take place. He cannot direct that certain classes of transaction will take place, and

I believe that that is a more satisfactory position than what was suggested by the hon. Member.

The matter of security of title has been brought up, of course, naturally by a number of hon. Members, and has been discussed and commented upon by the hon. Chief Secretary. I agree, and indeed I think if hon. Members will check the speech I made in moving this Motion, that I made quite clear that I feel that there are moral obligations on whoever has issued a title in the terms in which titles have been issued in this country, and that, as I have tried to point out, I am sure, is fully appreciated by Her Majesty's Government, which is the reason why Her Majesty's Government is looking into the matter so urgently and at such high level now.

I will not discuss the legal points which were dealt with by my hon. friend, the Solicitor-General. I could not add any thing to them.

There is a point I would like to make—and let us be quite frank here. Again, it was the hon. Member for Mount Kenya who said that he thought that Her Majesty's Government should undertake to compensate all farmers on expropriation—undertake now—presumably. Well, if as the hon. Member seems to think, that the future Government of Kenya is going to be an irresponsible one, is that not the most tempting thing that Her Majesty's Government could do? If indeed the hon. Member seems to think the Independent Government of Kenya will be so irresponsible as to take the risk of upsetting the economy of the country, by expropriation without compensation, then is it not just tempting them to do it to say that somebody else will pay? I think the hon. Member should think that one over.

I now turn, Sir, to the speech of the hon. Member for Nyanza Central, and really I have not got very much to say about it, except I was disgusted with the whole thing. He indeed helped not a bit in the present situation where people have doubts and suspicions. He said the whole land of Kenya belonged to the Africans, and he went on on this sort of line. I think the hon. Specially Elected Member, Mr. Slade, answered him shortly, and better than I can, when he pointed out that especially with regard to the area that the hon. Member was referring to—his own area—historical research might not really support his own case for the land he occupies. Surely, as other hon. Members have said, and here I want to say how appreciative I am of the number of responsible remarks that have been made in this Council during this debate by hon. African Elected Members, although curiously enough some of those remarks were in speeches

[The Minister for Local Government and Lands] where irresponsible remarks were made as well, and it struck me that a number of hon. Members really were not quite sure what they had to say although they were pretty sure in their own minds what was the right thing. A number of such responsible remarks have been made, and I hope, and very sincerely hope, that the public will take particular note of these remarks. There was one rather silly reference, I think, made by the hon. Member for Nyanza Central, when he said that farmers are deciding their rents. Well, of course, that is ridiculous. Farmers have never decided their rent. The Government have decided their rent and will continue to do so.

Sir Charles Markham: Shamel. Where is this freedom?

The Minister for Local Government and Lands (Mr. Havelock): Now, if I may turn to the speech of the hon. Member for Aberdare, I do not really want to comment very much on it. The hon. Member referred to my hon. friend the Minister for Agriculture and myself as Tweedledum and Tweedledee. I think physically anyway he has got something to base his remarks on, but he did remind me of Lewis Carroll and, indeed, shall I say, his whole speech reminded me of words spoken by a character of Lewis Carroll. It was all about shoes—running shoes; ships—I seem to remember Mr. Stonehouse, or was it Mr. Fenner Brockway, who said some years ago, two or three years ago: "Let us have the Queen Elizabeth twice in Mombasa Port and get rid of the problem of European settlers." Sealing wax—yes, trust in documents with great big seals on them instead of trust in human nature; cabbages—well, cabbages do not think much; kings—dictatorships: "What are we going to do? Somebody is going to bash our heads in after independence!" I think in my own view that was the tone of the hon. Member's speech and I have nothing further to say about it.

I now turn to the hon. Nominated Member, Colonel Jackman. He paid great tribute, rightly so, as a number of other hon. Members did, to the Kenya National Farmers' Union when they set up their committee and took evidence all over the country on Sessional Paper No. 10. I also pay tribute to them for doing that. They did a lot of onerous and honorary work and their paper which was presented to the Government was extremely useful indeed. I also met representatives of the Kenya National Farmers' Union to discuss their paper and out of all their paper and our discussions Sessional Paper No. 6 emerged. But it was not only from their paper and not only from their discussions—that is why I want to emphasize. Although they did a very

good job we also had very considerable help, from the Board of Agriculture and their representative, from the Association of Local Governments, and a number of individuals and other bodies. Although the Kenya National Farmers' Union did a good job, I cannot allow tributes to go by, without paying similar tributes to other bodies.

He also mentioned the matter of the five-year option period for conversion to freehold and suggested that if a man who now owns a farm does not convert to freehold and then sells it later and the new owner wishes to convert to freehold it might be rather unfair if the five-year period had elapsed and the second owner was not able to convert. Since he made that remark we have been giving some further thought to this matter and I will give him an assurance now that we will seriously consider a suggestion to the effect that the period of conversion to freehold might well be unlimited, but the period of conversion to freehold on the present terms must be limited to five years. In other words, after five years there may well have to be a revaluation and reconsideration of the terms, but the actual opportunity to convert may go on. Some people seem to think that it might in five years' time be cheaper to convert. I wonder—it might be more expensive.

Mr. Blundell: Mr. Deputy Speaker, Sir, would the hon. Minister give way? The hon. Minister is raising an important point and I wonder whether in speaking he has made a slip of the tongue? He spoke about revaluation and reconsideration. We on this side would accept reconsideration, but surely revaluation is actually handled by the existing Crown Lands Ordinance and therefore revaluation can only be within the terms of that Ordinance, not an arbitrary one.

The Minister for Local Government and Lands (Mr. Havelock): I think that reconsideration would cover revaluation anyway. We cannot, of course, alter the valuation of the farm for 15 years according to the Ordinance. We realize that.

Sir Charles Markham: Interjection.

The Minister for Local Government and Lands (Mr. Havelock): I think the hon. Member had better await events. I said 15 years. But the fact is that the actual terms might be so altered on reconsideration that the cost of freehold on conversion might be altered quite drastically, too, one way or the other. I do agree, though, and I thank the hon. Member for interrupting, I am not suggesting there shall be a revaluation within five years.

I think the only other remark of the hon. Nominated Member I would like to mention was his fear that peasant schemes with plots of, say,

[The Minister for Local Government and Lands] 15 acres or so, might degenerate into subsistence. Well, of course, it is difficult to judge what prices of farm produce are going to be in years to come and I think the hon. Permanent Secretary to the Ministry of Agriculture has dealt with that. I merely want to underline the fact that the Government will do everything they can to avoid any danger of the present schemes becoming merely subsistence even in the future.

Now, if I may turn to the hon. but absent Member for Nairobi West, he brought up the analogy which again was mentioned later by some other hon. Member who spoke today. I think, between the civil servants and the farmers. Indeed, it is a matter that I think has a certain amount of justification for it; it is not 100 per cent similarity, but a similarity. He also asked whether the Secretary of State's statement with regard to security of land referred to all land or only to agricultural land. I would say that it will refer to and does refer generally to all land and, of course, if he looks back on the record of Lancaster House he will see that property is also included. I would certainly agree that title to all land is necessary to secure. But here I think it is only fair to point out, as has been so well shown in this debate, that the emotional issues are really confined to agricultural land. Therefore, one might say—at this point, anyway—that there is more pressure against agricultural land than any other type.

I do not think, Sir, that I need refer to the speech of the hon. Member for Nairobi Area. A number of other hon. Members have referred to it and dealt with many points he has raised. I need not refer to it because he did not even listen to my opening speech and that was quite obvious from certain remarks he made of his own. Neither is he here to listen to any reply and therefore, as I say, I do not think I really need deal with him in any detail except, I must say, he was rather difficult to understand. His was one of these "plus and minus" speeches too. At one period in his speech he would be very antagonistic towards the Government; very much saying that any new government could do anything they wished. And yet he went on and underlined the fact that any African dominated or independent government would naturally have to have a very close regard to the general economy of the country and that therefore farmers and others should not be frightened of them. I think in that way he made quite a contribution. He said, for instance, that on property rights, business and industry, commerce and so on, he and all his colleagues have all agreed emphatically that safeguards should be written in to any constitution to see that they were not

expropriated in the future. That comes back to what I have just said, that it is land—agricultural land—that is the emotional issue at the moment.

Incidentally, I think it is only right and fair to say that the hon. Member seems to be continuing in that tone, a very good and encouraging tone, over in America where he is at the moment.

The one point that he did make which I think was unfair and I should correct is that he says that Government says that they must do everything to give Europeans security before independence. Of course that is not so at all and I emphasized as strongly as I could in my speech that security of title is not a racial matter at all. Security of title is a matter of individual security and the people who are going to be settled, new settlers or whatever they may be, mostly African, under the different schemes outlined by the Minister for Agriculture too need to know and to have confidence that their title is as secure as anybody else's. Sir, there is nothing racial in this at all.

Now, Sir, if I may turn to the hon. Member for Rift Valley, or South Rift, I think—the hon. Member who had a certain confession yesterday on his head—he said, Sir, that in granting freehold titles to Europeans we were in fact establishing Europeans in the Highlands rather more strongly than we are today. I think that is more or less what he said. That again is not so. Again I am not going into detail on this: the whole basis of the reason for freehold title has been described by other speakers and the one thing I want to re-emphasize is the Government's policy that land tenure should be on a similar basis throughout the country is still the Government's policy and that is the main reason why freehold title—the option to convert to freehold title—is given. We should try and converge towards similar land tenure everywhere as soon as possible.

He also was rather racial or tribal, I think, in his remarks which again I understand but I do wish that hon. African Members would try to get away from this. I think I am right in saying that the time will come, he said, when it will be impossible for land to be held on non-racial or non-tribal basis. In other words, the whole of Kenya is going to be chopped up amongst the tribes. Well, of course, if that is his attitude, if that is his idea of the future, all I can say is that he will not be a successful member of a government which has to cope with modern conditions and administer its territory in a modern, civilized way. That is an anachronism and will have to go. The sooner hon. African Members

[The Minister for Local Government and Lands] are prepared to tell their people that as well as letting us tell their people, the better.

Again, I think, the hon. Member referred to the matter that these particular policies or these Papers are only the start of the policy and I will come to that in a minute. Oh, no, I am wrong: that was raised by another hon. Member. I seem to have got another note but I cannot find who said it—Ah, the hon. Member for Ukamba!

Sir Charles Markham: I will take the blame.

The Minister for Local Government and Lands (Mr. Havelock): I think I have answered him more or less on the matter of the Kenya National Farmers' Union although he said that I should reconsider some points the Kenya National Farmers' Union made and the European Elected Members made. I will do that but I do not think there is much that I can do to help. I may come to one or two small points that other people raised in detail, especially the hon. Member for Kiambu who made a detailed speech, and in one way or another I might be able to help. However, I do want to emphasize that the Kenya National Farmers' Union were not the only people and there were large bodies of opinion which did not agree with the Kenya National Farmers' Union. I also think that on the whole the compromise that has come out in Sessional Paper No. 6 is quite a satisfactory result which will go a long way to help most people but not completely satisfy everyone, which is always the case when Government policies are put forward.

I think a number of the hon. Members—in fact most of the hon. Members—remarks have been answered by the hon. Permanent Secretary to the Ministry of Agriculture and I now pass on to the hon. Member for Meru.

He raised the point which again was raised by other hon. Members and I would like to stress it and record the fact the demand for land by Africans is greatly a matter of social security. He, I know, tied that not only to Africans and African land units but rather especially to squatters and resident labourers in the settled areas.

I fully understand and recognize that that is a rather important factor and there is no doubt that although in this House we have said so often, indeed when I was responsible for that particular side of things I said so often that we could not, and that the Government could not, afford social security schemes at this time, I must admit that I think that the Government must look upon a social old-age pension scheme as being of the highest importance. It will be difficult to finance it we know: it will have to be contributory and it cannot be just something

handed on a plate: but that matter is so closely connected with the demand for a few acres of land on which to retire in one's old age that it must be very seriously considered and very urgently so. I know the hon. Minister for Labour is looking into it now.

I must say that I thought that the hon. Member's speech was one of the most balanced speeches in this debate. He described the Europeans as a tribe and he said that he thought the European tribe, maybe, had a bit more land than they need have, but that other tribes also had a bit more land than they need have, and that really what we want to do is to get down on a sensible basis and talk it out and redistribute the land where the need is greatest, but not taking land away completely from any tribe, including the European tribe. That is the line of thought, although tribalism, as I have said before, will become an anachronism, but he did not go to the extent that other hon. Members did to say that all the land belonged to the Africans and that they did not want anybody else here. I do congratulate him on that speech. I also recognize a point that he made caused some amusement in this House, and that was that logic was not the answer to every question. I fully agree that it is not, and especially when we are dealing with this sort of subject where the emotions are concerned the human approach is very important indeed.

He also said that Europeans think that Africans have a secret plan to drive the Europeans out. He then went on and said it would be quite foolish to destroy the coffee, etcetera, in order just to have "land reform". There again is one of the remarks made by an hon. African Member which I think should be more widely publicized. I fully agree with him and I personally do not think that African Elected Members have any secret plan to drive the Europeans out because I am sure that they have not, and the great majority of them fully recognize the necessity to maintain the economy through the farming industry.

The hon. Member for Kiambu—I thank him for the remarks he made and the fact that he gave full support to this Paper—did ask one or two detailed questions. He suggested that there might be one regional board. The Government has not committed itself yet as to what the number of regional boards might be. I must admit that I think the most practical solution would be to have one regional board east of the Rift and one regional board west of the Rift, but I do not think that one regional board for the whole of the present Highlands area would be practical and also I know it would be open to suspicion as merely a replacement for the

[The Minister for Local Government and Lands] present Highlands Board. He then asked why the divisional and regional boards should cover agricultural areas rather than the country areas. I think that again we are not committed to the areas they will cover and indeed there is a revision going on now, I understand, of the areas which the agricultural committees and the sub-committees should cover, but I think that this matter is really and basically a matter of good farming and good husbandry and I think that it is probably best to link in with the agricultural committees rather than with local government.

He also mentioned Government-controlled regional boards, with which I have dealt.

He brought up the matter of transfers of shares which the hon. Solicitor-General has dealt with. It is a very difficult problem indeed. He also brought up the matter of the control of mortgages. This is a very important point. Since his remarks we have been giving a little thought to this and although I cannot commit myself I feel that it might well be possible for us to institute a system of exemption for responsible people, responsible bodies, the banks, et cetera, who normally do give mortgages of this sort, and we might be able to schedule such responsible organizations, which would mean that anybody who wished to borrow money on mortgage from such organizations would be exempted from going before the divisional boards. I think that in that way the difficulties the hon. Member for Kiambu pointed out could well be met. It would not mean that in the case of resale, taking possession and resale, those transactions would be exempt from control by the divisional boards; that would go through in the normal manner. But I think it might well simplify the whole procedure of mortgages and do away with the rather difficult question we had in front of us before, of in any way making it difficult for people to raise money to develop agricultural land.

The hon. Member for Embu and Nyeri also, I think, made a very balanced and constructive speech, as is usual with him. The one thing which he did ask about was that consultation should take place between the Government and the tribes concerned before settlement schemes were entered into. I think he must have noted the assurance given by the Chief Secretary in that respect, and that is what will be done.

He did say that he thought that the legitimate claim of each tribe must be met. Well, of course, the difficulty is to establish which are legitimate and which are not, but the Government has noted very seriously the remarks on these lines and indeed they were followed up, I think by the hon. Specially Elected Member, Mr. Blundell, and in some way I feel that this debate has

shown the way through this difficult land problem. I believe that with goodwill—there seems to be quite a considerable amount of goodwill—most of these questions can be settled amicably and in which case the whole basis of security of title and so forth, I think, can then be properly and firmly established, and it is certainly in speeches like the one I am referring to now which was given by the hon. Member for Nyeri and Embu that encouragement for this sort of result is very apparent.

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

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

With regard to the speech of the hon. Nominated Member, Commander Goord, there was one important point he brought out. I may be wrong in that he may have whispered this to me; he may not have brought this up in debate, but in any case I would like to take this opportunity of dealing with it. I think it was he who said that he thought that in some way or other we should adjust and amend the provisions with regard to the quorum of a divisional board, and I think he is right. I think it is laid down in the Paper that the number should be five. Some boards might consist of six or seven only, in which case a quorum of five might be a burden; others may consist of 12, 14 or 15, in which case the quorum of five might be absurd. I think that we can find a way of stating that a simple majority of voting members will form a quorum.

The hon. Specially Elected Member, Mr. Blundell, has been congratulated on all sides for his speech, and certainly would like to add to those congratulations. I think his speech was excellent and I liked especially the point he made when he said that now is the time to plan because in any case any Government will have to go into land reforms in the future, so let us start now. That indeed is what the Government is doing. He then went on with a lot of other matters, most of which I agreed with, and mentioned the speech by the Prime Minister to which the hon. Chief Secretary has already referred. But as I was casually glancing through a report of a speech by the Prime Minister himself only on 13th April, this year, which I think is very relevant to this debate, and in order to satisfy him even further than the Chief Secretary and Lord Perth in the House of Lords have satisfied him, I would like to quote from this speech which was made to the Joint Commonwealth Society's Conference. After describing his trip to Africa and South Africa and after dealing with the independence of South Africa in 1909, he went on, "We recognized then, and we recognize now, the strength

[The Minister for Local Government and Lands] of the desire for the formation of new independent nations on the continent of Africa. It is a legitimate aspiration. It is one with which we are ready and willing to co-operate. We are glad to see the development of the nations in the world to which we already stand in the relationship of parents. Like all parents we would like to see our children take after us. We would like to see them follow in our footsteps not only in their independence but in their free institutions. We think a country is only truly free when all its inhabitants are secure in their rights and understand their duties. That's the policy which we are trying to apply where we have responsibility in those territories where people of various races live together. The communities of European and Asian origin are for the most part composed of people who have made those lands their home, unlike those traders and administrators who have worked and are working in countries such as Ghana and Nigeria. In Kenya and the Federation of Central Africa these Europeans and Asians have their home there and they have no other home. It is they who have created by their vigour and constructive action the agricultural and industrial wealth of these countries. On their sense of security future progress depends. Moreover, apart from interest, common justice requires that they should be safeguarded and protected. Even in homogeneous communities the will of the majority must not ride roughshod over the rights and interests of the minorities, still less in multi-racial communities. Any of my American hearers will recognize this as one of the cardinal doctrines of the United States political theory. They call it the Doctrine of Concurring Minorities. It is of course particularly important in the United States because of the wide variety of interests represented in that vast country. We, too, pay respect to the same doctrine ourselves so far as it is applicable to our circumstances and it is a sign of political maturity not to abuse a preponderance of strength. If these principles are followed and fairly applied there should be a great future for the multi-racial territories in Africa. Most of them are favoured by climate and natural resources. Of course it would be foolish to deny that the problems are great, but so are the prizes. For the European has brought to Africa a guarantee of vigour and enterprise in economic development which offers to the multi-racial states, given goodwill and confidence, a tremendous guarantee of expansion and prosperity. I suggest that the Prime Minister's words percolate up really the whole of the arguments, feelings, and suspicions about security of title and the place of the Europeans and Asians in this country in the future. Surely what he ends up

by saying is that for their own sake the African peoples should encourage the Europeans and Asians to stay because with them they can make a most tremendous success, economic and otherwise, of this country, whereas without them they might not.

I would like to refer very quickly to one or two other speeches and firstly to that of the hon. Member for Nyanza North. He said, Sir, and this again was one of those speeches that was a plus and a minus, at one time that the conversion, or the offer of conversion, to freehold was really designed to trap a future Government. The number of suspicions that is raised in the minds of hon. Members on this subject is legion, and they are to my mind very often incomprehensible. That applies to all Members sitting in all parts of the House. Of course it is not, and I have explained what the reason for the freehold is, and if of course a future Government does wish to have land reforms then freehold itself is not going to be any further safeguard than leasehold. I will admit that. But it is a similar title to that held by the Africans—or that is what we want to move to—and they do not have to pay rent, and there is, let me say this, a sentimental regard, if nothing more, for freehold, especially in British minds, and because of that in itself it is some slight further security. But this is certainly not trying to trap any future Government.

Having made remarks of that sort the hon. Member went on, I think, to be quite constructive and reassuring when he said that many Africans are determined to see that we have democracy here, and that that means that the property of individuals will be respected. He went on to say that if anyone opposes land reforms now they are wrong, that the Government was giving a safety valve, as it is, and so on.

There is nothing more in his speech I need comment on in detail, but a lot of it was very encouraging.

The hon. Member for the East Electoral Area, Mr. Pandya, made a very constructive speech, I thought. He rather took the British community to task. He compared the courage and determination of the British people during the last war to the sense of insecurity and defeatism that seems to be around today. I am afraid that I will have to admit he is right, but I do not think that that sense is going to last much longer. I believe that we are getting through this rather hysterical jittery period and that before long the determination and courage will come out again, as it always does.

The hon. Member for Rift Valley said if the period between now and independence was short

[The Minister for Local Government and Lands] a lot of money would be needed, but that if the period between now and independence was long a little money would be needed for buying out the farms. Of course, what he is really saying is that if there is a long period a fairly small amount of money in a revolving fund would be sufficient. However, underneath it all he is also saying that he considers that the great majority of Europeans will want to be bought out before independence. I can read nothing less than that into his remarks. I think that those remarks have been rather backed up by other speeches. I cannot understand this attitude at all. He went on and said that there is going to be a mad rush for the £6,000,000 to be made available for purchasing land. I would say that if a fund were started with merely the one underlying reason for it being the purchasing of any land offered, and that that fund was £30,000,000 as he suggested, there would be an even madder rush, because this is not a fund to purchase farms from people who want to leave, although they will be helped in that way; it is a fund to settle people and develop the agricultural economy and also to inject into that economy a large sum of money which is bound to be a stabilizing factor. It is not a compensation fund at all.

He then went on and said that fears are justifiable, especially in view of the utterances of African Elected Members in this debate and so on, and I felt that to some extent, and I say again that the views expressed in this debate were both plus and minus, and on the whole I think they were more plus than minus, and I wish people would look more on the plus than on the minus. Everybody seems to be attracted by the negative and despondent and black picture. I personally like my picture, the other side, and have something worth fighting for.

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

[Mr. Deputy Speaker (Mr. Conroy) resumed the Chair.]

Now, what did the hon. Member say? That is what I cannot understand. The hon. Member said, in effect, that he was not opposed—he was not opposed—to the removal of barriers—in effect—he said that, and he said that nobody had ever said that. All I can say is that I am very glad that the hon. Member for Rift Valley is able to change his mind, because it was not very long ago when he had a very, very different comment to make on these subjects. In fact, the

last comment he made on this in this House in November, 1959, was as follows: "Now, Sir, we do not agree with the principles of progressive removal of land barriers. We consider that existing racial and tribal boundaries should be respected." Well, he is seemingly learning a little sense, and I hope he continues to learn sense and look on the brighter side of the picture.

The hon. Minister for Commerce and Industry asked that a certain number of matters should be clarified. I think that most of them have been, but I would say that indeed the hon. Minister for Labour spoke and clarified those matters on behalf of the Government, and I think I would merely like to repeat that this is, as indeed I said in my opening speech, this is merely a door to allow for land development. The schemes put forward by the Minister for Agriculture are a start to such land development and reform, and that does not mean they are an end by any means, but this is the door and the key, and without the Sessional Papers nothing can be done at all.

Now, another hon. Member stated I think, that for the first time landless Africans were being thought about by the Government. Well, now, Sir, I cannot let that statement go without explaining to the House what we have done over the years for Africans outside the native land units. I will not bother hon. Members with a lot of detail, but land which has been made available outside the native land units—some in the Highlands and some outside the Highlands—totals 492 square miles, which I worked out roughly when other people were speaking, so I may be wrong, to be something in the region of 300,000 acres, and to remind hon. Members because they may think I am just talking a lot of nonsense, but the land has been made available. I may have dropped a nought, but they are Taveta, Taita, Digo, Shimba Hills and Gede, etc. There is the Itembu grazing, Kaimoi, Kipkarren, Lembus Forest, Kipkabus, Kijabe and so on and so forth. I will not give the whole list—it is a very long one—but anyway that is the total 492 square miles. I will not risk the acreage again. It may be that the hon. Member for Ukamba will be able to tell me.

Sir, having established that I can now move on, I think, to the hon. Member for the Western Electoral Area. The hon. Member felt that we were still rather tying things up, that divisional boards and that sort of control should go and make it much more simple. Well, it is a matter of experience that if one is to ensure good farming that it is necessary to lay down certain conditions for the basis of that good farming, and the point of transfer. That it is not practical to

[The Minister for Local Government and Lands] work always to any great extent under an Ordinance which imposes conditions after the man has owned his property and has been on it for some time. Of course, that can be done, and is done to some extent, but it is much simpler and much easier, and I think that at the point of transfer when a man is taking over a piece of agricultural land he knows what he is expected to do with it, and if he is not capable of doing it, and does not want to do it, then he does not get the land, and that is the difference between I think the ideas in the mind of the hon. Member and the Government's suggestion. The hon. Member thinks, leave it to the Agricultural Ordinance, and if a man does not farm properly, then put a development order through the Agricultural Ordinance. It is much simpler to do that at the point of transfer, and I can assure the hon. Member this is not a racial matter of tying up the Highlands again. It is definitely to try to ensure good farming, especially when persons of, shall we say, inexperience in farming large areas of land are involved, and it is at that point when the land is taken over, the initial transfer, that we want to make it quite clear what is expected to be done with it. That is one of the main reasons for the control at that level. I think the hon. Member, if he studies the provisions, will realize and accept and agree that we have avoided any possibility of race as such coming into prevent the transfer of land.

He then went on to the old matter of racial covenants and terms, but I am not going into any further detail on that. We have had debates here, and I have stated the Government policy in moving this Motion. I do not agree, and I rather deprecate the remarks he made to the effect that it was the European Elected Members who really were the reason why covenants were not done away with. That is not so. It is nothing to do with racial groups or pressures at all on the Government. The Government sincerely believes that the way they are putting it forward now is the right way, and to upset previous contracts would be a very wrong thing to do.

The hon. Nominated Member, Mr. Tyson, brought up an extraordinarily interesting and important point with regard to the appeals tribunal as against arbitration which is suggested in the Paper. I think that the hon. Member may have a very good point there, and I will give him an assurance that we will go into this and see whether we should have an appeals tribunal rather than arbitration, but I doubt if it will necessarily be the Agricultural Appeals Tribunal which will be suitable, but that same pattern might well be followed.

The hon. Member for North Rift—and I think most of his remarks were dealt with by the Chief Secretary—did make one remark which rather surprised me in the context of the remainder of his speech, which was when he said that there would be no objection by the Kalenjin or Nandi tribes or the Tugen tribe to Lou or Kikuyu coming to farm in what they consider as their sphere of influence provided the tribes were consulted. I am very glad to hear him say that, but I wonder if it is right. I also want to put on record that I thoroughly deprecate and consider a very improper remark the remark he made to the effect that if Government will not create that atmosphere which he referred to—that atmosphere—then it is not his concern if Congo results in Kenya. I do not think I have quoted his words exactly, but that was the meaning of his words, and I believe that those sort of remarks made in this House do more harm than even the nonsense—I do not want to be ruled as unparliamentary—the nonsense that is talked about title, and I think it is the sort of thing that the hon. Member should think very seriously about and should knowing his own real feelings—I know he gets very hot under the collar about land, which we all do, and he especially—but I think he might think over that remark when he checks his HANSARD and sometime take the opportunity of saying he did not really mean it.

He then went on to describe what he called "rents for different classes laid down in 1908". He has done a lot of historical research obviously, but in fact they were laid down in 1911, and they were rents for licences to farm—licences for 99 years I think—and he is quite right in the amounts that he laid down. Class A land so much, Class B so much, Class C so much. These licences were, of course, superseded later by the Crown Lands Ordinance 1902—no, I am sorry, 1913. But what it has got to do with the African land units I do not know. The hon. Member I think gave the impression that the cheapest land was D class—03 cents per acre—and all the African land units came into that category. I may not be quite right, but he had a most extraordinary idea, and I think he was trying to establish that all the Europeans took was so good and all the land the Africans were left with was so bad. I think that is what he was trying to establish, but of course he is really talking a lot of nonsense in that.

He then went on to say that it was quite unfair for people to be expected to pay say £15 per acre for land which in 1908 or 1913, whenever it was, they got for 20 cents an acre. But again the hon. Member does not really seem to see further than his nose. He does not seem to consider what effects the value, the developments of roads, railways, water supplies, experiments in

[The Minister for Local Government and Lands] what crops can be grown, and so on and so on and so on apart from the deliberate and definite developments on the land itself. The hon. Member really should, I think, take a little time off by himself to think these things out. In fact, the appreciation is quite normal I would say compared with the enormous development of potential and development in every way that has taken place in Kenya during my lifetime—1911.

The hon. Member—I think it has been answered by the Chief Secretary—but in regard to discussions with the African Elected Members I would just merely like to repeat that we did try—the Government tried and tried to get meetings with the African Elected Members. Sometimes one would turn up, sometimes two, sometimes six, sometimes none, and it has been very difficult indeed to consult African Elected Members on these problems and no African Elected Member can justifiably accuse the Government of not making an effort to consult them and give them the information as to what the Government's ideas were and so on and so forth, and I think it is most unfair and discourteous and unwise to make such suggestions as the hon. Member did make, because they can be disproved.

The hon. Mr. Zafrud-Dren's main points were that there should be a consultation to avoid speculation, and also that genuine farmers and those without land should have the first choice of getting land. Well, of course, those are the principles upon which the schemes outlined by the Minister for Agriculture are based. He then went on to say that the only object of the exercise was to stabilize land values, which, of course, it is not, and having listened to all the speeches, especially the hon. Members of the United Party, I hope he is convinced, that it is not only to stabilize land values but also to provide settlement of different sorts for Africans and others, and my reference to the Members of the United Party is because £6,000,000 in their estimate for land purchase will not stabilize land values as I understand it.

Then the hon. Member said that ordinary people who cannot take legal advice will be barred from getting land. Well, really! I cannot see that the procedures are all that complicated and certainly I do not see why any man need have legal advice in order to make his application and so forth.

The hon. Member for Mombasa Area, I think, has been dealt with pretty fully by most people, including the hon. Member for Mombasa. The only thing I would like to say is that as mentioned that forests might be used for resettlement in the coastal areas and I am authorized to say that the Government is going into this particular matter and there may well be forests in

that part of the world which are not necessary, either for economic exploitation or indeed for conservation. There may well be land available for resettlement in those areas. These are being investigated now.

He then also said the Europeans came here to make money. He said they did not really come here to help. Oh, I am sorry, the hon. Member for South Nyanza said this. He is quite right; of course they did. Has anybody really said that the Europeans came here—or the Asians for that matter—to civilize the Africans? A body of them did in the form of missionaries, of course. I would not say the great majority of us did. Of course we came to make money; we came here into a new country to create something, to build something out of nothing, and we achieved it and in doing so, what did we do? Great benefits were derived by the people of the country and they have got a very different type of life, and are brought into the modern world. Whether they are happier or not I do not know. But, Sir, I do not think the European community has ever really said that the only reason why we came here was to civilize the Africans, because that is not so. Incidentally, we have done so.

Sir Charles Markham: Question! Not the Member for Central Nyanza.

Mr. Mangat: Question!

The Minister for Local Government and Lands (Mr. Havlock): The hon. and gracious Member for Uasin Gishu brought up the matter of the appendices, apart from her little bit of fun. I think that the answer is that as far as Appendix B is concerned, the agricultural committee, the Minister for Agriculture informs me, are now going to be fully elected. There will not be a nominated element, as is set out in Appendix B. As far as Appendix C is concerned, there was no need really for that to be reprinted. That is about the landlord and tenant Bill and that will come before this House in the form of a Bill once the committee under the hon. Specially Elected Member, Mr. Slade, has made its recommendations.

I think I am getting to the end of these voluminous notes—I hope I am. Again, this sort of remark was made by another hon. Member, that this was only being pushed in because people are afraid of a new Government. Those sort of remarks do not help and they are certainly not going to help people of the future. With regard to the hon. Member for Nairobi North, I do not think I will say anything more than I wish him luck in his pipe dreams!

The hon. Specially Elected Member, Mr. Slade, as I have said, made an extraordinary good speech and I think that most of his speech

[The Minister for Local Government and Lands] has been dealt with except that he said, "What are we going to do to encourage the tribes, the different tribes, to welcome people of different races and other tribes investing in their own areas?" He also went on to say that he thought there should be one Order in Council for all land. Well, the only thing we can do with regard to the tribal matter is to keep on plugging and to try and persuade the leaders of the tribe to persuade their people. As regards the one Order in Council, I think there may have to be more than one Order in Council but the African lands will be to a great extent—to some extent, anyway—dealt with under an Order in Council as well as these Seasonal Papers we are dealing with. If it is possible to have one Order in Council in order to follow the principle of similarity we will try to do so but I am afraid I will have to ask legal advice on those particular suggestions.

I do not think that I need—I think I have really dealt with all the points which are rather a repetition, other Members having brought things up one or two or three times. The hon. Member, Mr. Jamidar, I think, has had most of his points covered by other people in regard to what we can do to provide security. I think he must realize that we and Her Majesty's Government are very serious on that. The hon. Member for Mombasa asked two specific questions. To what extent do the proposals apply to the Coastal Strip? The proposals apply to the Coastal Strip in regard to 999-year leases of land in the Coastal Strip if there is any—I believe there is very little—which, if it is agricultural, may be converted to freehold. Apart from that, the papers really apply to what is now known as the Highlands, initially, although it was stated in the Paper and I stated in my opening speech that this is only initially and the Government hopes to extend these to all agricultural land in the Colony. We have got to see how it works first.

About the other point with regard to prescription rights after 12 years, I think the hon. Member should be clear that there are no prescription rights over Crown land. With regard to the unadjudicated claims, I am afraid we are finding it difficult to obtain an officer who will continue the good work that has been done in the past on these. If any hon. Member knows anybody with experience of that type of work in land, we would be very glad to hear. Perhaps some hon. Member himself might be interested.

As regards the coast generally, I think I can say that there is quite a considerable amount of Crown land available down there for settlement and coast Members are probably in an easier position with regard to their constituents

in this regard than others, although as has been pointed out by other hon. Members the actual reserves down at the coast are not overfull. The land position down there is better than elsewhere. Of course, the water position is very difficult indeed.

Well, Sir, I think I have dealt with most of the specific questions that have been raised and I am sorry I have taken up such a lot of time. I never know really whether hon. Members do expect an answer to the points they raise or whether they just want to raise them; but if they do expect an answer I am afraid they have to put up with rather a long reply from the Minister responsible. I merely say now, Sir, once again that I myself am pleased with the way the debate has gone. It has gone better than I thought. I think on the whole, whatever people have said, on the whole most hon. Members opposite support the proposals in principle and also on the whole most hon. Members are looking to the future with a responsible attitude, in spite of what some hon. Members have stated. I therefore feel that this debate has not only gone a long way to helping solve the land problem, but I hope it has gone quite a long way, to helping to solve the Kenya problem. It certainly is worth solving.

I beg to move.

The question was put and carried.

MOTION

AFRICAN LIVESTOCK MARKETING ORGANIZATION— OVERDRAFT GUARANTEE

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. Bruce McKenzie): Mr. Deputy Speaker, I beg to move that this Council notes that the Government proposes to guarantee an overdraft of £35,000 to be afforded to the African Livestock Marketing Organization as working capital, in addition to the overdraft of £65,000 already guaranteed.

Mr. Deputy Speaker, on 24th November of last year Council noted that Government proposed to guarantee an overdraft of £65,000 to provide working capital for the African Livestock Marketing Organization. The need now for further and additional working capital arises from four or five reasons; one being quarantine, the second the strike, the third seasonal contingencies and also from the recent heavy purchasing of immature cattle, payment for which may be delayed for some months. For instance, for cattle bought for the Kenya Meat Commission payment takes up to 90 days and on immatures being sold, onward to farmers, anything up to nine months. Also it has been necessary to purchase in ever-increasing numbers cattle in the Northern Frontier and in the Samburu areas, partly to

[The Minister for Agriculture, Animal Husbandry and Water Resources] meet the needs of people in that area who are wanting ready cash and are coming forward with cattle which A.L.M.O. can purchase.

Mr. Deputy Speaker, in case some hon. Member wishes to raise the point on the word "notes" in lieu of the word "approves", my colleague the Solicitor-General will deal with that point.

Mr. Deputy Speaker, I beg to move.

The Temporary Minister for Finance and Development (Mr. Butter) seconded.

Question proposed.

Mr. Nyagahi: Mr. Deputy Speaker, Sir, I rise to note this proposal by the Government to guarantee an overdraft of £35,000 to A.L.M.O. However, in noting it I would like the Government also to note that the African traders are not very happy about the working of A.L.M.O. I think I have said this before and I would like to repeat it again. There is also a fear that some of us have in voting so much money to this organization that A.L.M.O. in auctioning the animals in those areas pays very little, very low prices, and it is surprising—unless something extraordinary has happened—to demand such an overdraft to be guaranteed. It is all right to encourage local industries and local organizations of this nature, but the Government should be warned that allegations such as have been made before in connection with the Swynnerton Plan in its early stages should be guarded very carefully against.

I would also like to say—and this I say with permission from my friend the hon. Member for that area known as Mukogodo and representing the Dorobo people—that the purpose of auctioning animals there is to destock the tribe because the animal population in proportion to the area this tribe occupies is great. If that is so, the Government in its schemes which have just gone through should not forget the land requirements of the Dorobo tribes of that area.

I take it, Sir, that the Government in guaranteeing this large sum has confidence and knowledge that there has been found a market for meat exports from this country. If not, then I think it would be a sad story, to guarantee such a large sum to an organization that will not be fruitful.

Again, that side of A.L.M.O., as in other marketing boards that appear to be today somewhat quasi-Government organizations does cause quite a lot of irritation to the people interested in that trade. Nonetheless, Sir, I note with great approval the Government proposal.

Mr. arap Moli: Mr. Deputy Speaker, I also note the Paper and would like to say that this over-

draft is an indicative of something wrong with the A.L.M.O. Organization. I suggested before, Mr. Deputy Speaker, that it is high time that this organization should be handed over to an African business group of people to deal with cattle throughout this area. I have faced many complaints from Samburu people because of A.L.M.O. having the monopoly of buying the cattle, and not having any other alternative. People from Nyanza and other areas who are very willing to buy cattle in the Samburu area and parts of the Northern Frontier Province have been asked not to enter into those areas because A.L.M.O. is operating. I would urge the Government to look at this problem very seriously. The Samburu people depend very largely for their livelihood on cattle. If there is no option they will not be able to pay taxes or buy their food and therefore it is very important that Government in providing this amount of money to A.L.M.O. should also consider changing the A.L.M.O. Livestock Market Organization by having African representation on that Board so that they can express African point of view where it lacks co-ordination and where they feel that something wrong has been done and something should be put right.

Now, Sir, I wonder how this Organization does not make profits, because the prices they offer to the Samburu or to the Somali people are very low and apart from that, Mr. Deputy Speaker, A.L.M.O. sells hides to the Kenya Meat Commission or to some other private dealers, the hides and skins, and I presume that the profits accrued from these sales is not less, as suggested by the Minister, and I would further urge the Government that the time has come when they should look at the whole system of marketing of African livestock. The Kenya Meat Commission gives help or pays bonus to the European stock owners and the Africans do not receive such bonus directly as stock owners. They either pay to the Veterinary Department, so as to make facilities for stock route or some other facilities in African areas, but that should not be the right channel through which it should go and I feel very strongly that the money gained should go to the individuals because, after all, Africans in African areas receive receipts for stock which they have sold and I believe that if Government intends to improve the wealth and the standard of living of the African people, they ought to give this money back to the African district councils so that they can give that amount to the stock owners concerned.

I do not want to go into the whole system of A.L.M.O. but I should like to mention one word. The Somali people have complained and told me that they offered several head of cattle but A.L.M.O. could not buy them all because they have no money.

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): On a point of order, Mr. Deputy Speaker, I wonder if the hon. Member could clarify which area has this difficulty?

Mr. arap Moli: Yes, I would be very pleased, Mr. Deputy Speaker, to mention the name of area. The area in question Sir, is Isiolo and that northern part of Marsabit where stock owners or traders who own cattle have offered cattle to A.L.M.O. but A.L.M.O. were not able to buy them; I do not know whether they have not the money to purchase the cattle or not, I think Government ought to give stock traders in that area some assistance so that they can also purchase cattle if A.L.M.O. is unable to purchase them and also that I have always said that in any auction there should be competition so that those who offer cattle would feel that their cattle have been sold in a proper way.

Mr. Deputy Speaker, I note the Paper.

Air Commodore Howard Williams: Mr. Deputy Speaker, Sir, whenever I go to the bank and ask for a loan they always require me to give some indication of when the loan is going to be repaid. We have a case here of Government having given a previous guarantee of some £65,000; I would like the Minister to tell the House how much of that has been paid back. I would like to know the terms on which this loan is going to be given and what arrangements are going to be made for it to be paid back.

Mr. Hennings: Mr. Deputy Speaker, there are just two points on which I might speak, both arising out of the speech just made by my friend the hon. Member for North Rift, who I may say has given us a great deal of help on matters of this sort in the past.

Firstly, the African Livestock Marketing Organization in fact is a means by which Government subsidizes the take-off of cattle from the African areas. The way it does that is this: when A.L.M.O. started about eight years ago, I think it was, it was laid down by the then Minister for Agriculture that the overheads of A.L.M.O. that is to say all the cost of organization, the officers, their transport, all that sort of thing, should be an ordinary charge against the Government budget; but the trading side of A.L.M.O., which is the buying and selling of cattle, should as nearly as possible over a period of years "break even". In fact that has happened; some years there has been a slight loss, other years there is a slight profit, and over a period A.L.M.O. has managed just about to break even. I think very great credit is due to the Director of Veterinary Services that he has managed to walk this tight-rope for about eight years without losing a lot

of money, without making a lot of money. There are no big profits. The hon. Member suggested that there must be profits. Well, he can see for himself in the accounts of A.L.M.O. which are published every year exactly where the profit is, where the loss is, and in fact the accounts just about break even, which is what was intended originally, and the overheads are paid by Government. Now, Sir, that is in fact a subsidy and it is Government's way of helping to take cattle out of the overstocked areas.

There is just one other point. The hon. Member said that there should be more independent stock traders in this trade. There are, of course, independent stock traders trading in many parts of the Colony, but in certain areas, particularly the north, the disease risks are very great. This is mainly due to disease risks from Ethiopia and the Sudan and Somaliland, and I think it is a fact—in fact I know it is a fact—that if the independent traders were solely responsible for bringing cattle out of the Northern Province and Samburu southwards towards the consuming area the movement of cattle would be less easy than it is now. The reason is that when you have disease quarantine imposed it is possible for Government officers under strict veterinary control, i.e. the A.L.M.O. organization, to move those cattle despite the disease risks. If we had independent stock traders only in the trade from that area it would be less easy to get the cattle out and the quarantines would last longer than they do now, and they are very serious now. Samburu was bottled up, I think, for practically all of last year and at various other times. So from those two points of view, Sir, A.L.M.O. does help the pastoral areas. Firstly, Government is paying the overheads; and, secondly, we can keep cattle moving, despite disease risks, rather longer than we could otherwise.

I beg to note the Motion.

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): Mr. Deputy Speaker, Sir, the hon. Member for Nyeri and Embu raised the point about African traders in the areas where A.L.M.O. operated. I think this has been covered by my hon. friend the Nominated Member who has just spoken, excepting one point which he did not put across, and that is that we have learned from experience that African traders going into these areas usually take off the cream of the cattle and leave the rubbish and the poorer cattle behind, and if A.L.M.O. has to deal with that type of animal only it will be a very expensive exercise. But I have taken a note of the point that he did raise.

Another point he raised was about the tribes who obviously required—and I gather he was raising this point on behalf of somebody else—

[The Minister for Agriculture, Animal Husbandry and Water Resources] more land for grazing. I think that was the point he was getting at. What I would like to say to him is, I do not see what that has got to do with A.L.M.O. However, if he cares to give me the particulars I do not mind looking at it to see how I could help them.

He also raised the point about the meat exports. All I can tell him, Sir, is that over the last three years, and we have two hon. Members of this House who are members of the Kenya Meat Commission, the canning factory has been in operation, and it has been operating extremely successfully, and I gather that our sales of canned beef are going up and up and up, I am told that I am correct.

Mr. Deputy Speaker, the hon. Member for Rift Valley North also raised three or four points. He is a member not only of A.L.D.E.V., but of the Kenya Meat Commission Board himself, and a lot of the points which he has raised here he could also raise, and it would be of great value if he did raise them, on either or both those two boards, and I certainly hope that he will do so.

He also raised the point about traders, and my answer to him is the same as the one I gave to the hon. Member for Nyeri and Embu, but he must remember that A.L.M.O. is not a statutory board. It is not a profit-making concern, as the hon. Nominated Member has told us, and it operates in the most difficult areas. In the easy areas the traders are already operating. We will have a look in the Ministry as to whether it will be worth while making A.L.M.O. a statutory board so that it would have representation from all sides of the country. But because of the disease factor, and this is mainly in the Northern Province, the people at Isiolo are having difficulty now in getting rid of cattle because A.L.M.O. are not allowed to purchase cattle to move them because of the S.A.T. 2 type foot-and-mouth disease which we have got up in that area. We have no vaccine at the moment against S.A.T. 2 type foot-and-mouth disease and if we did start moving cattle from Isiolo to the rest of Kenya, and if that foot-and-mouth disease came to the rest of Kenya, it would stop the export of beef which we have built up, and it would also stop the export of all our pig-meat, and that is the reason, Mr. Deputy Speaker, why A.L.M.O. has difficulty in purchasing cattle up in the Isiolo area at the moment. But we are looking at ways and means because there are continual outbreaks up in that area. As the hon. Nominated Member has rightly said, Sir, that is going to become worse and worse as the administration of inoculations in the Sudan and in parts of Ethiopia and

Somaliland deteriorate. We have, over the years gone by, sold millions of doses of funderpest vaccine to the Sudan: today they are hardly buying any at all. We know, therefore, for a fact that they are not carrying out their full programme of inoculations. What we are hoping to do is to find ways and means of setting up some system whereby cattle can be purchased up at Isiolo and may be slaughtered up in that area and then be brought down after having been slaughtered. I hope the Kenya Meat Commission, who have been asked to look into this, are in fact looking into it, and if they are not perhaps the hon. Member would raise it at his next board meeting.

Reference was made to deferred payment. This point was also touched on, but the Kenya Meat Commission themselves are and have over this last year increased the price in order to try to do away with deferred payments. This, I think, will meet the hon. Member's point to a large extent: in other words, the deferred payments at the end of this year ought to be a very small percentage indeed and will, as he quite rightly said, be used to maintain the stock routes along which A.L.M.O. operates.

A point raised by the hon. Member for Nairobi North was whether we had repaid the £65,000, and what were the rates on which we were repaying the £35,000, and when did we maintain that we were going to repay it. If he had listened to me he would have heard that I said that both amounts were to be used as working capital. Therefore, until we reorganize A.L.M.O. or until the sales of A.L.M.O. drop lower and lower because of disease, or because of some other aspect of the livestock industry, we will continue to need these two amounts. We are paying the normal bank rate for an overdraft and what I can tell him is that my hon. friend the Minister for Finance and Development and I are considering the basis for the future financial administration of A.L.M.O. and just as soon as we have clarified our own minds on things the House will be advised of the outcome. I can promise this to the hon. Member for Nairobi North, and I hope it will not be very long before we are able to tell the House.

I think those were all the points that were raised, Mr. Deputy Speaker, and I therefore beg to move.

The question was put and carried.

ADJOURNMENT

The Deputy Speaker (Mr. Conroy): That concludes the business offering and I accordingly adjourn Council *sine die*.

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

Tuesday, 25th October, 1960

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

[Mr. Deputy Speaker (Mr. Conroy) in the Chair].

PRAYERS

INSTALLATION AND APPOINTMENTS

The Deputy Speaker (Mr. Conroy): I have to inform hon. Members that His Excellency the Governor has expressed his intention of attending here this afternoon for the purpose of appointing the Speaker and Deputy Speaker. I shall accordingly suspend business for a short while in order to enable me to meet His Excellency and conduct him to the Chamber.

Council suspended business at seventeen minutes past Two o'clock and resumed at twenty-five minutes past Two o'clock.

[His Excellency the Governor in the Chair]

THE SPEAKER

His Excellency the Governor (Sir Patrick Renison): Hon. Members of the Legislative Council, I have come here today to appoint Mr. Humphrey Slade as your new Speaker, in pursuance of instructions given to me by Her Majesty the Queen. Mr. Slade needs neither introduction nor commendation from me to any hon. Member of this Council. He has been a Member of this Council for eight years and is held in high esteem by all of you, and by all who know him for his sincerity, his ability and his unswerving support to the principles of justice and right dealing.

The success of the Speaker depends rather on the respect in which he is held as a man than on the disciplinary powers which are conferred upon him by the Standing Orders. A Speaker must be fair, patient, tolerant, good-humoured and wise. If, moreover, he possesses legal knowledge to assist him through the intricacies of parliamentary procedure, it will not be a disadvantage. In addition to possessing all these qualities, Mr. Slade enjoys the respect and goodwill of all hon. Members. I have no doubt that the procedure, the dignity and the traditions of democratic parliamentary government will in this Council be safe in his hands.

[The Acting Chief Secretary (Mr. Griffith-Jones) and Mr. S. V. Cooke conducted Mr. Humphrey Slade to His Excellency and introduced him.]

The Oath of Allegiance was administered to Mr. Humphrey Slade by His Excellency the Governor.

His Excellency the Governor handed Mr. Slade his Instrument of Appointment.

THE CHAIRMAN OF COMMITTEES AND DEPUTY SPEAKER

His Excellency the Governor (Sir Patrick Renison): Mr. Speaker, I have appointed Mr. Jeremiah Nyagah to be your Deputy Speaker and Chairman of Committees because it seemed to me to be proper that that office should be filled by an Elected Member rather than, as hitherto, by a Nominated Member. Mr. Nyagah has, since he became a Member in March, 1958, shown qualities which have earned him the respect of all groups in this Council, and which will fit him to preside in Committee and in the absence of the Speaker.

I express my good wishes to Mr. Nyagah for the successful performance of the very important tasks imposed upon him by this appointment.

[The Acting Chief Secretary (Mr. Griffith-Jones) and Mr. S. V. Cooke conducted Mr. Jeremiah Nyagah to His Excellency and introduced him.]

His Excellency the Governor handed Mr. Nyagah his Instrument of Appointment.

SHORT ADJOURNMENT

The Speaker (Mr. Slade): Hon. Members, it is now His Excellency's pleasure to withdraw. Council will stand adjourned for fifteen minutes, that is, until 2.48 p.m. this afternoon.

[His Excellency the Governor withdrew accompanied by Mr. Speaker.]

Council suspended business at thirty-three minutes past Two o'clock and resumed at forty-eight minutes past Two o'clock.

[Mr. Speaker (Mr. Slade) in the Chair.]

MR. SPEAKER SUBMITS HIMSELF TO THE WILL OF THE HOUSE

The Speaker (Mr. Slade): I rise in accordance with parliamentary tradition to submit myself to the will of this Council.

I feel very deeply the honour of being appointed as your Speaker. Indeed, for myself I can conceive no greater honour, if it be true that I am not only Her Majesty's choice, but also your choice. His Excellency has spoken very kind words about me. My old friends, Mr. Griffith-Jones and Mr. Shirley Cooke, have done me the honour of escorting me to the Chair. Such honour and kindness gives me heart for my task today and tomorrow, and I shall treasure it in the years to come.

In spite of such honour and kindness, this great office can only be approached with humility, and I am humbled by the knowledge of my personal inadequacy and by my understanding of my duty to this Council. Though I may seem to be set above you I am in fact here to serve you, as all of you and each of you, never as a partisan, always

[The Speaker] as a friend. I am the custodian of Standing Orders, but they are Standing Orders that you yourselves have made, or make from time to time. I am the guardian of the individual rights of every one of you; but they are your individual rights.

The dignity and prestige of this Council are my special responsibility, but it is your Council. Subject only to my faithful discharge of these responsibilities which you have committed to me as your servant, the will of this Council shall at all times prevail.

With the weight of such responsibilities on my mind, I am fortified by three considerations. In the first place I have been privileged during the past eight years to sit under a succession of illustrious Speakers and Deputy Speakers, Sir William Horne, Sir Ferdinand Cavendish-Bentinck, Mr. Conroy, and others who have stood in for them from time to time. This Council owes much to all of them, and I have learned much from them. It will not be easy to follow their example, but I will try to do so.

In the second place I do not have to face the commencement of this task among strangers. Every one of you is known to me already, and although we may have been in conflict from time to time in the performance of our duties I regard every one of you as a friend. I do not think that there is one of you from whom I have not at some time or other, or many times, received courtesy and kindness; and this gives me confidence, and only strengthens my desire to serve.

In the third place I have been given, as my Deputy, Mr. Jeremiah Nyagah, a man for whom, in his sincerity and wisdom and fair dealing, we all have the greatest respect and affection. I am sure you will agree that there could be no better choice. He has asked to be associated with all that I have said concerning our duties to this Council.

Now, hon. Members, so long as I am wanted here, and am fit for the task, I shall serve with all my might this Council, which I am already proud of, and, through this Council, my country, which I love, and to which I owe 30 years of happiness, and which my wife and I and our children claim as our only home.

WELCOME TO THE SPEAKER AND CHAIRMAN OF COMMITTEES

The Acting Chief Secretary (Mr. Griffith-Jones): Mr. Speaker, Sir, it is with very great pleasure, on behalf of myself and all Members on this side of the House, and, indeed, if I may say so, on behalf of the profession to which you and I have the great honour to belong, that I rise to welcome your appointment to your great office

and to congratulate you on it; and also to welcome the appointment of Mr. Nyagah as Deputy Speaker and to congratulate him on his appointment.

You are both old friends of all of us and we hold you both in deep affection and regard, and we know with supreme confidence that you will guide our deliberations in your respective offices with those qualities of patience and firmness, of wisdom and impartiality that your offices demand. We look to you, both of you, to keep us in order. We need it sometimes. We look to you to check our baser instincts. We need that sometimes. We know that the dignity of this House and the parliamentary traditions which we inherited in the first place from the Mother of Parliaments, and which we are building in this country, and which we are building in this country, and which we develop our own character and personality as a legislature, that these are truly in safe keeping in your hands.

We wish you, Sirs, both of you, every success. We pledge our co-operation and every help that we can give, and we shall endeavour, though I fear that in this we shall not always succeed, to avoid boring you excessively.

Mr. Cooker: Mr. Speaker, like my hon. friend I feel it is a great honour which has been done to me today that you have asked me to support the speech. I wonder if everybody has realized that I have the unenviable distinction of being, I think, the only European in this House who has been named by both the 'previous Speakers! That is unlikely to happen in the future, but you, Sir, referred to the other two Speakers, and I am sure you realize the tremendous tradition that this new Parliament is making in its appointment of Speakers. First we had Sir William Horne, a man learned in the law, and he was succeeded by our old friend, Sir Ferdinand Cavendish-Bentinck, who had such a charming and real natural dignity and a tremendous knowledge of Parliamentary procedure, and now we have you, Sir, and I know that my friend was not speaking in mere platitudes today when he said that you have the full confidence of every Member of this Council. I, Sir, shall greatly miss seeing you getting up in your old grey coat, and those large pockets from which I often thought a ferret was trying to poke its head out, and then coming to this Table and in-your-inimitable way expounding the law or castigating your opponents, and we are very sorry that we are missing you, and we shall still regard you as a comrade and a friend as you have been in the past, and we shall wish you the greatest good fortune, long life, and a healthy time in this House which you probably will not always find too easy! I would like to join in the same wishes to your charming wife and to your family, not forgetting the most recent arrival.

Mr. Hassan: Sir, I rise on behalf of the Asian and Arab group to welcome you as Speaker and congratulate you on your appointment as such by Her Majesty the Queen. We feel that there could not have been a better choice than yourself as Speaker, and also the Deputy Speaker so far as the Opposition Benches are concerned. We have known you so well for the last eight years that you have been in the Council, and during this period we found that although we differed in some most difficult problems on the Floor of this House between each other, yet the cool-headedness and levelheadedness you maintained in this Council made you extremely popular with Members of all groups in this House. I associate myself with all the speakers have said for you, and I assure you, Sir, that myself and my group will completely co-operate with you, and wish you every luck.

Mr. Khamisi: Mr. Speaker, Sir, I also would like to add a few words of congratulation on behalf of the African Members on my right on your appointment as Speaker of this House. A lot has been said, and I do not want to tire the House any longer by repeating what other speakers have already said about your appointment.

We hope, Sir, that during the time of your office you will be completely impartial and that we, as Elected Members, will be quite free to express our views however distasteful they may be to other Members without undue interference, as has been the case with our last Speaker, Mr. Speaker, Sir, you have our full confidence in this task, and we hope to co-operate with you as fully as we possibly can. Thank you.

Mr. Nyagah: Mr. Speaker, Sir, I rise to confirm and give an assurance to the hon. Members here of the loyalty that I intend to give to the duties that have been conferred on me this afternoon. I am indeed touched by the kind words said about me by my friends, the Chief Secretary, Mr. Griffith-Jones, the Father of the House, and my hon. friends of the Asian and African communities.

I am also encouraged, Sir, by the kind words said about my appointment as Deputy Speaker by my friends and well-wishers, both Members of this House, in this country, and those who are not of this House, in this country, and also abroad. I do realize, Sir, the great honour that this country has conferred upon me, and also the immense responsibility this entails. I am indeed humbled by this. It now remains for me, Sir, to humbled by this. It now remains for me, Sir, to say "thank you" to you all for this honour, and to promise to do my very best to try and give you, in this House and Kenya, my loyal services for as long as they may be of any use and needed,

to the best of my ability. In the spirit of a boy scout, Sir, I am reminded of the threefold promise which we often make about doing one's duty to God and the country, to help other people at all times and to obey the Parliamentary procedure and laws of this country. I am sure, Sir, with the co-operation of all the Members, both in this House and outside this House, and in the spirit of goodwill, and with God's help we shall all work together to try and build a new and a better Kenya for us and for our future generations. Thank you.

ADMINISTRATION OF OATH

The Oath of Allegiance was administered to the following Members:—

Geoffrey James Ellerton,
Sheikh Mohamed Akram,
Jack Musson Benn,
William David Gregg,
Wafua Wabuge.

COMMUNICATION FROM THE CHAIR

ASSENT TO BILLS

The Speaker (Mr. Slade): Hon. Members I am directed to inform you that His Excellency the Governor has assented to the following Bills:—

No.	Passed Third Reading	Date of Assent
29. The Eschequer and Audit (Amendment) Ordinance, 1960	22-7-60	19-8-60
30. The Paymaster General Ordinance, 1960	22-7-60	19-8-60
31. The Africans' Arms (Amendment) Ordinance, 1960	22-7-60	19-8-60

PAPERS LAID

The following Papers were laid on the Table:—
Royal East African Navy Annual Report, 1959.
East African Posts and Telecommunications Annual Report, 1959.

(By the Acting Chief Secretary (Mr. Griffith-Jones))

Registrar-General Annual Report, 1959.

(By the Temporary Minister for Legal Affairs (Mr. Conroy))

Land and Agricultural Bank of Kenya Annual Report, 1959.

The Price Control (Baringo District) (Amendment) Order, 1960.

The Price Control (Baringo District) (Amendment) (No. 2), 1960.

The Price Control (Malzo and Malzemeal) (No. 2) (Amendment) Order, 1960.

(By the Temporary Minister for Finance and Development (Mr. Butler))

- Kenya Police Annual Report, 1959.
Immigration Department Annual Report, 1959.
(By the Temporary Minister for Internal Security and Defence (Mr. Ellerton))
- African Teachers' Pensions Fund Accounts for the year ended 31st December, 1959, and Report thereon for the Controller and Auditor-General.
(By the Temporary Minister for Education (Mr. Miller))
- Produce Control—Balance Sheet and Accounts as at 31st May, 1960.
- Transfer of Powers (Animal Husbandry) (No. 2) Draft Order, 1960.
- Kenya Meat Commission—Tenth Annual Report and Accounts for the period 1st January to 31st December, 1959.
- Transfer of Powers (Animal Husbandry) (No. 3) Draft Order, 1960.
- Veterinary Department Annual Report, 1959.
- Nyanza Province African Sugar Marketing Board—First Annual Report and Accounts for the financial period ended 30th June, 1959.
- The Sugar Factory Rules, 1960.
- The Dairy Industry (Cess) (Non-Scheduled Areas) Regulations, 1960.
- The Pig Industry (Convening of Annual Conference of Delegates) (Amendment) Rules, 1960.
- Dairy Industry (Cess) (Non-Scheduled Areas) Regulations, 1960—Rate of Cess and Time of Payment.
- The Dairy Industry (Returns, Reports and Estimates) Regulations, 1958: Submission of Returns.
- The Dairy Industry (Milk Returns) (Non-Scheduled Areas) Order, 1960.
- The Native Lands (Irrigation Areas) Rules, 1959 (Mwea/Teberre) Area.
- The Kenya Meat Commission (Grading) (Amendment) Regulations, 1960.
- The Pig Industry (Election of Members of the Board) (Amendment) Rules, 1960.
- The Wheat Products (Amendment) Rules, 1960.
(By the Temporary Minister for Finance and Development (Mr. Butter) on behalf of the Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie))
- Industrial Development Corporation: Report and Accounts for the year 1959/60.

- The Oil Production (Amendment) Regulations, 1960.
(By the Minister for Commerce and Industry (Dr. Kioko))
- Ministry of Health Annual Report, 1959.
(By the Minister for Health and Welfare (Mr. Muimi))
- Central Housing Board: Balance Sheet and Accounts, 31st December, 1959.
(By the Minister for Health and Welfare (Mr. Muimi) on behalf of the Minister for Housing, Common Services, Probation and Approved Schools (Mr. Amalemba))

- Department of Information Annual Report, 1959.
(By the Minister for Information and Broadcasting (Mr. Harris))
- Report of the Permanent Secretary for Local Government for the years 1958/59.
- Lands Department Annual Report, 1959.
- The Township (Building Fees) (Amendment) Rules, 1960.
- The Township (Building) Rules: Application to Karatina.
- The Nyanza County Council (Provident Fund) Rules, 1959.
- The Townships (Encroaching Structures and Advertising) (Amendment) Rules, 1960.
(By the Minister for Information and Broadcasting (Mr. Harris) on behalf of the Minister for Local Government and Lands (Mr. Havelock))
- Forest Department Annual Report, 1959.
- Report on Kenya Fisheries, 1959.
(By the Minister for Tourism, Game, Forests and Fisheries (Mr. Crosskill))
- Road Authority Annual Report, 1958/59.
(By the Minister for Works (Mr. Nathoo))

NOTICES OF MOTIONS

- EXEMPTION FROM INCOME TAX: KENYA DAIRY BOARD CESS
- The Temporary Minister for Finance and Development (Mr. Butter): Mr. Speaker, I beg to give notice of the following Motion:—
- THAT this Council approves the exemption from income tax, for the year 1958 and succeeding years, of the income of the Kenya Dairy Board derived from any cess imposed under paragraph (e) of section (19) of the Dairy Industry Ordinance, 1958.

REVIEW OF DEATH PENALTY

Mr. Nyagah: Mr. Speaker, Sir, I beg to give notice of the following Motion:—

THAT this Council urges the Government to make an early review of the death penalty as capital punishment, with a view to instituting another form of deterrent more humane and Christian.

ROYAL COMMISSION ON DEATH PENALTY

Sir Charles Markham: Mr. Speaker, I beg to give notice of this Motion:—

THAT this Council urges the Government to recommend the appointment of a Royal Commission to examine all aspects of the desirability or otherwise of the continuation of capital punishment in this Colony and Protectorate.

ALL RACES UPPER HOUSE

Air Commodore Howard-Williams: Mr. Speaker, Sir, I beg leave to propose the following two Motions:—

(a) THAT this Council urges Government to set up an All Races Upper House with powers to amend and advise on, but not to control legislation, the Upper House to sit when Legislative Council is in recess.

COMMITTEE OF ENQUIRY ON NAIROBI CITY COUNCIL AND OTHER LOCAL COUNCILS FUNCTIONS

(b) THAT this House, in order to avoid friction should institute an All Races Committee of Enquiry to determine the composition and function of the Nairobi City Council and of other local-councils in an independent Kenya.

ORAL ANSWER TO QUESTION

QUESTION No. 141

Mr. Khamisi asked the Chief Secretary:—

- (1) How many clerks on temporary terms have been given contracts by Government from 1st January, 1958, in spite of the fact that they do not possess the qualifications required by sections 67 and 68 of the Code of Regulations, 6th edition?
- (2) How many have had their contracts renewed?

The Acting Chief Secretary (Mr. Griffith-Jones):—

- (1) None, Sir.
- (2) In view of the answer to the first part, the second part of the question does not arise.

BILLS

FIRST READINGS

The Diplomatic Privileges (Extension) (Amendment) Bill

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

The Statute Law (Repeal) Bill

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

The Housing (Amendment) Bill

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

The African Courts (Validation) Bill

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

The Education (Amendment) Bill

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

The Prisons (Amendment) Bill

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

The Road Authority (Amendment) Bill

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

The Aerodrome Regulation Bill

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

The Special Pensions Bill

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

The National Loans Bill

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

The Election Offences (Amendment) Bill

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

The Law of Contract Bill

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

MOTION

EVICTION OF TENANTS (CONTROL) (MOMBASA)

The Minister without Portfolio (Mr. Madan): Mr. Speaker, Sir, I beg to move:—

(That the Eviction of Tenants (Control) (Mombasa) Ordinance, 1956, be extended to 31st December, 1962.

Mr. Speaker, the present Ordinance was enacted in 1956 when it replaced an earlier Ordinance which was enacted for the same purpose. The proviso to section 9 (1) of the present Ordinance provides that this Ordinance may, if the Legislative Council signifies its approval by a resolution, continue in force until a date which is specified or until it is repealed. In consequence of that the Ordinance came up for review during November, 1958, when as a result of a Motion which was moved by me in this House, Council kindly agreed to renew the life of the present Ordinance up to 31st December, 1960.

Mr. Speaker, during the past 20 months or so a careful watch has been kept over the operation of the provisions of this Ordinance and more particularly to see if it would be possible to decontrol any of the premises that are comprised within the Schedule to the Ordinance in accordance with the Government's policy of gradual and progressive decontrol of controlled premises and pieces of land wherever possible without causing any hardship to persons concerned either living on the premises or occupying the land.

Hon. Members may be interested to know that, encouraged by the Government, the Municipal Board of Mombasa appointed a committee to go into this matter and the committee, after listening to various representatives and representations made to it by interested parties, as well as acting on its own knowledge and experience in this matter, made certain recommendations. Now, Sir, the members of this committee who were local people from Mombasa had peculiar knowledge of the circumstances that obtain with regard to the operation of the provisions of this law. After consideration of the matter, the committee recommended that—I might say, *inter-alia*—that the operation of the Ordinance should be continued up to the end of the year 1962; but as from 1st January, 1961, certain plots of land which are comprised in the Schedule to the Ordinance should be excised therefrom.

In so far as these two recommendations of the committee are concerned, Government has decided to accept them and hon. Members might

be aware that as a result of a Legal Notice published in the Official Gazette of 5th July this year 12 plots were excised from the Schedule to the Ordinance. With regard to the remaining plots which still fall within the operation of this law, it is Government's intention to continue to consider the position to see if any of these can also be excised, as I said before, without causing any hardship to the people concerned or to the occupiers of the land. In addition, Mr. Speaker, publicity was also given in the local Press as well as in Nairobi to the Order made to which I have already referred to excise certain plots of land from the Schedule to the Ordinance so that the owners of the houses and the tenants and occupiers of the plots concerned will have ample opportunity to make alternative arrangements for residential purposes.

This committee to which I have referred, Sir, also made certain recommendations for the amendment of the Ordinance in order to improve its working. Government is considering this, Sir, and it is possible that in the not too distant future a short amending Bill will be introduced to help improve the actual operation of the Ordinance in practice.

I hope, Sir, that the measure of de-control which will be achieved from the beginning of next year, as a result of the improving housing conditions at Mombasa, will lead to the rebuilding of the pieces of land which will be freed from the operation of this Ordinance, as well as to modernization, reconstruction of premises and slum clearance of some of the dwellings that are involved.

As far as I am concerned, Sir, I would like to see housing find its own level in Mombasa and I am confident, Sir, that the policy that is being followed by Government in achieving a gradual decontrol of the various plots of land that are concerned and fall within the Ordinance will achieve that purpose. I did say, Sir, that Government had decided to accept the recommendation of the committee that this Ordinance should be extended up to the end of the year 1962, but I should like to enter a caveat here to say that it does not necessarily mean the Ordinance will come to an end at the end of that period. I think the Government will have to keep the situation under review and if, as a result of circumstances, it is felt that it is necessary to extend the life of the Ordinance, that may have to be done.

Mr. Speaker, this is not a new debate. This Ordinance has come up for renewal before this Council at least on three other previous occasions and I feel I need not keep the House any longer on this matter.

Sir, I beg to move.

(The Minister without Portfolio)

The Minister for Information and Broadcasting (Mr. Harris): seconded.

Question proposed.

The question was put and carried.

MOTION

JUSTICE IN AFRICAN COURTS

The Speaker (Mr. Slade): Hon. Members, this is Mr. Odunga's Motion and as he is not here I might draw the attention of hon. Members to Standing Order No. 30 which will apply in this case: "Where no Member moves a Motion at the time prescribed therefor by or under these Standing Orders such Motion shall not again be published in the Order Paper during the same Session except with leave of Mr. Speaker."

MOTION

RELEASE OF DINI YA MSAMBWA DETAINEES

Mr. arap Moli: Mr. Speaker, Sir since the time of moving this Motion I have had more information about this Motion. Sir, I beg to move:—

That this Council while appreciating the release of a few *Dini ya Msambwa* adherents deplores Government delay in the matter and urges Government to release all the *Dini ya Msambwa* detainees forthwith.

Sir, in moving this Motion one can recall matters that have occurred or problems that have occurred as far as *Dini ya Msambwa* is concerned since 1948. I cannot, Sir, explain fully, the cause or objects of the religion of the so-called *Dini ya Msambwa*, but those who were involved were many. In 1950, Sir, the sect reached its climax and the deaths of certain people occurred in East Suk in that same year. Some were prosecuted, others were detained and others were imprisoned. Up to now, Sir, many have been detained outside their districts and the districts involved were West Suk District and North Nyanza and Elgon Nyanza.

I need not go deep into it, Sir, but I would like to mention certain points on this matter. Touching on East Suk, Sir, Suk tribesmen are still conservative and they want to preserve their own old traditions. I know definitely, Sir, that those tribes were not prepared to go into violence, knowing their customs and so on, but it was unfortunate that this affair occurred during that time. Now, Sir, I feel very strongly that the Government ought to release all those detainees because from my own knowledge, Sir, the Suk tribesmen control their own people through their own tribal structure. The only problem, Sir, is that the Suk tribesmen are divided into two, those living in Uganda called Kara Suk and those living in

Kenya. These people have asked the Government if they may be rejoined and be governed or ruled by the Kenya Government. Some of the *Dini ya Msambwa* adherents have gone into Uganda and, therefore, the Kenya Government could not get them and they could not bring those who were still sticking to this religion back.

Nevertheless, Sir, there have been certain rehabilitation camps in West Suk. Some have been confined to these camps for many, many years. From 1950 to 1960, Sir, to me seems to be a long time—the Government ought to have released them six or five years ago because there was no evidence at all to show that they were out for violence.

Secondly, Sir, the Government's attitude towards this tribe is that the Government did not give them anything to make them believe that the modern ideas and methods were better than sticking to their own old traditions. And I would urge the Government to implement at once some educational programmes to enable them to send their children to school so that they, instead of sitting idle, can work hard to send their children to school.

Secondly, Sir, the implication of the *Dini ya Msambwa* sect was that East Suk tribesmen have been banned from going to West Suk because there is a legislation enabling the district commissioners of both West Suk and Baringo District to evict any Suk tribesman crossing to East Suk or West Suk. The Government ought to legalize or allow these chaps from West Suk to visit their relatives living in East Suk or those living in East Suk to visit their relatives living in West Suk.

Another problem, Sir, is that the Bukusu tribesmen who have also been adherents of the *Dini ya Msambwa*, are no longer a problem to us because the sect has already died out and the problem is to build a better country and forget the past and I would like the Government to give full information about what is being done as far as these people are concerned. As far as I know the Suk tribesmen, most of them have already been released and sent to their own homes. Lately I have visited the camps and found that only two were still in the camp. But those from the Bukusu tribe, Sir, are still outside their district; I understand that they are in Lamu. I should like the Government to act and be sympathetic on this main issue and not to look at the problem from the point of view of punishing because the cure is not to punish but to teach and to get them to know that we are thinking further and thinking of building a better country and not to think of the old ideas.

Sir, because of the few comments I have made on this Motion and because of the few facts and

[Mr. arap Moll] information I have known, I need not detain the House but would beg to move.

Mr. Wabuge: Mr. Speaker, Sir, in seconding this Motion I wish to say a few points regarding the *Dini ya Msambwa*. This society originated in my own area and the little history I know about it was, that it was alleged to be a society whose aims and objects were to organize themselves in religion and at the same time were claiming the land in their own country. Now, Mr. Speaker, Sir, this was begun in 1947 and these people never had any idea of using any violence at all and in 1948 when this was being organized the Government took the first steps to stop the organization and when they did so more than ten people including a pregnant woman were killed. Of course these people had no weapons; they never harmed anybody and they never did any harm to the country.

After that, the leader being Mr. Elijah Masinde was arrested and was exiled without any trial and that was in 1948. Since all this period, if I am not wrong, the Member for the area has been urging the House or the Government to say or to do something about this old man who was exiled to Lamu and I do not know where he is this day. But still the Government never did anything. He had asked the Government to allow him to go or allow his brother and his wife to go and see him. But all the time he has never received any reply from the Government or if he has received a reply, if I am not wrong, it has always been in the negative.

Now, Mr. Speaker, Sir, as far as I am concerned every one in the area—that is Nyanza North—asks for the release of Elijah Masinde and his followers unconditionally, for the simple reason that the organization does not exist nowadays. The people there are not going to go back to the old ideas which they did have, I am sure, if they are released. I say so because if Elijah Masinde comes back, he will find that the situation in the country has already been changed completely. If it is a matter of land, the Government is carrying on the programme of land; he will find himself, that he is satisfied; that was what he was claiming for, if it is for the question of ruling, well the country has now been told how the future government of this country is going to be and for that reason I do not think that when he comes or when all these people are released they are going to cause any trouble or any disturbance to this country at all.

I must also at the same time appreciate what the Government has done to have released the three followers of *Dini ya Msambwa*. Those are the people who came late last month, but still people are not satisfied if all the remaining people,

especially Elijah Masinde, who has been out in unknown areas for 13 years, is not released. His wife and children have not been allowed to visit him and do not know what life he has. Now, Mr. Speaker, Sir, for this reason all the people including his family think it is high time that the Government relaxed all these restrictions imposed on them.

Now, Mr. Speaker, Sir, people in the areas do not understand if the act of grace was there and was extended to some other people and not to those people like Mr. Elijah Masinde and his followers, so they are wondering and asking why such action was not given to him or those followers of *Dini ya Msambwa*.

Mr. Speaker, Sir, with these few points I beg to second the Motion and think the Government ought to do something about it immediately.

Question proposed.

Mr. Wainwright: Mr. Speaker, Sir, on behalf of this House I would like to congratulate the new Member of the House for Nyanza North on his speech. It was short, clear, to the point and as such quite an object lesson to some of us in this House.

Mr. Speaker, I am only going to deal with the question of the Suk. In fact there are no further Suk who are still being detained. But all those who were have now been released and successfully rehabilitated and the two camps mentioned by the hon. Member have been closed.

The hon. Member, Mr. Speaker, suggested provision of schools for the children of those members. I agree with him entirely and support him, that it would be an excellent thing for their children to go to school and in fact for a lot of other children in West Suk also to go to school. At present that district is in the stage where it is not a question of shortage of schools but of persuading parents to send their children to school. I will give an undertaking to him that we will have a further drive in that direction, in West Suk District.

Mr. Speaker, the hon. Member also asked whether restriction on the movement of East Suk to West Suk could now be relaxed in view of the fact that there is virtually no *Dini ya Msambwa* movement left in West Suk. I will also go into that and will hope to remove any restrictions that there may still be. But I would just like to mention to the House that when I brought up this subject myself last with the East Suk as Provincial Commissioner there, I had to speak somewhat sharply to them because they all requested me in a body to be allowed to go over to West Suk with spears and seek out the *Dini ya Msambwa* people and spear them to death.

Mr. Speaker, I oppose.

Mr. Khamis: Mr. Speaker, I beg to support the Motion before the House because I was one of the lucky people who was present to witness three of the *Dini ya Msambwa* people being repatriated back to their reserves towards the end of last month at Lamu. These people looked very happy and they were not sure what was in store for them in their country because some of them had been at Lamu for the last 14 years and they seem to have lost all contact with their homes. Nevertheless, I also saw three others who were still waiting their turn to be repatriated back to their homes and these people, as I talked to them I found them to be of very good character, very reasonable and very peaceful and seemed to have recovered—if I can use that word—from what activities they were engaged on before they were exiled to Lamu. But the climate and also the surroundings of the area where they lived for many years seemed to be very difficult for them and they are trying their level best to cheer themselves up and after so many years I feel I found them in very good spirits, and I am quite sure that they would all like to go back to their homes. If at all it was a punishment which they were supposed to undergo or rehabilitation, I am quite sure I can assure this House that that has gone very deep into their hearts and it is time that we should ask the Government to reconsider returning these people back into their reserves. They are only very few—I only met about three there—and I think at the moment there are about six of them. Three went away and three are still at Lamu, and, of course, Mr. Masinde himself is not at Lamu and therefore I could not see him, but I was quite sure that the way they behaved and talked to people like me, and others, proved very well that they should now be returned to their reserves and that they are no longer a danger to anybody. All that they need is to go back home to look after their private and home affairs and their *shambas*.

Mr. Speaker, Sir, I appeal to the Government to see their way to releasing from exile these very few people who are left as members of *Dini ya Msambwa*.

Mr. Speaker, I beg to support.

The Temporary Minister for Internal Security and Defence (Mr. Ellerton): Mr. Speaker, Sir, I regret that the Government cannot accept this Motion, nor can it forget so easily, as the hon. Member would have us forget, the acts which gave rise to the restriction of those persons who are at present restricted for their *Dini ya Msambwa* activities. In order, Mr. Speaker, that I may explain why the Government cannot accept this Motion, it is necessary, I am afraid, that I should remind the Council of the events which led up to their restriction.

Dini ya Msambwa had its origins in the years 1935-1945 in what is now the Elgon Nyanza District, when its founder, Elijah Masinde, quietly gathered his lieutenants around him and evolved a religion which was based on the Old Testament, but drew also a perverted inspiration from a number of other religions and from the beliefs of the Babukusu. The movement, which in its origins, was almost entirely religious, gradually took on an anti-Government complexion. In particular, a number of acts of defiance took place against chiefs. Finally, in 1944, Elijah Masinde was arrested and charged with causing a breach of the peace. In the following year he was committed to Mathari as a lunatic. His committal was followed by a wave of disorder throughout the Bukusu area and the Trans Nzola. There were numerous outbreaks of disorder, robbery, theft, and arson.

In 1947 Elijah was released from Mathari and at once began a campaign to spread his doctrines. His meetings were attended by thousands of fervent admirers whom he proceeded to whip up to a state of frenzy and disorder. These meetings culminated in an attack on a Catholic mission, as a result of which some of the ringleaders were arrested. In February, 1948, the police were obliged to open fire on a mob attempting to release these ringleaders from the Police Post at Malakisi. Seven people were killed and a larger number were injured.

Shortly afterwards Elijah Masinde himself was arrested, and, following a judicial enquiry by a judge of the Supreme Court, who found that Elijah had conducted himself in a manner dangerous to peace and good order, he was restricted. At the same time, *Dini ya Msambwa* was declared to be an illegal society.

Now, this firm and necessary action restored order for a time amongst the Babukusu, but the surviving fanatics went underground and during 1948 and 1949 this pernicious faith spread over the borders to Uganda, to the Trans Nzola District, into North Nyanza, and northwards into the Suk District, with tragic and disastrous consequences. In April, 1950, a party of about 400 armed Suk, under the command of one of Elijah Masinde's disciples, attacked a force of police and Tribal Police at Kallao. In the fight which ensued a district officer, four police and tribal police officers, and 29 Suk were killed.

I hope I have said enough, Mr. Speaker, to make it clear that in dealing with *Dini ya Msambwa*, we have to deal with an atavistic religion which preaches the overthrow of Government by force, which practises arson, which has brought death to many, and untold misery to hundreds more. We have to remember the susceptibility of the Babukusu to mass hysteria and

[The Temporary Minister for Finance and Development] inflammatory oratory. For example, some years ago the vapour trails of a jet aircraft flying over the Bakusu country were enough to cause intense excitement and the honest belief that the spirit of Elijah Masinde had returned to his country. We must be quite sure that nothing is done to spark off again the events of 1948 and 1950. Unfortunately, throughout the 1950's there have been sporadic outbreaks of *Dini ya Msambwa* activity. The Government has to remember that we are dealing here with an emotional and irrational movement to which the normal criteria of administration cannot be applied.

Nevertheless, Mr. Speaker, in conformity with its policy that no restricted person is irredeemable, we have in fact made very great progress in returning to normal society those *Dini ya Msambwa* adherents who were necessarily detained or restricted. Of the total of some 80 Babakutsu who were restricted, either in 1948 or in 1950, or subsequently as a result of conviction for *Dini ya Msambwa* offences, all but ten have now been released to their homes, and the great majority were released several years ago. The ten who remain, who include Elijah Masinde, are the fanatical leaders of the sect, men who have been restricted as a result of a recommendation following a judicial enquiry, or in consequence of a recommendation made by a court after conviction.

Last September we transferred three of these leaders from Lamu, where they had been restricted, to their homes in Elgon Nyanza, as an hon. Member has said. If experience shows that these men have abandoned their perverse beliefs and are no longer a danger to security, their restriction will be lifted completely and we will send three more back in the same way. I hope that it may be possible to proceed in this way before the end of the year.

I would be misleading hon. Members, however, if I were to leave them with the impression that there is an early prospect of Elijah Masinde's release. He is the founder of this movement. He was released once with the disastrous consequences which I have described. As in the case of other restricted persons we do not regard even Elijah Masinde as beyond all hope of redemption, but we are not dealing here with a normal man. The Government specialist psychiatrist who visited Elijah Masinde last year described him as schizophrenic, and we cannot allow him to return home until we are quite sure that the hold which he exercised over his followers cannot be invoked again.

Mr. Speaker, I hope I have said enough to show why the Government cannot accept this Motion. The great majority of *Dini ya Msambwa*

adherents, not just a few as the Motion reads, have already been released. The very few who remain will be released as quickly as security permits and I hope by the end of the year we shall see further progress, Sir, in this direction.

I therefore beg to move, Mr. Speaker, that the Motion be amended by leaving out all the words after the words "that this Council" and by adding in the place of the words left out the following words: "welcomes the progress which has been made in the release of *Dini ya Msambwa* restricted persons and notes that further releases will be made as quickly as this can be done without danger to security."

Mr. Speaker, I beg to move.

The Acting Chief Secretary (Mr. Griffith-Jones): Mr. Speaker, Sir, I rise formally to second the amendment and to congratulate my hon. colleague on what I think the House will agree with me was a most distinguished maiden speech.

Question proposed.

The Speaker (Mr. Slade): It seems to me to be a suitable amendment for the application of rule 62, because it seems to me that the matter of the amendment is not conveniently severable to the matter of the Motion. That means that the debate on the amendment may include debate on the matter of the Motion. If anyone speaks on the amendment he will not be able to speak again on the original Motion.

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.

Debate on Motion as amended resumed.

Mr. arap Moli: Mr. Speaker, Sir, I accept the amendment very reluctantly, but in the first place, Sir, I should like to thank the hon. Secondor of my Motion, for what he said, and the Government Acting Minister for Internal Security and Defence, who very able answered the points although he did not accept my Motion.

Nevertheless, Sir, although I have listened very carefully and have heard that the Government has released some of the *Dini ya Msambwa* adherents, I feel very honestly that the Government could have done much more than they have done hitherto. As my hon. colleague stated earlier, if the Government had given the Act of Grace to the other detainees, namely the hard-core *Mau Mau* terrorists, it ought to have given the same to the *Dini ya Msambwa* adherents. Nevertheless, Sir, I hope the Government will act swiftly and, of course, be very vigilant of what is going on after these people have been released. I know very definitely, Sir, as the hon. the Acting Minister for

(Mr. arap Moli)

Defence stated earlier on, that Mr. Elijah Masinde is not irredeemable; he can change, of course, like anybody else, and I believe that the Government can see its way to releasing him so that he may return to his home.

I know, Sir, that future successive Governments will not allow any subversive societies which intend to overthrow the Government or which intend to molest peace-loving people.

I also thank the hon. Minister who stated that the Government will help and assist in educating the children of the West Suk and I hope that these steps will be taken as soon as possible because I believe, Sir, if the British Government gives up power in Kenya in the future the West Suk, or some other backward tribes, would feel that the British Government had done something useful to them after staying in this country for the last 70 years.

I need not stress the points that have been raised by the hon. Members on both sides of the House, but I believe very strongly that the time has come when the Government should not be very hesitant in releasing these people, because all of us believe that the future is bright and that the co-operation of all of us who wish that this country should prosper will be assured in regard to the building up of prosperity in this country.

Mr. Speaker, I beg to move.

The question was put and carried.

MOTION

REVIEW OF IMMIGRATION POLICY

Mr. Nazareth: Mr. Speaker, Sir, I beg to move that this Council urges Government to review immigration policy with a view to promote economic flexibility in the interests of the country and to ensure impartiality in its administration and due regard for human relations.

I am afraid that this Motion has come up some days earlier than I had expected.

There are three main considerations raised by this Motion: the question of economic flexibility, the question of impartiality in the administration of the legislation, and the question of due regard for human relations. Immigration policy and practice is in need of review from each of these three aspects.

If one looks even cursorily into the history of immigration legislation in this country it will be quite apparent that it owes its birth not to economic considerations but rather to a racial urge or conflict. I do not propose to go into the history of immigration here, interesting and important though it is, but to get a proper perspective of the

subject, and to enable hon. Members to see the kind of tree we have and the kind of fruit it bears or is likely to bear, a few salient facts must be mentioned.

The demand for immigration legislation started as early as 1911, if not earlier. At the very first meeting of the Convention of Associations, among the four resolutions passed almost unanimously was a resolution for the prohibition of further immigration of Asiatics, to use the term used in the resolution. The Africans did not come into the picture: they were not consulted; and the resolution was plainly directed by the representatives of one race specifically against another race.

The next stage in that sort of struggle was at the end of the First World War, the 1914-1918 World War. That too failed, for the Milner solution of 1920, in the words of Dr. Dilley, "maintained the immigration policy of no discrimination against Indians". I have taken the last few words from a scholarly book entitled *British Policy in Kenya Colony* by Dr. Marjorie Ruth Dilley, published as long ago as 1937, to which, if they can manage to get at a copy of it (it is somewhat rare) I would refer hon. Members who seek an objective study of policy, including immigration policy, in Kenya up to 1937.

The third stage in the struggle was at the end of the Second World War, 1939-45. African support could now be obtained, for at least one African had been nominated to the Legislative Council, but the initiative and the pressure did not come from Africans. This time the struggle against Indian immigration was successful and the Immigration (Control) Ordinance, 1948, was passed.

It has been necessary to go briefly into these broad facts because they make clear that the moving force in the pressure to impose immigration restrictions has in fact not been economic. The moving considerations were not economic, but were primarily political or racial, and this was made clear at the time of the passing of the 1956 Ordinance.

The White Paper on Immigration which preceded the Immigration Bill of the same year clearly laid down that precedence would be given to persons from the United Kingdom. That was declared in paragraph 30 of the White Paper. It was the subject of much comment in the debate on the White Paper, and subsequently in the debate on the Bill. That expression of preference showed a political or racial approach, not an economic one. The pattern in the immigration figures which emerges shows that the policy—the racial or political policy—which has been behind immigration legislation has in fact been realized. Immigration figures of European rise steeply;

[Mr. Nazareth] From being well behind the Asian figures, they forge ahead. The result of the new policy might be stated in the words of the Development Programme, 1960/63, Sessional Paper No. 4 of 1959/60, at page 5: "While immigration in the case of Asians has accounted for an increase of 24 per cent annum over the last ten years, the rate of growth of the European population has been some 6 per cent or 7 per cent increase from immigration." That is a fact or conclusion supplied by the Government itself and it confirms that the political or racial intentions of those who have been pressing for Immigration restrictions had been and were being realized.

We are all aware—and on this point I stand in need of no assurance from Government—that in form, I say in form, the present Ordinance is non-racial and that, again in form, it pays regard to economic considerations. The most famous requirement which has to be satisfied by every class of immigrant seeking an entry permit is the obligation laid down on the would-be immigrant to show that his entry, or engaging in the activity he seeks to engage in, "will be to the benefit of the inhabitants generally of the Colony".

That is the form. It applies to all, irrespective of race, and in that aspect is quite unexceptional. What happens in actual practice is something very different. I must mention a few figures and let them tell their own story. The proof of such puddings is in the eating.

In 1958 the number of British Europeans who applied for temporary employment passes was 1885 and not a single one of this large number was refused. In the same year, although only 350 Asians applied (about one-fifth of the number of British European applications), no less than 110 of them were refused. I doubt if there is any field of human endeavour where one race can show such impressive superiority as in this field, administered by the Principal Immigration Officer. One hundred per cent success with a field as large as 1885 entrants would seem almost impossible to achieve. But the Principal Immigration Officer was able to achieve just that in 1958. In Kenya the Asians can beat the Europeans eight to nine times running in the national game of British European cricket, but when the Principal Immigration Officer takes up the bowling the Asians are knocked out in large numbers, while he seems utterly powerless to knock out a single European. The words of the Bible seem to have come true in the case of one community: "Ask, and ye shall receive; knock, and it shall be opened unto ye."

Looking at the latest figures, the Principal Immigration Officer's performance last year is no

less impressive. Out of 1,766 Europeans who applied to him for temporary employment passes, every single one succeeded. In the same year, out of only 361 Asian applicants, he had to throw out as many as 72. Going back earlier, in 1955 and 1956, the figures were no less remarkable. They too deserve mention. In 1955 out of 2,971 British Europeans, nearly 3,000, every single one succeeded; while no less than 337 Asians were refused temporary employment passes out of 996 Asian applicants. In 1956 out of 2,246 British Europeans who applied for temporary employment passes, only one was refused, while 495 Asians out of 1,294 were refused.

When you get such truly remarkable figures, one is driven to the conclusion that the administration and operation of the Ordinance is not impartial and that race, not economics, is an important or ruling consideration. Would it go too far to call the Immigration Ordinance a whited sepulchre? What is the explanation? I can see no reasonable explanation other than that the administration of the Ordinance is in the hands of the same race that pressed for such legislation to keep out members of another race. If we are going to have any respect for this legislation, it is essential that its actual operation and administration as opposed to its mere form be placed on a genuinely economic basis; and that its actual operation and administration be not allowed to continue to remain exclusively in the hands of members of one section of the community.

Control over the Principal Immigration Officer must be shared by or entrusted to members of all races. Nor is there any justification in the light of such figures for there being only one Principal Immigration Officer empowered to issue these passes. In a multiracial society, if there is to be any confidence in the Immigration Department, it is important to have officers from other sections of the community with powers and a status equal to that of the present Principal Immigration Officer, who has always come from that section of the community which has pressed for this legislation. If the administration of the Ordinance continues as we have had it it will leave non-Europeans confirmed in their present conviction that the Ordinance is being operated—not for economic, but for racial purposes.

When the present Ordinance was passed we were told that the basic principle of the legislation was—and I quote from that debate—"that the people who have made this country their home are entitled to expect proper protection from the Government". It is that principle and not some other purpose that hon. Members and I would wish to see carried out.

[Mr. Nazareth]

If race is not an important factor in the administration of the Ordinance one wonders why the Immigration Department is divided into one section for Europeans and another for non-Europeans. I hope the Minister will be able to give us a satisfying explanation on this point, and that he will state whether he intends to continue with this division, and if some other non-racial division in the working of this Department is not possible as a small measure of improvement to mitigate the unhealthy approach underlying and encouraged by such a division.

The figures which I have given to show the racial operation of the Ordinance in the field of Temporary Employment Passes could be duplicated in other fields of the Ordinance, and it would be easy to show that the racial preference goes to the extent of preferring even aliens if they are Edopeans to Commonwealth citizens if they belong to other races. I shall limit myself to one field. In 1955 in the case of "D" class entry permits, the employment class, 509 British European applicants were granted permits and only two were refused. In the case of Asians, 352 were granted such permits and 84 were refused, that is to say nearly 20 per cent refusals to the total applications. In the case of aliens—alien Europeans—only two were refused out of 158—a negligible percentage of less than 20 rejections. The latest figures—those for 1959—show only one out of 812 British Europeans refused against 69 Asians refused out of 223 applicants, while only four out of 296 alien Europeans are refused.

It is worth of note in the figures I have given that alien European applicants in 1959 substantially outnumbered Asians, being 296 against 223 Asians. That is an indication of the encouragement aliens have been receiving as against Commonwealth citizens, showing that citizens of European countries that fought against us were being preferred to citizens of Asian Commonwealth countries that fought alongside us. The figures show the domination of the racial element in the actual administration of the Ordinance. When we point out practices of this kind on the part of the Government, or on the part of a favoured community instead of things being put right we are called racists. I hope we shall not have a repetition of that sort of response in this debate.

[Mr. Speaker (Mr. Slade) left the Chair]

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

To ensure impartiality in administration it is necessary that influence and control be shared

by all races at both levels, at Principal Immigration Officer level as well as ministerial level.

As to the ministerial level, the control should be exercised through a judicial or quasi-judicial tribunal so composed as to command the confidence of all races, or by a similarly constituted committee advisory to the Minister, whose advice would be overruled by the Minister only for a good reason assigned. The present right of appeal to the Minister is wholly unsatisfactory, and indeed illusory, and I would say bluntly that those who have most need of it—the non-Europeans—have no confidence whatever in it. The appeal is from one executive officer to another acting executive, and must be accompanied by a deposit of Sh. 200. The deposit is forfeited if the appeal is unsuccessful. In spite of the hon. gentleman who administer the system it must surely act as an incentive to dismiss appeals, since no reason for dismissal need be given and the Treasury net Sh. 200 for each dismissed appeal.

The Acting Chief Secretary (Mr. Griffith-Jones): On a point of order, Mr. Deputy Speaker, I do suggest that that is an unworthy accusation to make about the Government. The Government does not fuss about Sh. 200. It attempts to do equity to the subject.

Mr. Nazareth: I am not suggesting that the Government dismisses appeals in order to net Sh. 200, but I say it must act as an incentive from the very nature of the case.

The Acting Chief Secretary (Mr. Griffith-Jones): Mr. Deputy Speaker, I would ask that the hon. gentleman withdraw that accusation, as I think it is a wholly unworthy imputation on the Government.

Mr. Nazareth: Mr. Deputy Speaker, if the Acting Chief Secretary takes strong exception to what I suggested, although there is no imputation of motive, I do withdraw the remark.

The Acting Chief Secretary (Mr. Griffith-Jones): I am grateful to my friend for his withdrawal, although I find it is a rather graceless one. He said there is no motive—no incentive—I think he said motive—imputed to us. He suggested that the fact that there was Sh. 200 going to the Treasury was an incentive. What is the difference between an incentive and a motive anyway?

Mr. Nazareth: Now I am going to suggest that this is a Gilbertian system of appeal and ought to be ended and something worthy of the name ought to be substituted.

There is one aspect of Immigration practice which has always intrigued me. I hope in the course of the debate the Minister will throw

(Mr. Nazareth) some light on it and tell hon. Members the number of Europeans and non-Europeans respectively who, having entered on a temporary employment pass, were able subsequently to obtain a "G" class permit. I am interested in this figure because complaints are prevalent in the Asian community that it was the policy of the Immigration Department not to allow Asians to remain in the country longer than four years lest they qualify for permanent residence certificates. This policy was, it seemed to me, applied at one time even in the field of education, where Asians were experiencing great difficulty in obtaining the services of teachers who were rarely allowed to remain in the country on the expiry of their temporary employment passes. Later, I got the impression that the policy was relaxed in this particular field when there was a major agitation from Asians over the mess that the authorities had got Asian education into. But in other cases I think the Immigration Department has continued to maintain the policy of preventing Asians from qualifying for certificates of permanent residence by ensuring as far as they can manage that they do not stay beyond four years, the maximum period for a Temporary Employment Pass.

Such a policy is obviously against the economic interests of the country. On the one hand it would plainly tend to keep out the better class of Asians. How many from the better class of men would wish to enter into a new country, with the disturbance such a venture involves, if he knows that at the end of four years or earlier he will be forced to return. On the other hand, if some of the better class of Asians do come they will, as a result of such a policy, be forced out of the country after they have got acclimatized and are able to give of their best to it. In this field too it is of the utmost importance not only that the Ordinance be fairly and impartially administered, but that it be seen abroad to be manifestly so administered.

Turning to the question of economic flexibility, the racial springs in which immigration legislation has its origin, has vitiated the whole legislative approach to this question. At present the Principal Immigration Officer and the Minister in charge of Immigration between them decide who shall, and who shall not, enter the country. They take advice or not as they please. Nobody knows in advance what classes of persons will be allowed to enter except that, in the light of the Immigration Department's figures, we know that Asians will be kept out, if possible. It is only after application is made for a pass or a permit and a decision has been made on it, that you know your fate. In the interests of the inhabitants, and more particularly

their economic interests, if economic interests are the governing consideration, and if no indirect or ulterior purpose is being sought to be served, there seems to be no real difficulty in protecting those interests fairly, impartially and effectively.

The proper way to protect them would be to restore immigration legislation to its basis before the 1948 Ordinance, and at the same time to set up a body likely to command the confidence of all races, with power to define or declare the fields of employment or activity which immigrants would not be allowed to take up or engage in. The permanent legislation in force before 1948 would be sufficient to keep out of the country the undesirable types, such as the drug and drink addicts, the destitute and the prostitutes, the convicts and those dangerous to security, which are set out in the legislation. On the other hand, the power to prevent immigrants from engaging in overcrowded fields of employment or activity would protect the inhabitants of the country. That was officially declared to be the prime object of the present Ordinance. I, along with other Asian Members, and I feel sure, other hon. Members entirely support it, and the policy I suggest is directed to achieve it more effectively and much more fairly than the present policy and practice. Such an approach as I am suggesting has immense advantages over the way in which immigration is now being dealt with.

Firstly, it would have economic flexibility, as the body set up to define the classes of employment or activity from which immigrants would be barred could and would alter them, adding to or deleting from them from time to time according to the changing circumstances of the country. Secondly, there would be impartiality in administration, since the fields of employment which were closed would be closed to immigrants of all races alike, and members of one race would not have an advantage, as the figures I have shown indicate they now have over members of another race. Thirdly, it would attract a better class of immigrant—the class who do not like to be at the mercy of unsympathetic bureaucrats. If they do not belong to any of the undesirable classes, and do not intend to engage in any of the barred fields of employment, they would know in advance where they stood and would be attracted to the country.

The kind of approach I have suggested was not possible in the past, because at the root of immigration legislation lay the desire to keep in the Europeans even if they were alien, and to keep out the Asians even if they were Commonwealth citizens. This sort of desire is unlikely to be satisfied in the future in the way it has been satisfied in the past. The wind of

(Mr. Nazareth) change blowing across Africa will not allow such policies or practices of racial preference for any immigrant race to survive. The racial building behind the present economic façade will not escape the force of that wind. The time is now ripe, I suggest—indeed it is overdue—for a radical revision of immigration policy. Kenya is not at present an attractive country to immigrants. People belonging to the immigrant races are more disposed to leave it than to enter it. There is therefore no inward pressure which must be resisted by legislation. On the contrary, we must seek to induce people to come here—people with new capital and new skills—but who at the same time will not compete with the local people. I would suggest that a select committee be appointed of Members of this House to review immigration policy and practice and to make recommendations in the light of the considerations I have urged.

Finally, there is the question of due regard for human relations, on which I need say only a few words. Civilized society is built largely on the family and any civilized Government must make it a prime object of policy to preserve and maintain the ties of the family, not to undermine or destroy them. In the words of Article 16 of the Universal Declaration of Human Rights: "The natural unit of society is the family, and it is entitled to protection by society and the State." Under the present law a father long-settled in the country might be prevented from being reunited to an adult son because he happened to be born abroad, and a son might be denied the right to be reunited to his father. A wife born in this country, with her parents in this country, may be denied the right of bringing out her husband here; or worse still, her children, or alternatively may be forced to leave the country to join her husband. I find it difficult to understand the mentality of people who think it right to disregard the sanctity of family obligations and ties.

Under the suggestions which have made there would be none of this unwarrantable forced division or separation of the family, or destruction or undermining of family ties. If the person does not fall into any of the undesirable classes, the mentally defective, the diseased, the prostitutes and so forth, he would be able freely to enter the country, but would, of course, be barred from entering the declared closed fields of employment or activity. I would urge that the policy I have outlined to the House is a fair, sensible and practical policy: that it affords proper protection for the people who have their home in this country—the ostensible purpose of the present legislation: that it will achieve economic flexibility, and is in the best interests of the coun-

try: that it will ensure manifest impartiality in immigration practice, and that it will remove the reproach which can justly be levelled against the present law as showing a disregard of human relations and family ties. And, finally, Mr. Deputy Speaker, I would say that now is the time to put it into effect.

Sir, I beg to move.

Mr. Jamilar seconded.

Question proposed.

Mr. Zaifud Deen: Mr. Deputy Speaker, although I consider it is late in the day to talk about immigration, I believe at this time the history regarding immigration in this country should be recalled. It will be appreciated by hon. Members that the question of immigration in this country has been a major political issue for almost 40 years, as the hon. Mover tried to outline in his Motion. While supporting this Motion I have to disagree with certain of the imputations made by the hon. Mover. For instance, I think I would mention here that I have been a member of the Immigration Control Board for six years, and from my personal experience the immigration officers, both past and present, have been most co-operative, and they have been most helpful whenever a case has been properly represented to them, and similarly I have found in my experience that the Ministers concerned in this Department have in all cases considered all the appeals made to them in the light of the facts of the case. The Principal Immigration Officer, Mr. Deputy Speaker, in my view has got to carry out the policy and practice as directed by the Government, and I think the Government has gone wrong there.

From the figures which have been quoted here, and from my personal knowledge, I can say with full responsibility that directly and indirectly the laws of immigration and the practice of immigration as has been directed, has worked, against the immigration of Asians into this country. One feels here that the present Asian immigration into this country is just a trickle. You see, what really, I think, hurts almost all the Asian Members is that those people who came here four years ago and those who have qualified now to make an application for a Class G Entry Permit are not treated and considered on their merits, but in most cases are turned down outright. The reason which is given for that is that they have not taken any trouble to train local inhabitants, and I think the hon. Members should realize that a person, for instance, who comes into this country as an artisan is most of the time occupied in his own work and it becomes really very difficult for him to give training to another artisan to pass a Grade 1 Trade Test.

[Mr. Zafrud Deen]

Well, if I were to go on recounting the faults in practice of the Immigration Department, that would take me a very long time. But I am of the opinion that the figures which have been quoted by the Mover of this Motion should be gone into, and you will find that there is a lot of justification for saying that the immigration laws have operated in most cases against the Asians in this country. That is one of the reasons why we, the Asian Members, feel that it is high time that the Government tried to look into their policy and practices as they are practised by the Immigration Department. As I have said, actually the policy and the practices which are carried out by the Immigration Department are directed by the Government and therefore the Government is responsible for that kind of policy.

Mr. Deputy Speaker, I believe that justice will be done if every individual case is treated on its own merit. As I said earlier, we know that the political situation and developments in this country are such that no longer is it in the interests of the country, neither is it possible, for new immigrants to enter into this country. I think, looking to the economics of the country, that the people are now progressing fairly fast towards taking up the responsible positions.

Another case which I think ought to be mentioned here is regarding permanent residents, some of whom were born in this country, who get married outside Kenya and they do not happen to enjoy large incomes, but they want to bring their wives and children into this country, but they find difficulties in the way which seem to be quite wrong. Anybody who belongs to this country, no matter where he gets married, should be able to bring his wife and dependants here.

Well, I trust, Mr. Deputy Speaker, that the case which has been put by the hon. Mover will be looked into and the Government will accept the Motion. Once again, before I sit down, I would not like to associate myself with the remarks against the executive officers of the Immigration Department. As I said before, it is my experience that they have helped all cases of immigration wherever proper representation has been made and I only hope and trust that that will continue to be so.

Mr. Alexander: Mr. Deputy Speaker, the hon. Mover has complained that his community are alone in cricketing ability in Kenya today. I can only suggest to him that that is the direct cause of the fair way in which the immigration laws have been administered by our Government. There was a time in Kenya when to be a good cricketer was an immediate passport to this country; but because our administrative officers in the immigration have been so fair, they abandoned that

sort of an idea and since then, of course—the hon. Mover is quite right—we have not been able to give his community a decent game of cricket. And if only he would not be quite so vehement in his complaint about this sort of a problem in the country, there would be far more opportunity for us to play with him on equal terms.

Mr. Deputy Speaker, this Motion does give me the opportunity to refer to a matter which I have dealt with in the past. The Motion urges Government "to ensure impartiality" in the administration of its immigration policy. What is that policy, Sir? In respect of the entry and re-entry of Kenya residents, the Government have accepted a policy of no discrimination.

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

[Mr. Speaker (Mr. Slade) resumed the Chair]

They accepted this in November of 1958 when I moved a Motion, Sir, which I hope I can quote, with your permission. It read as follows: "I beg to move this Council urges Government to undertake a study of the Immigration Ordinance, 1956, with the object of introducing amending legislation to place the Ordinance on a non-racial basis." That, Sir, was accepted by the Chief Secretary at the time. A year later a question was asked by me as to what progress was being made with the amendment to the Immigration Ordinance to remove this discrimination, or partially in the words of this Motion, and I was told that it was being considered for drafting.

Now, Sir, the problem here is quite a simple one. It is the definition attached to the word "indigenous". At the moment our Government regard that word as meaning only "African", whereas in fact the meaning of the word "indigenous" is "those that belong naturally", belong naturally to a country. And until, Sir, the Government acknowledge that those of us who belong naturally to Kenya are entitled to the same immigration laws then, indeed, partially will continue. In the words of this Motion, "partiality" will continue, partiality that the Government have done nothing to remove.

It is now, Sir, over two years since this matter was raised. And what have the Government done about it? They have excelled, Mr. Speaker, in doing precisely nothing. It would have been a wonderful opportunity before the close of this Legislative Council to have got out of the way this rather irritating discrimination in our immigration laws. This Motion, Mr. Speaker, gives me the opportunity to raise this matter. I am surprised that the hon. Mover himself did not refer to it, because I know he is as concerned about

[Mr. Alexander]

this particular irritation as I am, and I believe this gives Government an opportunity to tell us in reply to this debate what they are doing about it and whether they intend to do anything before the close of this Legislative Council.

The Temporary Minister for Internal Security and Defence (Mr. Ellerton): Mr. Speaker, Sir, the Government's immigration policy is simple and is based on two principles. First, Sir, the Government has a duty to protect the economic interests of present and future generations of Kenya—and I include in that term, of course, all those of whatever community whose homes are in this country. Secondly, Sir, if development is to continue and if standards of living are to be raised, it is, and it will remain, essential to encourage the introduction of capital and of people who possess special knowledge and ability, experience or skill, not the least being the ability to impart these skills to others. It is the aim of the Government's immigration policy, therefore, to encourage the permanent immigration of those whose contribution to the economy of the Colony will be of incontestable value; and to exclude from permanent entry those who, even though they may make a temporary contribution to the economy—for example, by supplying a skill which today we cannot in sufficient degree supply from our own resources—would increasingly be likely to compete in the local labour market with local people were they allowed to acquire a permanent immigration status.

To this extent, Mr. Speaker, I accept that the Government's immigration policy is partial. Indeed, it must be, because an impartial policy could only mean a policy of no immigration control at all, or a policy of no immigration at all. In the circumstances of Kenya, to adopt either course would be disastrous. Within this partial policy, however, and in spite of the figures which the hon. Mover has quoted, the only discrimination which is exercised is between those whom we think will benefit the Colony and those who will not. This is an exercise which must be left to the Government to determine in the light of all the information which is available to it. I would assure the hon. Mover, however, that in exercising its discretion the Government is only influenced by what is in the best interests of the inhabitants generally of the Colony. The Government, therefore, cannot accept the *innuendo* in the Motion as it stands, that its administration of the immigration law is partial and has insufficient regard to human relations. The Principal Immigration Officer, for example, does not turn down every application for a Temporary Employment Pass or for a Class G Entry Permit submitted by one of the hon. Mover's constituents just because the

applicant is of a certain race. He will turn down, however, every application—no matter by whom it is made—to bring into the Colony, for example, a mason or a shop assistant, because the Principal Immigration Officer is satisfied, after consultation with the Labour Commissioner and with other responsible advisers, that masons and shop assistants are available locally.

This brings me to the present employment position, with particular reference, Mr. Speaker, to our immigration policy. On the one hand, we have a situation in which an increasing number of boys of all races are leaving our schools. Thus, for example, if I may quote some figures, some 100,000 Africans are leaving school in 1960 after completing four years' education; a further 15,000 Africans are leaving after completing eight years' education. At the same time, more than 3,000 Asians will be leaving school and a much smaller number of Europeans. Some of these boys will go on for further education. The great majority, however, must be absorbed into the economic life of the country and there are already some indications that this process of absorption is becoming less easy than has been the case hitherto and that the employment status, if I may use the term, of Asians, for example, is declining. This makes it all the more necessary for the Government to scrutinize carefully applications to enter the Colony. We must be all the more careful that those persons who are admitted will contribute to our economic development, thus ensuring that employment opportunities are also increased. Only in this way will we in fact achieve the basic aim of our policy which is to protect the economic interests of the present and future generations of our people.

The hon. Mover, Mr. Speaker, has put forward proposals which would mean a complete change in our system of immigration control and in our immigration policy. He has suggested that instead of continuing to apply the positive criterion of positive assistance towards the community, we should go back to the old idea of having a negative criterion whereby any person could enter the Colony, in effect, provided he could show that his entry would not be prejudicial to the inhabitants of the Colony. This is something, Mr. Speaker, which the Government could not possibly accept. It would, first of all, as I have said, mean the complete abandonment of the principle that only those should enter the Colony whose presence would be beneficial to the inhabitants. It would mean that such immigrants and their children would impose a serious burden upon the Colony's already strained social services, for example, education, even though they may not be contributing in any way to our development. It would mean that in time these immigrants and their

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children would qualify as permanent residents and, as such, could not be debarred from taking up any employment which might be available to them, notwithstanding any conditions that may have been imposed upon them when they first entered the Colony. Above all, no matter what restrictions might be placed upon their employment, they would increasingly enter into competition with local inhabitants in the general employment field. If they were to be denied employment altogether, they would become a charge on the State unless they were possessed of large sums of capital, in which case they may apply to enter the Colony under existing legislation.

Lastly, Mr. Speaker, he should be obliged to set up complex and expensive machinery to make sure that persons who entered the Colony in the manner proposed by the hon. Mover in fact abided by the conditions of their entry; and this would be unproductive expenditure which we cannot afford.

I am very well aware, Mr. Speaker, that in the administration of our immigration policy hard cases sometimes occur. This is, I think, inevitable in the practice and administration of any policy which deals so closely with the lives and affairs of human beings. These hard cases come to me frequently both in my substantive capacity as Permanent Secretary of the Ministry responsible for immigration and in my temporary capacity as Minister. I can assure hon. Members that these difficult cases are given the most careful consideration by the Principal Immigration Officer, the senior officials of my Ministry and by the Minister himself. The human aspects of these cases are always very much in mind, but that does not mean that we can allow ourselves to lose sight of the basic aim of our whole policy which is to protect the economic interests of the present and future generations of Kenya people. If I may give one practical example of the kind of problem we are up against in this connexion, it is the issue of dependents' passes which the hon. Mover mentioned towards the end of his speech. Difficulties sometimes arise when a Kenya-born girl, for example, who has married in India in circumstances which preclude the issue to her husband of an Exemption Certificate and who has raised a family abroad, wishes to return to Kenya as the wife of course do as a Kenya-born person. She wishes, perhaps, to reside here more or less permanently and naturally wants her children to live with her. Are we to allow it? At first sight regard for human relations suggests yes. I am bound to say, however, that the question is not so easy as it appears. If we are to

grant dependents passes in this way, it means a departure from the principle which has hitherto guided us, that a wife follows the domicile of her husband. To depart from this principle would not only be, in all the circumstances, an encouragement perhaps to the breaking up of homes; it would also mean an influx into Kenya which, apart from other considerations, would bear heavily upon our strained educational and other social resources. I mention this as the kind of problem which is continually coming before us and which cannot just entirely be dealt with by having regard only to human relations.

I should now like to refer briefly, Mr. Speaker, to the remarks of the hon. Member for Nairobi West. I am well aware that about two years ago the Government accepted a Motion moved by the hon. Member that it should undertake a study of the Immigration Ordinance with the object of introducing amending legislation to place the Ordinance on a non-racial basis. The hon. Member questioned why, for example, when he embarks on his travels to Rome and elsewhere, he should be obliged to obtain a re-entry pass; whereas the hon. Member for Nairobi Area on his travels is not so obliged. I accept that this is an apparent anomaly which stems, of course, from the fact that our immigration law does not apply to Africans as defined in the Ordinance. It is a matter which, in spite of the remarks of the hon. Member, the Government has examined carefully.

Mr. Alexander: Interjection.

The Temporary Minister for Internal Security and Defence (Mr. Ellerton): I can, however, hold out no prospect that any change will be made to the law in this respect in the near future. Either the Government would have to set up an expensive apparatus for immigration control which would be quite beyond its resources at the present time; or we would have to accept that we could not properly administer the law, which would be to bring the law into contempt.

Mr. Alexander: Then why do you accept the Motion?

The Temporary Minister for Internal Security and Defence (Mr. Ellerton): The Motion, Mr. Speaker, was to examine the Ordinance.

Mr. Speaker, the Government cannot accept this Motion as it stands. As I have said, the Government always has under review its immigration policy with a view to ensuring that its policy aims are being achieved. For this reason the first part of the Motion moved by the hon. Member is quite acceptable. For reasons which I have explained, however, the Government cannot accept the suggestion in the second part of the Motion that it does not have sufficient regard to

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human relations and that its administration of the law is partial. The Government will continue to be guided always by what it believes to be in the best interests of the inhabitants generally of the Colony. That will be the extent of its partiality, and discrimination will only be between those whom we think will benefit the Colony and those who will not. I can assure hon. Members that within the ambit of that policy we shall continue to have regard for human relations.

I therefore beg to move that the Motion be amended by the insertion after the words "in the interests of the country" and of the words "to continue". Mr. Speaker, I beg to move.

The Acting Chief Secretary (Mr. Griffith-Jones): I beg to second the amendment, Mr. Speaker, and I feel that I owe it to my hon. friend, the Member for Nairobi West, to tell him something of the position in regard to the Motion in amplification of what my hon. colleague has just said, the Motion which he moved two years ago. As my hon. colleague has said—and I think the hon. Member has been told before—the Government has satisfied itself that it would not be possible—not be practicable—to extend immigration control to all the inhabitants of this country. But there were certain features which, I think, the hon. Member will remember—I think he and I discussed them at one time—which we might be able to introduce in regard particularly to the control of immigration in the interests of security. I have to apologize to him and to the House that it has not been possible to prepare legislation on these grounds. I have on a number of occasions attempted it and made certain progress myself, but on each occasion I have been overtaken by more urgent projects.

And I merely confess that it has not been possible to bring the matter to fruition. In extension I can only remind the House that we do require in this country a very considerable volume of legislation, both principal legislation in the terms of Ordinances both original and amending and a vast volume—I think a lot of people do not really appreciate how great a volume—of subordinate legislation, all of which has to be prepared, reviewed and approved in proper form by the Legal Department's draftsmen. They do perform a very fine job under constant pressure and I think if hon. Members will look over the years, over the last few years particularly, at the annual volumes, they will realize that both in terms of the extent and the complexity of the legislation which has been produced in this country, they have really achieved something quite remarkable.

Now in regard to allegations made by the hon. Mover of partiality, my hon. colleague has dealt with most of them. But, of course, there is one aspect of our immigration law which is almost wholly partial. That is the provision under the Exemption Regulations for the husbands of girls of Kenya to enter the Colony by virtue of their position as husbands and quite irrespective of any economic criterion at all. Now if we look at the immigration policy in this law and as implemented by the immigration officers, I think we are entitled to ask ourselves whether in fact this is not unduly impartial, this concession, whether or not in fact it is *undue* regard to human relations. As my hon. colleague has just mentioned, the normal principle in civilized life is that a wife follows the husband's domicile. This particular concession was introduced at a time when it was represented that certain parts of the Asian community could not find husbands for their daughters in this country. I think I am right in saying that those conditions have very largely if not entirely passed now. At any event I invite the hon. Mover who quoted us a number of figures to quote to this Council figures for the years which he quoted earlier of each category of Asian immigrant into this country, including the category of Asian immigrants coming in as husbands of Kenya girls. I think you will find that the figures are quite illuminating in terms of the economic benefit to this country. When he quotes these figures as I challenge him to do, let us remember that this particular category enters this country wholly irrespective of any economic advantage to the country.

I beg to second the amendment.

Question proposed.

The Speaker (Mr. Slade): In this case also, as the matter of the amendment is not conveniently severable from matters of the Motion, Standing Order 62 will apply.

Mr. ole Tipsi: Mr. Speaker, Sir, I would just like to make a few observations on the Motion before the House. Now as far as the Motion is concerned, I do not think any Member of this House would like to see any discrimination in the implementation of the law of the country or the policy of the Government as far as the immigration policy is concerned. But surely in a very important Motion of this nature, we cannot close our eyes to the effects that the adoption or the acceptance of a Motion such as this would have on the country as a whole, especially in its present situation. Now I think I am right in saying—it is a fact and the Government knows it only too well—that in this country just now we are faced with the problem of unemployment and as such I think we can be very, very unwise at this juncture if we opened our doors wide without

[Mr. ole Tipl] taking due regard to the effects of the immigrants who have very, very little or nothing at all to bring for the economic benefit of the country and instead would bring and increase our social problems which are already with us and which we are finding extremely difficult to tackle.

Now I would only say that as far as the immigration into this country is concerned, I would not like, nor do I think that the Africans would like, the restrictions or the controls lifted, but only due consideration and encouragement should be given to those indispensable personnel whose coming into this country has a direct benefit to this country, economically, socially, and politically. But to suggest that simply because someone is interested in coming to Kenya, bringing absolutely nothing, whereas the people who are already here are unemployed, I think it would be very, very unwise to take such a step.

Now, if I may make myself very, very clear, the first part of the Motion is really asking nothing of the Government and it gives three loopholes in the immigration laws. Surely that is the duty and the business of the Government, to put things right. To try and suggest that the Government has been partial, has been inconsiderate in considering the human relations, is the very foundation to such allegations. Then it is only fair that the Government should go into the whole thing and play fair with everybody. But I will not agree that it has been partial in this case and if it has then I strongly urge a review of the whole immigration policy.

Now, Mr. Speaker, I do not want to labour the hon. Members of this House on this question, but I think it is in the interests of us all here in this country to absorb whatever manpower we have, whatever financial resources we can drag in this country, to enlighten the people of this country, instead of trying to add another heavier burden which we cannot shoulder, a heavier burden than we have already and to have something more added on our shoulders will be asking for collapse.

I beg to oppose.

Mr. Pandya: Mr. Speaker, Sir, I would like to congratulate the hon. Mover on the very lucid and comprehensive speech he made on moving his Motion.

I listened with great care, Sir, to the speech of the Temporary Minister for Defence, but I fail to see any answer to the two points which the hon. Mover was trying to make. The first one, Sir, was the figures where Europeans of non-British origin have been given preference over Asians of Commonwealth countries and this was proved by the

figures that he quoted and which have not been referred to by the Government side.

The other point, Sir, was that he was emphasizing the partial nature of the administration and practice in the immigration laws of this country as between the European and non-Europeans. I am afraid, Sir, the Government has not answered this point and has not answered the figures that have been introduced by my hon. friend. I think the Government must accept the challenge which has been given by my hon. friend. The Government should satisfy this House that it has not been partial in the administration of the Immigration Ordinance. I, Sir, have in the course of my duties as a representative of my constituency, to go to the Immigration Office in Nairobi quite often and I have found that the Asian Section is so very overcrowded and that there is hardly any order at the counter. What do you see on the other side? There is a European Section. I do not see the necessity of having an Asian Section and a European Section separately and that section is about three times the size of the Asian Section, it is almost empty and you get attention at very short notice, without having to waste much time. Of course, when I have made representations for my constituents I get attention very soon and I am able to discuss the problem with the Immigration Officer, but this difficulty, Sir, is very apparent to any person who passes the Immigration Office in Nairobi and I would like the Government to answer the main point that was made by my hon. friend for the Western Area and not to put before us the principles which have been guiding the Government in the application of the law in this country. I would like to assure my friend, the hon. Member for North Rift, who has just sat down that I think the hon. Mover made it very clear that he did not want to bring in any more people to this country, we want to have regard for the economic interest of the future generations of this country, but those people who are useful and who would do great service to this country should not be hindered by only being given temporary employment passes for four years and then we would say "Thank you very much you have done a fine job, but we do not need you any more". I would like, Sir, the Government to go into those points which have been made—the relevant points which have been made—and not to give answers to this House which are, in my opinion, not so relevant to the purpose for which the hon. Mover has moved this Motion.

The Minister for Information and Broadcasting (Mr. Harris): Mr. Speaker, Sir, just two very short points arising from the last hon. Member who spoke. On the reason why he finds two separate racial departments in the Immigration

[The Minister for Information and Broadcasting] Office, he will appreciate of course that the immigrants come from different parts of the world. They are dealt with and it has been found administratively very much easier to deal with immigrants by people who know the conditions from which they come, know their customs, their habits and also know their language, and it is purely an administrative matter that it has been found advisable to separate the immigrants so that they can go through the process of immigration in front of people who understand their particular problems.

Since my hon. friend, the Chief Secretary, spoke, Sir, I have been given immigration figures of Asians in 1958 and 1959, and it might interest hon. Members if I quoted them. The "G" class permits issued in 1958 were 870. Immigrants who were allowed in as the husbands of Kenya wives and therefore had no particular economic contribution to make to the country were 153, and non-Asians in 1958 were nil. In 1959 the figures were "G" class permits issued 154, the husbands who came in because their wives were Kenya citizens totalled 185, and there was one non-Asian exemption. I hope none of the hon. Members ask me why there was one, but there was one. And those are the figures.

But I think it does reinforce what the Chief Secretary says that in fact in 1958 and 1959 338 Asian males came into the country for no other reason but that they were married to Kenya-born Asian girls. I thought the House might be interested in those figures, Sir.

Mr. Hassan: Mr. Speaker, I have heard the hon. speech of the hon. Mover and the reply equally able from the Acting Minister of Defence. Sir, I must say that the amendment to the Motion suggested by the Minister is not acceptable to me for the simple reason that the part of the Motion he does not accept is one of the important parts of the Motion. Ever since the Immigration Control Board was done away with and the whole immigration problem was left for the Principal Immigration Officer to decide, the number of complaints we have been receiving from the members of our community have increased several hundred per cent and in my opinion it was not only in the interest of the good working of the immigration law but it was in the interests of the officers who are assisting of a Immigration Department that the suggestion of a select committee should have been given very serious consideration. This would find out whether the complaints are merely from those who do not succeed in getting a permit or whether they have any substance at all.

When this Immigration Bill was debated some years ago, and we put up an objection to it the

Chief Secretary who put this Bill on the Table said that concessions allowed in the Bill to the European community for selection of people from the immigrant races should have been extended to members of the Commonwealth. The reply by the Chief Minister at that time, I well remember, was to the effect that this is a British Colony and it should remain a British Colony for ever, and the members of the European race will be given the privileged position. That was the basis of the immigration change in the law at that time and I would like to draw the attention of the Government to the fact that there has been a complete wind of change in this country and that that idea of allowing this country to be a British Colony should have a change.

The Minister for Information and Broadcasting (Mr. Harris): On a point of order, could the hon. Member quote this Chief Secretary who has told us that this would be a British Colony for ever, because I do not remember it during my time in this House.

The Speaker (Mr. Slade): That is not a point of order.

Mr. Hassan: I would only draw the attention of the Minister for Information, Mr. Speaker, that if he goes through the debate of 1958 when the new change was made in this immigration law, he will find the reply given by the Minister at that time to my objection that immigration, especially from the United Kingdom should be changed to include the Commonwealth and this reply of his was very clear at that time that it is a British Colony and shall always remain a British Colony.

I would only like to suggest, Sir, to the Minister that the whole Motion should have been given very serious consideration. It is, after all, in the economic interests of the country that the suggestion has been made that the services of the Immigration Department should be protected as well as the members of the particular race who raise frequent objections. For this reason, Sir, the amended Motion I would like to propose.

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

Mr. Travadi: Mr. Speaker, it was not my intention to speak at all here on this particular Motion. I only came yesterday afternoon from India, not knowing that this particular Motion was down for today, and I got my papers this morning and had no time to go through them. But having heard the Attorney-General and a couple of other speakers, I felt myself I should speak out my mind, although not quoting exactly the number of cases and the full details thereof.

When the hon. Member for Nairobi West was speaking and when he was being replied to, I

[Mr. Travadi] remembered distinctly the last time he moved his Motion that when the hon. Member Mr. Pandya was speaking he was not allowed to touch on the actual application side of the immigration law, but only on the theory side. I myself also was ruled out of order by the previous Speaker, yet now today he has been replied to in a very different way.

One point I was worried about was when the hon. Member spoke about the 1,700 or so odd Temporary Employment Passes that were given to Europeans. Were they not asked to train any Africans? If an equal number had been trained, I would have thought I would have known the figures of the Africans trained—I would have known that—but no figures are forthcoming.

Then there is the allegation that has been repeated again and again that the Asian girls bring their husbands here as an appendage and that the husband follows the wife. Is this law only applicable to Asians?

The Acting Chief Secretary (Mr. Griffith-Jones): Yes!

Mr. Travadi: What happens to European girls? Do they disappear in Europe? What happens to their husbands—

An hon. Member: You are getting mixed up! Mr. Travadi: I think there is something fundamentally wrong and that is why we should have an impartial enquiry to go into the exact application and operation of the immigration law.

The Acting Chief Secretary (Mr. Griffith-Jones): We have got it all here!

Mr. Travadi: It is not here, Sir. You have been saying to us that in the last year the Asians have been coming here illegally by thousands and thousands. The words "thousands and thousands" were the words which were used by the hon. Minister for Legal Affairs. We challenge those figures. General figures came forward to us in black and white simply stating that this happened to 2,000 persons, something else to 300 other persons, something else to 500 persons, and so on; but we want the full details of prosecution and deportation and such like. I throw out a challenge to you. Appoint a committee and let every case be gone into and we shall prove largely that those figures are all made-up figures. I can give you an example, or two or three if you will listen: just one example. In 1943 a man came here under the Defence Regulations and he stayed in Kenya for two or three years. He thought himself that he would probably better his prospects by going to Uganda where the money was better. He did go there and he did not find it very good, but luckily he got his wife there in Uganda. Both came back to a

job that was offered to him in Kenya. He came back to Kenya, stayed here for 10 or 15 years and had about half a dozen children. All of a sudden the Immigration Department had that family up, brought them before the court and told them: "Well, when you entered Kenya you did not have your passport endorsed. Your entry here is illegal." And the poor fellow with his wife and half a dozen children was deported. These are the cases where human relationships are considered? These types of cases are piled up together and then they are called "thousands and hundreds of thousands". I therefore, Sir, appeal to this House. Let an impartial committee of this House be appointed to go into all these innumerable cases to see what type of action against the Asian community is taken day in and day out and how this partiality against one particular community goes on.

I beg to support the amendment.

Mr. Nazareth: Mr. Speaker, Sir, the hon. Member for Nairobi West said in reference to the remarks which I made rather lightly that the reason why the tide turned in cricket in favour of the Asians during the last eight or nine years was that the European cricketers had not been allowed into the country. I find the explanation quite unconvincing because if the immigration figures show that no British Europeans are denied temporary employment passes, and almost no British Europeans are denied entry permits, then I cannot see how any European cricketers have been excluded. It looks to me as though the explanation which he has given as regards the change in the type of cricket cannot explain the difference that has occurred. However, it is purely, as I say, a light-hearted remark which I made, and I do not think that it received the answer that it merited.

Now, Sir, he expressed surprise that I had not mentioned, on the question of impartiality, the necessity of putting all indigenous people on the same footing. Of course one has only a limited time in which to move a Motion of this kind—half an hour—and there were many other things which I would have liked to have said but I was unable to say them in the time at my disposal. However, I entirely agree with what he said and I think the Government has not given a sufficient answer to his complaints. I entirely support his desire that all indigenous people should be placed on the same footing and that there should be no racial discrimination drawn between the members of one race and the members of another race. The Government has found it impracticable to implement that valid principle and I hope they will not find it, on further examination, so impracticable.

The hon. Temporary Minister for Defence set out two principles on which Government policy

[Mr. Nazareth]

is based. He said the first was to protect the economic interests of the people who have their homes here. I entirely accept the principle. In my speech proposing the Motion I accepted this and I made it clear that I accepted it. All I said was that the proposals I made were much better calculated to carry out that principle than the methods that the Government now follows.

The second principle he set out was to attract people with capital or who will impart skills, and again I say, in regard to that, that the proposals I have put forward are much better designed to achieve that end than the methods of the Government, because those fields which are overcrowded are to be closed but those fields which are not overcrowded are to remain open; thus those who can assist the economy of the country will be able to come. The others, who seek to come into fields of employment where there is no scope, will not seek to come in for the simple reason that they will know in advance that there will be no employment available in those fields and that they will not be able to take up employment because they are prohibited by law from taking up employment. There again I say that the present Government policy is not as well designed to achieve the ends we both have in view as the proposals I have made. He said, in regard to the selection of persons who want to be allowed to come into the country, that this exercise should be left to the Government. Well, we see the results of leaving that exercise to the Government. The result of leaving that exercise to the Government is that people of one race are in practice very largely excluded and the people of another race can enter for the asking. They can apply for an entry permit, hardly a single one is refused, and they can apply for temporary employment passes, and not a single one has been refused in several of the years that I have mentioned. He put forward examples such as this: that masons and shopkeepers are available locally and that they are therefore excluded. But again, under the proposals that I have put forward, masons and shopkeepers, if there is no scope for them or if there is no employment for them, would automatically be excluded because by law they would know in advance that they would not be allowed to take up employment because there is no scope for them. Again, accordingly under my proposals, the interests of the country, and the interests of the local people, would be just as well protected, and, indeed, I say they would be better protected.

He again referred to the large number of local boys who are leaving schools and said we must see that scope is provided for them and that employment is provided for them. He said also

that we must see that immigrants contribute to create employment. I cannot see in what respect the present policy has the advantage over the proposals I have put forward. As regards local boys leaving schools, Sir, if a field of employment is fully occupied I am sure no immigrant will come in to enter into competition with the boys leaving schools. As regards immigrants contributing to the creation of employment, the only type of immigrant who would seek to come in would be the type who would be able to make a contribution to the economy of the country; the others simply would not find the country attractive to come to because they would be prohibited from taking up employment, or, alternatively, they would only come in because they find that there is scope in a particular field.

Therefore, Sir, in not one single respect do I find that the hon. Temporary Minister has answered the points I have put forward. He said that the proposals put forward would involve a complete change of immigration legislation in practice and that I have suggested a merely negative criterion. I am unable to see how I have suggested a merely negative criterion. I have put forward a very positive proposal that persons entering into competition with local people ought not to be allowed here. That is even more clear than the present way in which the Ordinance is administered. People would know in advance that those spheres are not open to them. That is a very positive contribution to the economy of the country, because he will find that if one has a policy of economic flexibility, as I suggest, people will go out much more readily, when the economy is burdened, than they are at present prepared to do.

In fact, it was noticed during the depression in the years 1930 onwards, or about that time, more people left the country, far more people left the country, particularly members of the Asian community, and then re-entered the country. Why was that? It was because there was no scope for them and so they returned to India. But the same thing will not happen so readily now because people get a little apprehensive that they will not be allowed to come in. But if, as permanent immigrants, they were entitled to come back, and if when had not yet qualified for permanent residence, they left the country, but they felt that they could come in whenever there was scope available for them, it would mean that they would leave much more readily than they do now. In that respect, Sir, the proposals I have made are of much greater advantage over the present position. Therefore, his repetition of what has been declared to be the principle of the Ordinance that people entering the country would enter into competition with the local people and would become

[Mr. Nazareth] as a burden on the country, in my submission, has no substance whatever. He said further that if people were allowed to enter the country freely and were not permitted to take up employment in overcrowded fields of employment, a complex machinery would be necessary and there would be a great increase in expenditure. I am unable to see in what respect a much more complex machinery would be required than is at present required, or that there would be any greater increase in the expenditure. As far as I can see, there would be a much more flexible practice and there could be a watch kept on people just as much as a watch is kept now, and no greater watch would be needed than is now necessary.

He referred to hard cases, and on that point I thank him for the sympathetic way in which he referred to them, and he said that they are given the most careful consideration. But the unfortunate part of it is that all these hard cases, almost every one of them, occur in only one community. If the figures tell you that hardly a single temporary employment pass is refused and that hardly a single application for entry permits is refused, then where are the hard cases? The hard cases occur in only one community. That is the kind of thing we complain of.

Therefore, I find myself wholly unable to accept the amendment that he has made that we should substitute the words "continued partiality" in the place of "ensure partiality" because it implies that at present there is impartiality in the administration of the Ordinance. I am quite unable to accept that there is impartiality in the administration of the Ordinance. It is not I who give the contradiction to that statement, but it is the figures that do so, the figures I have mentioned. Look at the figures in the Immigration Report for the years 1956, 1957, 1958, 1959, and the figures tell you that the administration of the Ordinance is not impartial. It is not I who say that.

The hon. the Acting Chief Secretary said that the Ordinance was wholly partial in that exemption was given in favour of husbands of local girls only in the case of one community, and he asked me to quote the figures in that respect; but, fortunately, the Minister for Information has himself supplied the figures and saved me carrying the burden which I felt the Government itself should undertake. I do not really see the importance of the particular argument that the hon. the Acting Chief Secretary used, although I accept the contentions advanced and founded on these particular facts. The reason why Asians are compelled to come in under this particular clause is because they are so readily refused entry permits and temporary employment passes, and no

Europeans need ever come in under that clause for the simple reason that if they apply they get entry permits or temporary employment passes. They need not resort to that particular way of coming in. It is because the Asians are driven to coming in under this clause that they are compelled to resort to it. I see no partiality in favour of the Asians by reason of this clause. In these days of sex equality I see no reason why the wife should not choose the matrimonial home just as readily as the husband chooses it, and I can see no partiality in that respect even if we have an outmoded law of domicile on that point. We have now come to the days of true sex equality in that respect.

The hon. Member for Central Rift said that we would worsen the unemployment situation if we accepted the Motion in the form in which I proposed it. I should have thought that the advantage in that respect is in favour of my Motion rather than in favour of the amendment, having regard to the proposals which I have put forward, because those fields where there is no employment available would be closed to immigrants; they would not be able to take up employment in those fields. Therefore I am unable to see how the unemployment situation would be worsened by allowing the people in who will not be permitted to compete. Therefore, Sir, I think he has not really understood or has not given due weight to the proposals I have put forward, and I think that if he were to examine them he would see that really they do not in any way worsen the unemployment situation. On the contrary, Sir, I think they would improve it, because I think the people who are now becoming unemployed would more readily leave the country in the expectation that when employment was available in those fields they could come back. But if they now have the fear that they would not be allowed to come back if they were not yet permanent residents then in that case it will be much more difficult to find a solution to the unemployment problem than it will be in the way I suggest.

I would commend to the Government the observations made by the hon. Member for the Eastern Electoral Area, Mr. Pandya, when he pointed out that the arguments I made in my opening speech have not really been answered by the Government. They have carefully kept away from them or the most material parts of my argument.

The hon. Minister for Information justified the division of the Immigration Department into two sections as being necessary for purely administrative reasons. Now, I can see no difficulty at all in having just one Department where, if the applicant was an Asian, a person speaking Asian languages would attend to him, as he would to a

[Mr. Nazareth] European. It is not necessary to divide the Department into two sections. It is quite easy to call up a person speaking the particular language of the caller. I can see no particular justification for a division of the Immigration Department into an Asian Section and a European Section. That, as I say, brings about or encourages the racial approach where, or so the Government informs us and assures us, there is no question of a racial approach.

In conclusion, Sir, I would say that the Government has not really answered the points I have put forward in support of my complaints and in support of the proposals that I have made. I would suggest to the Government that it would be much more in the interests of the country to introduce a flexible policy of immigration so that people know in advance who can come in and who cannot come in, so that the discrimination would be between classes rather than as at present, persons. Secondly, Sir, if it is known who can come in and who cannot come in, you will get a much better type of immigrant coming in under that sort of situation than you get under the present situation. Since, as I urged in opening, the policy of immigration has its roots in a racial urge, now that that racial urge, or those racial prejudices are becoming much less, Sir, it is desirable—it is indeed urgent I would suggest—that a new policy, a flexible policy, which should be seen to be manifestly fair, should replace the old policy which in form was non-racial but which in practice I submit was racial.

Mr. Speaker, Sir, I beg to oppose the amendment and support the Motion in its original form. The question was put and carried.

ADJOURNMENT

The Speaker (Mr. Slade): That concludes the business for the day. Council will be adjourned until tomorrow, Wednesday, 26th October, at 2.15 p.m.

The House rose at eight minutes past Six o'clock.

Wednesday, 26th October, 1960

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

[Mr. Speaker (Mr. Slade) in the Chair]

PRAYERS

PAPERS LAID

The following Papers were laid on the Table:—
Ministry of Community Development Annual Report, 1959.

The African Courts (Fees and Fines) (Amendment) Rules, 1960.

(By the Acting Chief Secretary (Mr. Griffith-Jones))

The Township Sanitary Rules: Application to Karatina.

The Trading Centres (Dust-bins) Rules, 1948: Mogotio Trading Centre (Refuse Removal Service).

The Machakos Township (Refuse Receipts and Refuse Removal) (Amendment) Rules, 1960.

The Machakos Townships (Conservancy Services and Conservancy Fees) (Amendment) Rules, 1960.

The Machakos Township (Emptying of Cess-pools) (Amendment) Rules, 1960.

The Malindi Township (Refuse Removal Fees) (Amendment) Rules, 1960.

The Embu Township (Disposal of Refuse) Rules, 1960.

(By the Minister for Information and Broadcasting (Mr. Harris) on behalf of the Minister for Local Government and Lands (Mr. Havelock))

BILLS

SECOND READINGS

The National Loans Bill

The Temporary Minister for Finance and Development (Mr. Butter): Mr. Speaker, Sir, I beg to move that the National Loans Bill be now read a Second Time.

This Bill, which has been drafted on the lines of the United Kingdom National Loans Act seeks to make a major change in the method by which funds are provided annually for the payment of the principal aid interest on our Public Debt. It has hitherto been necessary for these sums to be voted annually; but these payments are inescapable commitments and the Bill therefore seeks to make them a direct charge on the Consolidated Fund of the Colony.

[The Temporary Minister for Finance and Development]

The two most recent Loan Ordinances which have been passed by this House, namely, the Ordinances covering the Exchequer loans we borrow from the United Kingdom and the recent loan of £2,000,000 from the International Bank, both contain similar provisions to those in this Bill and are therefore not included in the First Schedule. Clause 5 of the Bill gives effect to the main purpose of the legislation. Clause 2 enables the Treasury to repay existing loans and clause 3 gives the Treasury the power to exchange new securities for existing securities. Clause 4 deals with the charging of principal, interest and sinking fund contributions of loans raised under this Ordinance on the Consolidated Fund. Clause 6 seeks to amend the Tax Reserve Certificates Ordinance so as to enable interest on the certificates to be made a direct charge on the Consolidated Fund. The repayment of these certificates is already a direct charge on the Consolidated Fund under the Tax Reserve Certificates Ordinance.

The Bill does not seek to increase in any way the limit of our Public Debt. It is not concerned with the short-term borrowings and provision for these is contained in the annual Appropriation Ordinance.

It may be asked whether the enactment of this Bill is likely to give increased confidence to investors in Kenya. There is no doubt that this increased confidence is necessary and a very rough guide of what the City of London thinks about us can be obtained on any day by looking at the back page of the *Financial Times* which gives the redemption yield on the various Colonial and Dominion stocks that are quoted on the London market. There is one Kenya stock quoted on that page and in January the redemption yield was £6 6s. Today it is £8 12s. Only part of this increase can be attributed to the general fall in Gilt Edged prices and to the increase in the Bank rate in the United Kingdom. So long as our stocks in London are giving a redemption yield of the order of 8 per cent, it means that the local market as well as the London market is denied to us as a source of funds for our Development Programme.

We have obtained on the local market in the last six years some £18,000,000 for development. But the financial institutions which have contributed to those loans will obviously not take them up at rates out of line with those prevailing in London. It is quite out of the question for the Government to try to finance its Development Programme when the rate at which the money has to be borrowed is 8 per cent or more.

However, we have already arranged sufficient finance at reasonable rates of interest—mainly by way of Exchequer loans—to cover satisfactorily development expenditure in the current financial year. As far as 1961/62 and 1962/63 are concerned, we are seeking to fill the gap and have put forward applications to a number of international organizations. It is too early to say whether these applications will be successful or not and it is therefore too early to say whether we can be sure of having sufficient money for the last two years of our present Three-year Development Programme.

The other source of filling this gap would, of course, be a revenue surplus. We started the year with £1,900,000 of credit in the Colony Exchequer, and if our revenue this year fully covers our ordinary expenditure then we hope to be able to devote a considerable part of this £1,900,000 to assisting with expenditure on development, but present indications are not favourable. The Exchequer Account for the first three months of this financial year, that is from the 1st July to the 30th September, has already been published in the *Gazette*, and shows that expenditure is running at the anticipated rate, but that there is a lag in revenue compared with the same three months of last year of about £1,000,000. About half of the shortfall is on customs and excise, and the other half is on income tax, but there is a special reason for the shortfall on customs, which is that we were overpaid by the Commissioner of Customs to the extent of £420,000 at the 30th June. I would not like hon. Members to think that this is because the Commissioner of Customs has done his sums wrong. It is because there were unusual transfers of goods from Kenya to the other territories in May and June, possibly owing to the lifting of the trade boycott in Uganda. We have had to repay this amount out of collections for the first three months of this year, and that explains most of the shortfall, but I feel I should point out that we have estimated to receive £14,700,000 from customs and excise duties this year and only received £13,900,000 if we take the correct figure last year. I think it is therefore clear that there will probably be a fairly substantial shortfall in customs revenues. One of the reasons will, of course, be that the credit squeeze will exercise pressure on traders' stocks and will tend to reduce the volume of stocks and also reduce the volume of imports.

Referring to income tax, it is still too early in the year to say whether we will catch up on present shortfalls, but I am hopeful that we will. During the early months of the year the revenue collected relates mainly to arrears. On the 31st October we are due to receive the first instalment of personal income tax. Then on the 31st

[The Temporary Minister for Finance and Development]

December we are due to receive the company tax, and the position will, of course, be kept under careful review. There is no reason at present to think that we will not achieve our estimate.

To return to the Bill, from which I fear I have wandered rather widely, the Bill will, I hope, assist our credit position, but as I have explained we are entering a period of difficulty both on the recurrent side and the development side of our Budget.

Finally, I feel I should point out that the estimates of expenditure on the public debt will, of course, be published each year and brought to the notice of Legislative Council, and further that before any moneys can be withdrawn by the Treasury from the Consolidated Fund for the payments referred to in this Bill it will, of course, be necessary for the approval of the Controller and Auditor-General to be obtained on each occasion in accordance with the procedure laid down in the Exchequer and Audit Ordinance.

The Acting Chief Secretary (Mr. Griffith-Jones) seconded.

Question proposed.

Mr. Alexander: Mr. Speaker, the Minister has wandered fairly wide in moving this Bill to expand on the general Government financial policy. That being so, Sir, I am bound to take him up on one or two points. He did say, Sir, that there was difficulty in attracting capital to Kenya; in borrowing for the public sector of our Colony, and then he went on to make a most surprising statement. He said that if we finished the year with a recurrent surplus it would be devoted, he hoped, to helping the Development Programme. How the two go together in his own mind I do not know: the difficulty about capital and then the use of a recurrent surplus to assist with development. Surely, Mr. Speaker, if there is to be a surplus the first thing to do with it is to review the income tax legislation in its incidence in this Colony, because one of the greatest deterrents to the attraction of capital to Kenya is our present income tax legislation.

He went on to say that he hoped that the revenue from income tax would measure up to what was budgeted. Here again let me assure him, Mr. Speaker, that it is the cumbersome nature of that mass of woolly and irresponsible legislation that we passed in this Council some two years ago that is cluttering up the whole of the tax machine in this Colony. That is why he is not beginning to see his revenue. Practitioners and those who have to administer the tax laws; and those who have to pay income tax, are finding their affairs seriously compli-

cated as a result of the existing taxation legislation. Before he goes any further he could perhaps have a look at this aspect of it without coming here to tell us about the difficulty of getting capital to this country.

Mr. Speaker, I beg to support.

Mr. Cooke: Mr. Speaker, I would like to oppose everything said by my hon. friend. In my opinion the Finance Minister is perfectly right in the programme he envisages. I think the mistake we made in the past was that we used to build up large surplus balances which we know were eventually all used during the *Mau Mau* rebellion, and I think it is very much better, if a surplus balance has accrued, for it to be used in the Development Programme of this country. I have always supposed that when there were surplus balances you were really taking from the purses of the people money that would fructify more usefully in the pockets of those people. But if you do find at the end of the year that you have a surplus balance then I think my hon. friend the Minister for Finance is perfectly right in saying that it should be used, as I think he said, for development purposes. That does not mean that I think it is a good thing to underestimate that and then gradually build up surplus balances as we did in those war years when we had a surplus balance of something like £9,000,000 which was finally frittered away on the very unnecessary, I think, *Mau Mau* rebellion.

I think, Mr. Speaker, that the money should be left in the pockets of the people but if, by any chance, we do have a surplus balance then I think that the right use for that surplus balance is for development purposes. I believe I am right in saying that in England it is used for the payment of the National Debt, but that is a different thing altogether.

Mr. Speaker, I personally would like to support my hon. friend in this proposal.

Mr. Tyson: Mr. Speaker, the Minister in the course of his remarks has drawn attention to the expensive rate that has to be paid today for raising capital. I would like him to tell us what steps have been taken to remedy that position because it surely arises from a feeling of insecurity and I do suggest, Sir, that some steps should be taken, so far as the British Government is concerned, to give some assurance in regard to the capital which is required for the development of these territories. It does not only apply to Government borrowing but it affects the local authorities throughout the country, and I do feel that some steps should be taken to encourage or request the British Government to come in and assist in sorting out this business because it does not only

[Mr. Tyson]

apply so far as Government borrowing is concerned or even so far as local authorities borrowing is concerned; it is having a very serious effect on industry generally and the development of industry in these territories because of the high rate that has to be paid to raise the capital which is needed if we are going to carry on with development, as we surely are, in order to cope with the general unemployment problem with which it is closely bound up.

I would like to ask the Minister to tell us what steps the Kenya Government have taken and what steps the British Government have taken to see what can be done to alleviate this unsatisfactory situation.

The Temporary Minister for Finance and Development (Mr. Butler): Mr. Speaker, Sir, I am grateful for the support that has been given to this Bill. There have been no adverse comments on the legislation itself, but with your permission, Sir, I would like to answer briefly the points that have been made by the three hon. Members who have spoken.

The hon. Member for Nairobi West suggested that it would be wrong to devote a surplus in the Colony Exchequer at the end of the year, if there was one, to development; but the object of my remarks was really to suggest that there would be no surplus in the Colony Exchequer Account, or only a fairly small one, if, as I expected, there was a shortfall on our receipts of customs duties. His question is therefore to some extent hypothetical and I would also point out to him that at the beginning of the year although there was a surplus of about £1,900,000 in the Colony Exchequer there was at the same time a deficit of £3,900,000 in the Development Exchequer; so that these figures are taken together and we take into account tax reserve certificates then we find that the net position of the Colony's whole Exchequer Account was a deficit of some £700,000.

We have a precedent for the type of action which I suggested that we might have been able to take if we found at the end of the year that we had this balance of £1,900,000 in the Colony Exchequer in that in view of the fact that this year we did transfer from the Colony Exchequer £1,000,000 to the Development Exchequer; the reasons for this were explained by the substantive Minister for Finance in his Budget speech.

I do, however, accept the importance of keeping taxation at the lowest possible level; the Government has always been very conscious of this; and, as the hon. Member is well aware, our rates of company tax are below those in the Federation of Rhodesia or in West Africa.

In the unlikely event of our ending the year with a large surplus the possibility of reducing taxation will, I am sure, be in the mind of the substantive Minister for Finance and the Government.

I am grateful to the hon. Member for the Coast for his support, and I agree with him that this is a time when we cannot look to building up large surplus balances and that in fact we must make use of all our resources to develop the economy as best we can.

One of the things that we were taught during the very anxious times of the Emergency was that it is possible for us through the use of short-term resources which are not normally used by Colonial Government to maintain the rate of development in the Government sphere.

The hon. Nominated Member Mr. Tyson asked what steps the Government were taking to give security to investors. We have had a number of debates on this issue of confidence and members of the Government have done their best to explain the situation. We have had lengthy debates on land and security of property and all those matters will be coming up in the Council later; but I would like to point out that although I said correctly that the redemption yield on Kenya stock was now £8 12s. according to the back page of the *Financial Times* that of our neighbouring territories is not very much different, and undoubtedly at the moment investment is not forthcoming as on as large a scale as we would wish, either here or in other parts of the African continent.

Mr. Speaker, I beg to move.

The question was put and carried.

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

The Diplomatic Privileges (Extension) (Amendment) Bill

The Acting Chief Secretary (Mr. Griffith-Jones): Mr. Speaker, Sir, I beg to move that the Diplomatic Privileges (Extension) (Amendment) Bill be now read a Second Time.

Sir, the Ordinance which this Bill sets out to amend is that which regulates the privileges and immunities of international organizations. It provides that the Governor in Council of Ministers may by order extend to certain international organizations and their officers privileges listed in the Schedule to the Ordinance. Orders under the Ordinance have been issued in respect of various international organizations, including the United Nations Organization and certain of its specialized agencies.

The Acting Chief Secretary

The Schedule to the Ordinance lists the privileges and immunities which may be conferred and it is divided into three parts. Part III, with which this Bill is concerned, is that which relates to the immunities and privileges which may be conferred on certain officers and servants of the organization.

The basis for granting privileges to international organizations and their staffs is the international conventions entered into by Her Majesty's Government in the United Kingdom on behalf of itself and of the territories for whose international relations Her Majesty's Government is responsible.

In the present context two such conventions are of particular relevance, the Convention on the Privileges and Immunities of the United Nations, of 1946, and the Convention on the Privileges and Immunities of the Specialized Agencies, of 1951. The privileges and immunities afforded to the United Nations and their specialized agencies are, with minor exceptions, identical.

Now, Sir, Part III of the Schedule, dealing with officials, at present only covers immunity from suit and legal process in respect of official acts and exemption from income tax on official emoluments; it does not cover the privileges and immunities set out in this Bill for which the various conventions provide. Some of those privileges and immunities it is possible for us to afford, in accordance with the conventions, by administrative action, but others relate to matters which are regulated by statute and accordingly in order to bring ourselves into conformity with our obligations under the conventions we require to make the amendments which this Bill sets out to do.

I accordingly, Sir, beg to move.

The Temporary Minister for Legal Affairs (Mr. Conroy) seconded.

Question proposed.

Mr. Blundell: Mr. Speaker, I would like to ask the hon. Member when he is replying to give us the detail of the certain officers and servants of international organizations. He mentioned in speaking, I think, the United Nations Organization, but I would like to know whether there are others and presumably before the hon. Member moved the Bill he had in mind to apply it to certain organizations. I think the House would like to hear what are the immediate applications he has in mind.

The Acting Chief Secretary (Mr. Griffith-Jones): Mr. Speaker, Sir, we have no further extension of the list of organizations to which the Ordinance has already been applied in mind. But orders under the principal Ordinance have already been issued in the past in respect of the

United Nations Organization, the Permanent Court of International Justice, the International Labour Organization, the Food and Agricultural Organization, the International Civil Aviation Organization, the World Health Organization and the United Nations Educational, Scientific and Cultural Organization. I am delighted to be able to give that information to the hon. Member.

The question was put and carried.

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

The Statute Law (Repeal) Bill

The Temporary Minister for Legal Affairs (Mr. Conroy): Mr. Speaker, Sir, I beg to move that the Statute Law (Repeal) Bill be now read a Second Time.

Sir, this Bill results from an exercise which we are undertaking to prepare a Revised Edition of the Laws. Going through our Statute Book we came to the conclusion there was a good deal of dead-wood in it which could be cut away and that is what we are trying to do this afternoon.

The Bill contains a Schedule of 25 Ordinances which are either spent or had their effect or are obsolete, and we want to get rid of them off the Statute Book so that they will not have to be included in our new Revised Edition of the Laws.

Sir, I do not propose on a Second Reading to go through this Schedule in detail because we are not dealing with detail now. We are dealing with principle, and therefore perhaps if I just mention one or two to illustrate the kind of principle which we are applying, it might help hon. Members.

Sir, first of all you see there are two Pensions Ordinances—the Bowring Pension Ordinance and the Morris Pension Ordinance—and both the recipients of those pensions are dead. Therefore there is no need to have that legislation any longer. Then, Sir, we have things like the Lighting Control Ordinance which was to provide for a blackout which we did not think was very necessary at the moment—

Sir Charles Markham: What about the Power and Lighting?

The Temporary Minister for Legal Affairs (Mr. Conroy): Sir, I was talking about statutory provision, not actual provision, for blackouts. Sir, then we have some rather charming things like the Liquor Ordinance which now consist of the title and definition sections but nothing else, the remainder having been repealed. There are one or two other odd Ordinances which are going. I think I cannot sit down without drawing attention

[The Temporary Minister for Legal Affairs] to a provision which I confess astonished me when I came across it which defines and crystallizes, as at 1st October, 1907, the rights and duties of concubines. That is contained, Sir, in section 6 of Chapter 94. I must say I really thought it more suitable for the pages of *Burton* than on our Statute Book.

Sir, I do not think unless any hon. Member wishes to ask me questions about these statutes that we are going to repeal that it is necessary for me to go through these in greater detail and accordingly beg to move.

The Acting Chief Secretary (Mr. Griffith-Jones) seconded.

Question proposed.

Mr. Nazareth: Mr. Speaker, in supporting the Bill I would like to take the opportunity of asking the Minister one or two questions. The last revision of the Statute Law was carried out in 1948 and I had an idea that it was intended to complete the revision of the Statute Law in 1958. I may be mistaken; possibly the intention was to carry it out in 1960. I would like to ask the Minister whether the work has been up to schedule or if it is not up to schedule. If it is not up to schedule, is there any reason that has caused delay in the revision of the law.

Perhaps one other question I might add is, how the Liquor Ordinance came to survive for such a long time with all the spirit drained out of it? Perhaps he would be able to answer that question when he comes to reply.

The Temporary Minister for Legal Affairs (Mr. Conroy): Mr. Speaker, I must confess with regard to the revision of the Law that work has not gone ahead as we had hoped. We have now made other arrangements and I hope it will progress more speedily.

Sir, with regard to the Liquor Ordinance, I would join issue with the hon. and learned Member there. The body has gone, Sir, but the spirit has remained.

The question was put and carried.

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

The Housing (Amendment) Bill

The Minister without Portfolio (Mr. Madan): Mr. Speaker, Sir, I beg to move that the Housing (Amendment) Bill be now read a Second Time.

If I might, Sir, with your permission, I will quote from what the Minister for Housing said in this House during November last year. I am

reading from the HANSARD of 24th November, 1959. "The Central Housing Board operates on an Ordinance, Housing Ordinance No. 17 of 1953. That Ordinance provides for funds to provide houses for Africans. This is how the Ordinance is, and I have not been pleased myself to be providing houses for Africans only and amendments are in process for this Ordinance to provide housing in general so that any racial community, any race or anybody, can have the benefit of this Central Housing Board. These are in process. They will be coming in here."

Mr. Speaker, Sir, this Bill follows the policy decision that was made last year, that is, to remove the racial nature of the Central Housing Board, and to make the service available to members of all communities in this Colony. The principal object of the Bill, therefore, is, Sir, to extend the working of the Central Housing Board for the benefit of all races instead of limiting it to Africans only. It is, I feel, Sir, right that this should be so, because since 1953 when the Central Housing Board first came into being, it has gained considerable experience and knowledge of this matter. I feel it is only right that that experience and knowledge and the service that it can place at the disposal of the people of this country should be available to all sections of the community. Therefore, Sir, clauses 2, 3 and 6 of the Bill seek to amend the law in order to remove the limitation in the present Ordinance which restricts the services of the Central Housing Board to Africans only.

In so far as clause 5 is concerned, Sir, the opportunity has been taken to substitute for the word "Minister" the words "Minister for the time being responsible for local government". If hon. Members would look at section 19 of the principal Ordinance, they will see that it deals with by-laws which fall within the purview or the province of the Minister for Local Government. Clause 5 seeks to remedy that.

Opportunity has also been taken, Sir, to provide for a new method of submission, approval and publication of the accounts of the Central Housing Board. Members can see this in clause 4 of the Bill. Hon. Members will also note in subclause 5 of clause 4 of the Bill that the reports which will be submitted to the Minister will have to be published in the Gazette and subclause 5 states that such reports shall be published with the exception of the auditor's report. Since this Bill was published, Sir, it has been represented to Government that it would be not only desirable but helpful also to publish the auditor's report. Government is agreeable that all the reports that are submitted by the Central Housing Board to the Minister should be published. Therefore, Sir,

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at the Committee stage I will be moving an amendment to seek the deletion of the expression "with the exception of the auditor's report".

I might add, Sir, that as a result of the views that the Minister for Housing expressed in this House during the month of November last year, this Bill is not necessarily the first practicable step that has been taken to give effect to the intention to remove the racial nature of the principal Ordinance—the original Ordinance—because hon. Members will have seen that in Sessional Paper No. 4 of 1959/60, which was our Development Programme for 1960/63, houses and housing schemes were no longer referred to as "European housing" or "African housing" or "Asian housing". Instead, they are referred to as "low density housing", "medium density" and "high density housing". This Bill now, Sir, will enable us to put the matter right in so far as the Housing Ordinance itself is concerned.

Mr. Speaker, I beg to move.

The Temporary Minister for Finance and Development (Mr. Butter) seconded.

Question proposed.

Mr. Muchura: Mr. Speaker, Sir, I rise to oppose the Bill before the House. If I may take up the Minister on his last few words before formally moving the Second Reading of the Bill, he did say that during the last Budget, I think it was, when we were dealing with that Development Programme, there was a note to the effect that all houses will not be based on race but on the density—medium, high and low. I must confess that I have been connected with the Central Housing Board from the start up to recently and so I know something of the working of the Central Housing Board. Secondly, I have, as I said, had some connexion with matters of housing—primarily African housing—and mainly in the Civil Service in the past. And speaking with experience of those two fields, I very strongly object to this amendment, as I will proceed to show.

First of all, in the Memorandum it is stated that the Government considers that the time has come for those facilities to be made available to all races, referring to this question of the Central Housing Board's funds and the Central Housing Board and its operations.

I am going to proceed to prove that the time has not come. If I may say first of all, that we know only too well in this country that there are some legacies of the past relating to incomes and salaries and wages paid to various racial groups. We know only too well, that Lidbury and his team tried to amend that position. We know also that the Government in its Sessional Paper

accepted the Lidbury recommendations to the effect that salaries and wages should not be based on the colour of a person's skin, but on what his work is. It has been admitted by the Government that they have done their best to try and implement Lidbury, but they have not fully implemented it, for reasons, as I understand, that it has a long history, and they cannot do it by a stroke of the pen, and therefore we have not the report fully implemented.

It follows also, Sir, that wages in Kenya were based on a low wage economy, so from the commercial and industrial work outside the service the wages have not been based on the office or the duties, but on the colour of the person and mainly been based on the subsidy that the fellow has got from the reserves. And, therefore, from that angle, the country is not, and the time is not, where all people of all races are at the same economical level. That being the case, Sir, it is not practicable for one to say, "We will pool all the housing in Kenya in a common pool and allow anybody who wants to rent to do so".

Too, there are covenants which restrict certain areas for occupation by certain races only, and that adds to the financial difficulties and problems of particular types of races. For instance, a plot of land in the Hill area is cheaper than it is in Eastleigh, with the result that building costs are lower there, and therefore the rents are higher outside it unnecessarily, based on that fact.

Going further from there I can prove that it is not a question of houses not being there, but the colour of the skin still matters. It is not the standard of living of the tenant to be, but as to what he looks like. An hon. friend of mine here will remember I rang up in reply to an advertisement I saw in the paper about a vacant flat. Over the telephone it was difficult probably to tell whether I was an African or European or Asian, but I had an appointment at five o'clock, and when I went in at five there were four gentlemen sitting there. They did not know who had spoken to me, nor did they know whether the person existed. That was not because the flats were not there. They were there—I saw them. Also, I can prove that that is not only an incidental case, but it is a common case. I know of friends of mine—one is a doctor holding a responsible position—who has been out in the street for months on end. I know of instances when they went to look for flats in Asian areas following advertisements. They asked, and were told, "We are very sorry, we should not have told you where the flats were, or where the houses were, because they are restricted".

Not only that, I know of cases where Africans have been told, "We are very sorry, but these flats have been let and the possession is being taken

[Mr. Mwachira] tomorrow", and two, three or four weeks after the flat or house is still empty.

The other thing is that landlords take the attitude of demanding unnecessarily high rents just to keep the African out of the way. I know the question of whether one was a vegetarian or not, did crop up in cases, and I know that the removal of rent control in a way has done a great disservice to Africans for that matter, because in desperation they have taken over some flats, and possibly houses, at unnecessarily high rents because they have no alternative, and that unnecessarily high rent was used as a means whereby they could be chased away, but if they insisted and were desperate they could have probably taken them on, and there are cases which exist—and if the hon. Minister or Members opposite want—I can quote them, or take them round to see them.

Now further, I agree also that it is probably desirable to have a common Housing Ordinance but take for instance the City of Nairobi. They still run European estates, Asian estates and African estates. That is not going by the medium, high and low density, and it is not practical for an African to apply for any of these City Council houses. Primarily—as I said here some time ago—the changing of the designation of the African Affairs Officer to that of Director of Social Services and Housing did not in the least help in the situation of the African housing, and that is still so, and right up to this day that is the practice. It is not a question of density, it is a question of the colour of the person.

I am going to prove, Mr. Speaker, Sir, that on the legacy of our economic system that existed in the past, and mainly in the field of employment and others, we have not come to a time when we can say our people can work on an economic basis or economic equality because the earnings, right up to now, still, to a certain extent, apply to the colour of the person and not what his office is.

Also, I will prove that, although I do not think there is anywhere in the world where there are enough houses for everybody, I want to prove that some houses can be lying vacant but they will be denied to the Africans, irrespective of his standard of living, irrespective of his position and irrespective of what else can be taken into consideration.

Secondly, tying the whole thing up, as the Minister did in the Second Reading, he did refer to the development programme and their wish that houses should be based on nothing but the density, low, high and medium. I must say, from the word "go" that that alone also hits the Civil Service first

and will mean that, as I have seen it, and I have said, some of these Africans who may be holding senior positions, unless the Government had its own houses these friends of mine could not have been housed, and therefore Government must continue to house its officers. I am not being selfish or biased in favour of the civil servant, but supposing there is somebody like a doctor, for instance, who cannot afford to be running around from hotel to hotel and boarding house to boarding house, and who may be on duty or call and all the rest of it. This friend of mine only got a roof over his head because eventually he got Government housing, and therefore to dispense with Government housing would mean that these people would probably be in the streets right up to the present day.

Then secondly, it is all tied up with emoluments. The houses and rents and so forth are part of the Civil Service salary structure.

Thirdly, as I said last time, it is also connected with institutional housing, outstations and so forth, and much more so in the main centres like Nairobi where we expect in time to have a good number of Africans holding senior positions by virtue of their education and training.

And then, as I have proved before, the heart of Lidbury was there, but the implementation has not been met in full, and therefore we cannot rightly in this Council say we have come to a stage where we need not be worried about the various financial positions and status of our people in Kenya.

Then again, I think on that argument the other races—instead of trying to come in—while some of these houses and flats still lie vacant, are denied to the African, had better keep out of the Central Housing Board and have the funds exclusively, right up to the time that some of these arguments I have mentioned have been met, be exclusively for the Africans. If any extra money can be found have what I would call medium and high density houses built with no tags and covenants, so that any African who wants a high or a medium or a low density house can get one, and so the money that can possibly be made available should go towards that type of improvement to alleviate the difficulty of having people in the streets for months and months just because nobody is prepared even to take them on as tenants or to rent houses for them.

And as I said the Bill must not pass this stage, at least in the City Council area, I think, with all the goodwill in the world, to try and remove the humiliation that threaten most of my African friends when they go round looking for flats and houses to be sneered at. On this Bill, Mr. Speaker, I move under section 86 (2) that instead of the word "now" "six months hence" be substituted

Mr. Khamisi: Mr. Speaker, Sir, I beg to second the amendment before the House, and I do it because I was very much surprised to see this amending Bill brought before this House at this stage of our development.

Mr. Speaker, it is very well known that the reason for the Housing Ordinance was because the poorer classes of people in this country, namely the Africans, were suffering from shortage of houses, and that shortage, up to now, has not been rectified. It is still there. It has not been remedied as yet.

Now, while the problem which brought the introduction of this Bill still exists, it seems to me there is no reason why Government now comes and amends the Bill to include persons other than Africans in this Ordinance. It is very well known that non-Africans have got the facilities—they can go to the building societies and obtain funds to build houses—and in fact it has been proved by the last speaker that there are plenty of empty houses for the non-Africans which are readily available to anybody who wants them.

There is no problem of a housing shortage with these people, or, if there is, it is not as acute as it is at present among the Africans, and therefore I do not see the reason why we should now think of throwing open the facilities that were made available by the introduction of this Housing Ordinance, Sir, in Kenya the housing situation, especially for Africans, is very difficult. One only needs to go to the neighbouring territories to see what the housing departments there are doing towards improving this situation. When one goes to Dar es Salaam in Tanganyika one can see that big loans have been granted by Government to individual Africans to build their own houses, either tenant-purchasers or owner-builders. In Kenya nothing has been done so far except in so far as it has been done in a very small way in Nairobi, but not at any other place, surely not at Mombasa. I do not know of any person in Mombasa who has been given a loan, a housing loan, to build a house on his own plot. In Uganda this also is being done. One can only go to the vicinity of Kampala to see the many houses that have been built by Government funds for the Africans. I have been there myself recently and I have seen that.

Now, Sir, that being the case, I very strongly oppose any question of the very small funds that are at present in the hands of the Minister for Housing to be thrown open to non-Africans because it will mean that most of these funds will go for a use which is not absolutely essential, for it will not be used to provide houses for those people who are much in need of the houses

and at present there is no one in this House who can doubt the fact that it is the African who is suffering from not having houses of a standard which will keep him quite happy and comfortable.

Mr. Speaker, Sir, with those few words I beg very strongly to oppose this Bill.

Question proposed.

The Speaker (Mr. Slade): As the practical effect of this amendment is a negation of the Second Reading it is clear that the matter is not conveniently severable from the matter of the original Motion, and Standing Order 62 will apply.

Mr. Cooke: Mr. Speaker, I confess that I do not understand the object of this amendment, but I would support very strongly the suggestion that it should be adjourned for six months because with this housing scheme at the moment the Africans especially are so sensitive to it that I think it is a great mistake to bring any measure in today or now which could be resented by a large proportion of the African people.

Now, I have always supported the question of economic rents, but economic rents must be kept in line with the wages of the people of this country and I could never support the theory of an economic rent unless wages go up in proportion, and although that may not be strictly relevant to this particular discussion I would say that this Council would be very wise to accept the amendment of my hon. friend that it should be read in six months' time.

Mr. Hassan: Mr. Speaker, I would not like to support what my friend the Member for Mombasa, Mr. Khamisi, has said, that the amendment to the effect that further additions included in the housing scheme would be to the detriment of the Africans. There is nothing of the sort. I remember when the Minister for Housing brought in this matter during his Budget speech I mentioned to him that we had a large number of non-Africans in Mombasa and Government is forced to continue the Rent Restriction Ordinance for helping and assisting those people because they had nowhere to go and no means and no help from the Government for their accommodation in places which the Government was setting aside for housing for those who needed housing. We are now heading to a situation in this country when we would like to get rid of communal schemes which are aimed at helping and assisting people on the basis of race, and when we are attempting to have everything non-racial I cannot understand the reasons for my friend Mr. Khamisi to insist upon having the housing confined only to the Africans. This is entirely against the principle that now we are working in this country for, helping and assisting everybody to

[Mr. Hassan]

look upon each other as comrades. I personally would like the amendment to the Housing Ordinance that is being brought up by the Minister be supported for the simple reason that it is not aimed at depriving finances for the Africans, but it will draw the attention of the Government to the purpose of raising extra funds for assisting other races.

There are other schemes in the housing proposals to dish out plots to the people who can build houses themselves, and I believe it will cater for the needs of those who can raise loans to build houses for themselves, particularly for the people of Mombasa who cannot afford to buy very expensive plots within the town, and it is with the help and assistance of the Government that the land would be acquired on the mainland to help and assist those people who are hard up for want of accommodation.

I have great pleasure in supporting the original Motion.

Question that the word proposed to be deleted be deleted put and negatived.

The Minister without Portfolio (Mr. Madan): Mr. Speaker, Sir, I must straight away say that I am surprised at the opposition to this amending Bill from my hon. Specially Elected friend, Mr. Muchura, and the hon. Member for Mombasa Area. Their inconsistency insofar as the application of the principles is concerned seems to know no bounds. Sometimes a principle is applied only to Africans; sometimes a principle must only be applied to Africans; sometimes they must be made applicable to others. But it seems that the principles that are to be applied to non-Africans which have already been applied to Africans are rejected—they say, "Oh, no, you cannot take that away from us". It is an attitude which is not easy to understand. But, Sir, the two hon. Members have behaved as if this were the first time the matter had been brought before this House. I referred you, Sir, and the hon. Members, to the speech that the Minister for Housing made in the House in November last year, when he gave an indication of his intention to amend the Housing Ordinance of 1953 in order to remove the racial nature of the application of the schemes of work of the Central Housing Board from this law. After that, Sir, followed the Budget, and then we had our Sessional Paper, to which I have also referred already, the Development Programme for 1960/63. Hon. Members will remember that this Sessional Paper was debated and it was approved by this House, including, I assume, by the Specially Elected Member, Mr. Muchura, and Mr. Khamisi. In this Paper, at page 38, are referred to the low-density houses, the medium- and high-density houses.

My hon. friend the Member for the Coast has referred to the African opposition to this Bill. I would like to remind him and other hon. Members that I only happen to be Temporary Minister for Housing in so far as this matter is concerned.

This policy, which has been accepted by the Government, and therefore is Government policy, was conceived, was nurtured and brought out into the shape of this Bill by a Minister who is an African himself, and I, Sir, find it difficult to believe that there is opposition by Africans to this amendment. On the contrary, Sir, all the arguments that I have heard submitted by the hon. Specially Elected friend, Mr. Muchura, reinforced me in my request to this House to approve of this amending Bill. Surely he was seeking that houses and housing schemes should be related to standards and should be related to persons and not to race or the colour of skin. I agree with him entirely. I think those people who refused him accommodation or who refused any other person accommodation on the grounds of race are anti-social. I believe that this measure, which will enable the Central Housing Board to operate its schemes for the benefit of members of all races on the basis of density instead of colour or race as it does at present, will help us to remove the very anomalies and the very difficulties to which the hon. Members himself referred.

I agree, Sir, that there are many difficulties in our housing schemes and also in respect of plans which are legacies of the past. One of them is, of course, the restrictive covenants to which he referred and which are still applicable in a city like Nairobi. But with the passage of time and with the greater enlightenment of the minds of the people and the progress that we are making whereby people, the citizens of this country, are themselves thinking and recognizing the need for greater co-operation among all sections of the people, even the restrictive covenants will disappear by themselves. There will come a time, and I believe that it will come very soon, when no one will pay even the slightest heed to restrictive covenants.

Sir, the hon. Member went on to say that the Rent Control Ordinance—I presume he was referring to the Increase of Rent (Restriction) Ordinance, 1949—had worked a great hardship against the Africans because it imposed rents at very high figures. I have had quite a lot to do with rent restriction legislation and that is not my experience or impression. My impression and my view is quite to the contrary; that the rent restriction legislation helped to fix rents at a level which was applicable under normal conditions and unaffected by abnormal conditions arising as a result of the war. Most of the rents

[The Minister without Portfolio]

were frozen at the 1939 figure. I cannot accept, also, Sir, that the rent restriction legislation has worked harshly against the Africans; if anything, not only in this country but in all countries where rent restriction legislation has been introduced, it has usually worked for the benefit of the tenants and usually against the interests of the landlords. My hon. friends who are lawyers and advocates and who sit on the opposite benches will confirm this, surely.

The hon. Member went on to say that even now there are schemes being established on the basis of race in the sense that we have European, Asian and African estates, Sir, which are being worked by the City Council of Nairobi. It is no part of my business today to deal with the policy of the City Council in this matter, but I do submit to the hon. Member that if we proceed to build and erect houses and to introduce schemes which will be related to standards and not to race—

Mr. Muchura: Mr. Speaker, I did say, in connection with the Central Housing Board, that I knew that the Board worked through the local authorities, and therefore the local authorities apply for the money and the money is used in any way the authority either like, for Europeans, Africans, or Asians. The money goes through the local authorities who in turn build the estates or lead the money out.

The Minister without Portfolio (Mr. Madan): Well, Sir, the purpose for which this Ordinance was enacted was to provide housing for Africans, and Africans only. Without wishing to quarrel with the hon. Member, Sir, all I would say is that I would be very surprised to know that the money that is handed out by the Central Housing Board is used otherwise than for African housing, because the Central Housing Board is confined and limited in its operations to provide housing for Africans only.

Mr. Speaker, Sir, the hon. Member for Mombasa said—I see that he has disappeared from the House—that the Africans suffer acutely from a housing shortage. This is not a malady which is peculiar to Africans only; this is not only a malady peculiar to this country, that to people suffer from a housing shortage. He went on to say that there were plenty of empty houses available to non-Africans. I find it very difficult to accept that, Sir. Hon. Members will remember that the rent restriction legislation is, I admit, to a very limited extent, still not repealed, and if there were plenty of houses available for occupation by people in this country, this legislation would not have been allowed to remain in force; it would have become redundant. Admittedly,

Sir, the tide is turning now; as a result of the Government's policy to decontrol houses built after 1st February, 1952, we are getting into a position where people are able to pick and choose their houses. But to say that there are empty houses lying available for non-Africans I find a little difficult to accept, Sir.

He referred to the question of tenant-purchase schemes, and he referred to Uganda and Tanganyika. He said that loans are made available by Government to intending builders, house builders, to enable them to put up their own houses, but that the Government of Kenya is not doing anything of that sort here. I would like to remind the hon. Member that not so very long ago—in fact, it was not more than two years ago—the Minister for Housing put out a scheme, a tenant-purchase scheme, a non-racial scheme open to members of all races, not far from the centre of the city in a very salubrious area beyond King George VI Hospital, and that scheme did not meet with any great response from any section of the community. How can any hon. Member stand up here and say that the Government has done nothing to help tenants, to help people to go in for tenant-purchase schemes, or that Government has failed to help people who want to build their own houses?

Finally, Sir, I would like to answer the argument made by the hon. Member for Mombasa Area when he said that if this Bill is passed the funds that are available now will be placed at the disposal of people who do not need them and would be used for non-effective purposes. There are many ways in which the Central Housing Board can assist people who want to put up their own houses as my hon. friend the Member for the East Area has pointed out. It is not necessary, or it does not necessarily mean that if this amending Bill becomes law all the funds of the Central Housing Board will be diverted for European and Asian housing. The emphasis, in my opinion, will remain upon African housing for a very long time to come and for the obvious reason that that is the section of our people who stand in need of housing more than any other section of our people. Be that as it may, Sir, what we want to see done is that the services of the Central Housing Board are made available to members of all races, its knowledge, its experience, and its help which it can give in regard to sites and development schemes.

Mr. Speaker, I beg to move.

The question was put and carried.

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

The African Courts (Validation) Bill

Mr. Wainwright Mr. Speaker, Sir, I beg to move that the African Courts (Validation) Bill be now read a Second Time.

Mr. Speaker, I rise with a somewhat red face to move this Bill. The reason for it is explained in short in the Preamble to the Bill itself, but the full explanation is as follows.

In accordance with long-standing Government policy and with the consent of the Minister and of the Provincial Commissioners a past African Courts Officer issued an instruction to the Provincial Commissioners that in future the quorum in African courts should be two. It has long been the policy of Government to reduce gradually the number of elders in the African courts. The Provincial Commissioners passed on that instruction and gave orders to the courts but it was not appreciated at the time that the law required that he should not merely issue an order in writing to the courts but that the warrant itself should be altered and signed by the Provincial Commissioners. That was not done. It was discovered a considerable time later and it was obviously not possible then for Provincial Commissioners to sign and backdate the alterations. There has been no injustice to anyone; no defendant or accused ever realized that the court had not got jurisdiction or brought it up; it was discovered by a Government official. This Bill is therefore to validate all those cases in which that African Courts Officer's instruction was obeyed but where the warrant had not been altered and signed in the individual cases by the Provincial Commissioners.

Mr. Speaker, I beg to move.

The Minister without Portfolio (Mr. Madan) seconded.

Question proposed.

The question was put and carried.

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

The Education (Amendment) Bill

The Temporary Minister for Education (Mr. Miller): Mr. Speaker, Sir, I beg to move that the Education (Amendment) Bill, 1960, be now read a Second Time.

The substantive Education Ordinance now in force was passed by this House in 1952 and the object of the present amendments is merely to bring into the main Ordinance certain alterations which experience of the working of the Bill over a period of eight years has proved to be very necessary. The details of the amendments are

given fully in the statement of Objects and Reasons and I do not propose, Sir, to take up more of hon. Members' time than is necessary to enable me to give some additional clarification.

Clause 3 of the Bill makes it possible to increase the membership of the Boards of Governors which is at present restricted to not more than nine persons. This figure of nine has been found insufficient to include representation of certain bodies who certainly should have representation on the Board. I remember, for instance, the plea made by several of my hon. friends opposite that on the Boards of Governors of African secondary schools there should be representation for parents of students. My predecessor in this office and myself both agreed that such representation was advisable, and the increase of the numbers who now can be put on the Boards would make this, and any other additions we like, possible.

As the law stands at present, too, Sir, it is possible to set up a single school committee to serve a group of Government schools or a group of aided schools, but there is no provision for a school committee to serve a group of unaided schools. It frequently happens that an approved Management is responsible for both aided and unaided schools, and, as I have explained, it is unfortunately not legally possible for such a Management at present to set up one committee to deal with both types of schools. Obviously it would be administratively convenient to be able to do this and clause 4 amends the main Ordinance so as to make such an arrangement possible and legal.

Clause 6 of the Bill, Sir, has been made necessary by the difficulty of getting formal appointment of members of district education boards, under the Ordinance, signed by various groups of appointees. The clause now introduced leaves the nomination of these members in the hands of the various groups but it merely simplifies procedure by leaving the actual appointments in the hands of the Minister. I can assure hon. Members, however, that the Minister cannot make his appointments except on the nomination of the various groups who at present have the power of appointment. This, Sir, is merely a simplification of the procedure. This clause also empowers the Minister to appoint any other members he considers appropriate, having regard to the special circumstances of the area or the areas served by the Board. I think, Sir, that this is a very valuable provision. For instance, local African authorities, as they develop, may well need more representation on these boards than they have at present, and this clause enables the Minister to add to their representation if he thinks it is right to do so. I have also noticed that very few district

[The Temporary Minister for Education] education boards have in fact got women members, and I think, in view of the importance that must be attached to the development of the education of women and girls, that it is important that they should be represented. Here again this provision makes it possible for the Minister to make such appointments.

Clauses 7 and 9 merely provide for the proper keeping of accounts and the proper auditing in respect of district and regional education boards. Clause 8 removes the numerical restriction on the representation of interests served in the furtherance of education by regional education boards. The previous clause referred to district education boards.

Clauses 10 and 11 are particularly important. Sir, they extend the grounds on which the Minister may order the closing of a school. They also extend the grounds on which a certificate or licence to teach may be cancelled or revoked. The right of appeal is safeguarded in both instances.

Now, Sir, it is the prime duty of any Minister of Education, perhaps above all of any Minister of Education, in charge of education in a rapidly developing country such as Kenya, subject to all the stresses and strains of rapid political growth, to ensure that the prime object of an educational system is to produce citizens of all races of the necessary strength of character and general knowledge and background to play a satisfactory part in the development of their country. The objects and reasons of the present amendment, Sir, are merely to make it easier to deal with any evil influences which might perhaps otherwise filter into the educational system of the country and play an undesirable part therein. That is the sole object of these two amendments.

Clauses 12 and 13 are merely simplifying measures to allow rates and fees, etc., in Government and aided schools to be prescribed by notice in the Gazette rather than by regulation.

Finally, Sir, clause 14 is made necessary by the fact that under the existing Act a child outside the area prescribed for attendance at any Government school is prevented from coming to such a school—that is all right. On the other hand, the Act at present contains no provision preventing a child inside the area prescribed from attending a school outside that area. The present amendment closes this loophole.

Sir, I beg to move.

The Minister for Information and Broadcasting (Mr. Harris) seconded.

Question proposed.

Mr. Travadi Mr. Speaker, Sir, I feel that the amending Bill which is now before this House ought not to have come at this juncture. As we know—and we have been talking about this just now, five minutes before—the winds of change have been sweeping over Africa, even in the United Nations Organization, so that there should be an entirely new Bill. The racial character of the advisory councils, the racial examinations, the racial papers, the racial nature of every type of education in this country should be abolished and a Bill to that effect should come before this House. Instead of that, we have here today a Bill tightening the grip of the Education Department, not only over the grant-in-aid schools, but even over those schools which are not paid a penny by way of grant. I am not worried, Sir, about that; the Education Department may have as much control as it can possibly have over education. But the Bill itself, or the education itself, contains no obligation on the part of Government. We do not know ourselves the stages of our children's education; the purposes for which our children are educated. We do not know where we are being led by the Education Department or if they know what our children are going to do in Kenya. I thought, Sir, that by the time the Minister went to England he would have published a proclamation to the effect that the provisions of this Education Ordinance would be extended—by stages—firstly to the Asian community and then to the African community. But nothing of the sort has happened. The Universal Charter of Human Rights has been entirely ignored. The parents have a right—and that has been supported here by the Unofficial European Members—to choose the type of education they want. May I ask whether the Asians have ever had such a right here?

Mr. Speaker, I feel very disappointed to see that there is even no guarantee by the Government that a sufficient number of schools will be provided; and that in the schools that are provided the children will not be given torn books but text-books in sufficient numbers so that every boy and girl may read through them, and other material also for the sake of reference. Nothing of the sort has been said here, with the exception that this Bill provides some administrative machinery for tightening the grip of the Education Department as much as it possibly can. I therefore feel, Sir, and feel very strongly, that this Bill is untimely. I think it would have been better to wait for four or five months until we had an entirely new Council and a new African Minister who would understand the strains and trouble we have under the present administration and, realizing this, if there were sufficient funds, would come to our help. We already know what

[Mr. Travadi] types of education are available—we have standards high, medium and low (high at the top and low at the bottom). And the Africans are at the low standard and we are somewhere in between. What a pitiable position we are in, Sir—

The Temporary Minister for Education (Mr. Miller): Mr. Speaker, on a point of explanation, may I remind the hon. Member that I did endeavour to explain that I was not introducing any new principles or any new Bill in this amending legislation. We are merely trying to rectify deficiencies which experience has proved exist.

Mr. Travadi: But, Sir, we have here boards of governors which are a new thing entirely so far as the non-Africans are concerned. This is another case where instead of the Government taking over the schools now, the Government schools are being handed over to the communities, so that the racial character of the schools may be perpetuated permanently. This is the way in which this Bill has come before us.

I beg to oppose, Mr. Speaker. I do not want to move that this Bill be read a Second Time six months hence because I know it will not be approved here. I strongly oppose this Motion.

Mr. Ayode: Mr. Speaker, I wish I had the spirit of the previous speaker in speaking about this Bill! I quite agree that the time has come when the Government must tell us very clearly what type of people our schools are intended to produce. I think we should know now whether certain schools are intended to produce servants, some masters and some traders. If we know this it would be very easy for the teachers to know how to deal with their problems in the schools. I am quite sure that it would also help in influencing the minds that rule over the schools.

Now, I am referring to this because, for example, in African schools it is a very serious offence—or it would raise serious problems—if a teacher, for example, say, in a civics lesson or in a history lesson referred to such well known principles as, say, human dignity or principles of equality, principles of self-respect, principles of justice, and so on. To the present Government, for a teacher to speak in that way to an African child is subversion. I think the time has come when this should be made very clear.

The second point, Mr. Speaker, that I would like to raise in connection with the Bill is the aspect in our system of education whereby, say for example, the boards of governors are so closely connected with the administration. I am thinking of the African secondary school in particular. This is disturbing because of the recent strikes we have had and the way in which some of these strikes have been handled. I would give

the example of what happened at Kisii in South Nyanza where a simple, normal school situation was very poorly handled, only because the man who chairs the board of governors happened to be an administrator and instead of treating the situation as a school problem he thought he was dealing with a *Mau Mau* situation, rushed in *akarisi*, and as a result the children were led to think of a lot of unhealthy things. I think that this must be remedied at once because these boards should be in the hands of qualified educators and not administrators because it confuses people.

The third point that I wish to make very strongly is this one of prescription of areas as far as the Government schools are concerned. I quite agree that in establishing a Government school the particular area should be given priority in considering the intake of boys or girls. But in view of the rapidly changing conditions in this country, and in view of the fact that we are moving so fast towards nationhood, I think it would be entirely wrong for the Government to be particular about prescription of area. It would be very useful, for example, for boys from the Coast Province to be taken into schools in Nyanza so that they know something of what is happening in Nyanza. And I think it would be very useful for boys in Nyanza to be taken into the schools in the Central Province so that they know what is happening there. It is only in that way that we will produce people and persons who will be able to cope with the national problems that are ahead of us.

Mr. Speaker, I beg to support.

Mr. Khamisi: Mr. Speaker, Sir, I also beg to stress the point which has been mentioned by the last speaker, particularly in connexion with section 14 of the Bill before the House. I feel it is (unfortunate that the Government should continue—I say, continue—to restrict the movements of even students from one area to another. I feel that that is absolutely wrong. If any student from Mombasa wants to go to study in Nyanza or Central Province or anywhere where there is room, there is no reason why Government should regulate in this clause to say that such a student should not be allowed to be accepted in that school. That is entirely wrong, and absolutely immoral. I feel that the Government should be a little objective in this matter, because even now there are so many students from up-country in Mombasa who are able to find accommodation in those schools. There is no reason why they should be restricted. They are within the boundaries of the Colony and there is no reason why a student from Kisumu, once he can find room in a Government school or in any other school anywhere else in the Colony, should not be allowed to go there. That is a point which I too take very

strong exception to, and I hope that the Temporary Minister for Education will see to it that this clause is removed from the Bill before the House.

I beg to support.

Mr. Alexander: Mr. Speaker, Sir, clause 3 of the Bill sets out to provide that boards of governors should have more than nine members. I would ask the Government to reconsider this, Mr. Speaker, and withdraw this amendment. I do so, Sir, because I liken the duties and responsibilities of a board of governors to that of a board of directors of a large commercial or industrial undertaking. Experience has taught the commercial world over very many years that efficiency is invariably diminished in ratio to the number of members who serve on a board of directors over and above a certain number. I consider, Sir, that nine members to administer a normal school of, say, 600/700 pupils, is quite adequate. The moment you go above that number you run into the problem of too many cooks trying to spoil the broth.

I do know—and the preamble makes it clear—that the reason for this is that the Government hope to include other sectional interests or additional sectional interests in the boards of governors. But is that, Mr. Speaker, a wise approach? For example, let me say that I believe that perhaps the best boards of governors are those largely drawn from the old boys and old girls of the school. Those are the people who usually have got an abiding interest and a permanent pride in that school. I believe it is right that there should be a particular emphasis towards those types of people.

There is a current example, Mr. Speaker, of which we are all exceedingly pleased. I refer to the Board of Governors of the Prince of Wales School. There are today five old boys of that school on that board out of a total of nine. That means that there are only four others, and two of those are Government nominees, who come from outside the category of old pupils. Now, I know that those old boys are exceedingly proud of their appointment and they are desperately anxious to see that their old school shall continue to be as good and better than it was when they left it. And no amount of additional sectional interest can be added to it to improve the quality of that particular board of governors.

I do realize that when the Minister spoke he singled out particularly the parents of the pupils. Now, I think, Mr. Speaker, that this particular type of section of the community has got to be

approached with considerable caution. We all know—we are all the same in this particular respect—that as parents our child at school is the most important thing in this world. And it is quite wrong that headmasters, headmistresses and boards of governors should be loaded with individuals who have an immediate and direct interest in the domestic affairs of the school to the extent of having a child at school. It is wise that there should be a representation of this kind, but it should be strictly limited. I believe that most parents accept this situation. The place of the parents of children currently at school, surely, is on the advisory committee or, better still, on the parents' association outside the school. That is where parents can, I believe, make the most objective and the wisest contribution. I would ask the Minister to think again and modify his views on the extent to which parents of children currently at school should be admitted to boards of governors.

If this amendment remains, there will be a temptation to increase the numbers of boards of governors beyond all recognition. I know that the Minister will tell us that there is no need to go beyond the nine, but the very moment that it is possible to go beyond the nine it will mean that it will be exceeded. I think we can accept that.

Turning to clause 14 of the Bill, this deals with this vexed problem of zoning. It is a pity, Mr. Speaker, that this Bill does not provide for the recognition of councils of chairmen of boards of governors; and particularly to provide such councils with statutory powers in respect of zoning. Quite contrary to two previous speakers on this side, I do accept the very real need for zoning. I know that we would all love to live in a world where we could send our children to schools irrespective of any considerations whatsoever. But the moment that happens, it does mean that a country is involved with the whole problem and the whole expense of unlimited boarding schools. And although I can appreciate how parents in Mombasa would like to send their children to school in Kisumu it does mean invariably the creation of a boarding school. I know there was one African leader quite recently questioned whether we could go on affording boarding schools unlimited.

The question of zoning does, I believe, fall into the province—the duties—of chairmen or councils of chairmen of boards of governors, and I think it is a pity that this tidying-up amending Bill has not provided for this particular activity. I do not quite know how the boards of governors are going to cope with this zoning problem without statutory powers.

[Mr. Alexander]

Mr. Speaker, I hope that the Minister will be able to agree with some of these remarks and I beg to support.

The Temporary Minister for Education (Mr. Miller): Mr. Speaker, Sir, as I explained in introducing this today, really the purpose of this amending legislation is merely to tidy up the existing Bill and to introduce into it certain improvements which experience of its working over eight years have proved to be very necessary. I was therefore a little taken aback by the reception given to it by the hon. Member for the Central Electoral Area, although, of course, I should have realized from my experience in this House that he does become rather excitable on educational matters.

I would point out too, Sir, that this is not in any way a new Bill. It has in fact been on the stocks for at least three years and, I believe, four years. It existed when I first came to this country, but it has never succeeded until now in getting a place on the Order Paper.

The hon. Member for the Central Electoral Area also referred to boards of governors as though they were something new. Boards of governors are not anything new at all. They have existed in the case of African schools and they are now existing to an increasing degree for all schools. They have existed for at least one or two years and their establishment is fully in accordance with educational policy all over the world.

The hon. Member for Nyanza South asked that Government should state what type of pupils the schools are trying to produce. I thought I made that clear in my introductory remarks. I stated that the prime duty of a Minister for Education—and especially a Minister in a rapidly developing country—is to produce boys and girls who will be decent, responsible citizens of that country and who will play their proper part in its development. That, I repeat, is what the Government is trying to produce from its schools. I simply do not understand his reference to the restrictions which he says are imposed upon teaching by teachers. I have no doubt whatever that practically every teacher in this country talks to his pupils about self-government. There is no reason whatever why he should not do so. I have no doubt too that teachers talk about Bills of Human Rights and every form of development that is going on. I cannot agree, Sir, that there is any restriction upon proper teaching by teachers, but I do think that it is necessary—as this Bill has in fact set out to do—to make quite sure that evil influences are as far as possible kept out of the

schools, whether those influences emanate from the pupils or whether they emanate from the teachers.

The hon. Member for Mombasa was very upset about what he thought was the restriction of entry to schools or the zoning of schools. I do not think he really understood what the object of this amendment is. It applies, in fact, mostly to schools in Nairobi where, at the moment, these schools are zoned so that a child outside the area of the school cannot come into the school which is not properly zoned for that area. On the other hand, the Act as it stood did not say that the child which was inside the area or zone for a school cannot go to a school outside that area. It was merely to put that right that we introduced this amendment. The African secondary schools are in a more fortunate position. There is nothing to stop an African from Mombasa getting into a school in Kakamega if he can find a place there. Admittedly, African schools all started as territorial institutions serving the whole country. But as these schools have grown up all over the country, naturally the secondary pupils from Nyanza normally seek admission to schools in Nyanza because that is the easiest, cheapest and generally the best thing to do. Nevertheless, there are schools in this country still such as the Alliance High School which draw their pupils from all over the country and I hope that this will continue because I agree that it is much better for the people from the Coast to get to know the people in Nyanza and, *vice versa*. Unfortunately, as your populations grow your financial resources usually do not admit of your schools catching up with the population, and you have to introduce some restriction.

If I might return for a moment to the remarks of the hon. Member for Nyanza South, I was disappointed—although I am afraid again not surprised, because I have heard it before—to hear of his attack upon the board of governors of Kisii school. I must say, Sir, that I do not think this attack is in any way justified and I have no evidence to suggest that the chairman of that board of governors did not deal with a difficult situation in a perfectly reasonable way. In my opinion, Sir, it is the duty of the Ministry of Education—in fact, it is the duty of all of us—once you have established a board of governors to support that board of governors unless you have evidence to prove that they are doing their job in a completely improper manner. They were facing a very difficult situation—

Mr. Ayodo: On a point of explanation, Mr. Speaker, all I meant to bring forward was the

[Mr. Ayodo]

connection between the administration and the board of governors. I am not opposing the board of governors as such.

The Temporary Minister for Education (Mr. Miller): I thank the hon. Member for that explanation, Sir. I am glad to hear it. In actual fact I do not quite see what the connexion between the board of governors and the administration is as the only point of contact happens to be that the district commissioner is very often chairman of the board of governors. In a district like Kisii with a new venture such as a board of governors I must say that I think you have got to call upon the services of the most experienced man in general conditions in the district to appoint as chairman of the board. I agree that as the board gains experience and as more experienced people in the district grow up and informed interest in educational matters increases probably the district commissioner will no longer be chairman. But I do think, Sir, that to start with that appointment is generally wise.

The hon. Member for Nairobi West opposed the enlargement of membership to the board of governors beyond the limit of nine. I am sure, Sir, that he will expect me to agree with him that the smaller the board to do the job efficiently the better the situation is. I entirely agree with that. But, Sir, this amendment was introduced by us simply and solely because in the case of the boards for African secondary schools which were first established our experience has been over a number of years that this limit of nine simply has not made possible the representation of as many people as we would like to have. I was very pleased to hear the hon. Member pay tribute to the old boys of the Prince of Wales School who now form such a valuable element in that particular board. Well, Sir, it happens on the African side that if you had your limit of nine you would not be able to have representation of the old boys. I agree that perhaps my reference to parents being on the board was in general perhaps rather unwise. There again, I think we have to think of the various types of schools which exist in this country. If I may say so without any offence to other races, in the case of European schools through tradition and experience of those schools over a great number of years the European parent is accustomed to playing an active part in the education of his child. He is prepared to support the teachers and he realizes, I think, what is required of a child that attends a school. The African I do not think can be expected to know this at this stage, although of course he is learning that it is one of the reasons why I think that in an African secondary school it is good to have

more parental representation than you might have in a school of another type.

With regard to zoning, Sir, the Member referred to this. This, of course, is an unpleasant necessity which none of us like. But it is forced on us by circumstances. I do agree, Sir, with the hon. Member for Nairobi West that the formation of boards of governors will mean that the boards, and in particular the chairman of the boards, will have to be brought into this question of zoning very actively. I certainly propose to see that they are brought in. I could not agree, however, with his suggestion that at this stage there should be statutorily set-up boards, committees consisting of the chairman of the various boards. I think we should see how committees of chairman work out in the first instance. If it is found necessary later to give them statutory recognition, well, we can do so. I hope for the present that the chairmen will continue as they are already doing, consulting with one another on matters of import to all the schools even though they do not have as yet statutory recognition.

Sir, I beg to move.

The question was put and carried.

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

The Prisons (Amendment) Bill

The Temporary Minister for Internal Security and Defence (Mr. Ellerton): Mr. Speaker, Sir, I beg to move that the Prisons (Amendment) Bill be read a Second Time.

Mr. Speaker, this Bill was foreshadowed by the Minister for Defence in the Budget debate, when he announced that he would shortly be introducing a Bill to alter the existing rates of remission which can be earned by prisoners serving sentences of imprisonment for criminal offences.

Under the present Prisons Ordinance, Mr. Speaker, every criminal prisoner under sentence of more than one month and less than three years may, after completion of one month's imprisonment, earn a remission of one-seventh of the remaining period of his sentence by satisfactory industry and good conduct. No remission may be earned at present by a prisoner serving a sentence in default of a fine. Prisoners undergoing sentences of three years or more do not earn remission as such. Under section 65 of the Ordinance, however, the Commissioner of Prisons may, and in practice he generally does, grant to a prisoner serving a sentence of three years or more a licence to be at large when he has completed three-quarters of his sentence. I would add that licences are not granted to prisoners

[The Temporary Minister for Internal Security and Defence] serving sentences of life imprisonment. Their sentences are subject to regular review in accordance with other provisions of the Ordinance.

These present remission arrangements, Mr. Speaker, are not entirely satisfactory. They are unnecessarily complex, and are not therefore always understood by the prisoner. To this extent they are not conducive to prison discipline. They discriminate between classes of prisoners—the short-term and the long-term—and in practice produce anomalies. This is again not conducive to discipline. They do not constitute a sufficient incentive to good behaviour, or sufficiently award good behaviour.

It is not easy, Mr. Speaker, to design any principle on which the amount of remission to be earned can be based. On the one hand it must be enough to enable its forfeiture to constitute an effective disciplinary sanction. On the other hand, if the amount appears too generous the courts might feel obliged to pass longer sentences than they would otherwise deem to be appropriate. The rate of remission which has been adopted in the United Kingdom and most colonial territories is one-third. Although it cannot be said that this rate is based on any strict principle, in practice it strikes a reasonable balance, and we consider that this is a case where we should be guided by this wider experience.

It is therefore proposed, Mr. Speaker, to adopt the one-third rate of remission in Kenya, and to make this rate applicable to all sentences of more than one month, including sentences in default of payment of a fine. The procedure for dealing with sentences of life imprisonment will remain unchanged. Clause 3 of the Bill provides for this accordingly. If the proposal is adopted a consequential amendment will be required to section 65 of the Ordinance, which provides for release on licence, to enable the Commissioner to release in this way a prisoner who has completed two-thirds of his sentence instead of three-quarters as at present—otherwise remission of sentence would normally be earned long before a licence to be at large could become available under the law as it stands at the moment. Clause 4 of the Bill provides for this.

If these proposals are accepted by Council we should, unless other arrangements are to be made, have a situation in our prisons in which some prisoners would be earning remission at the old rate up to the time of the introduction of the new law, when they would earn the new rate of remission; while new admissions would earn remission at the new rate. This would be unnecessarily complicated and would also not provide for

equality of treatment between prisoners. It is therefore proposed, Mr. Speaker, that the new rates of remission should also be applied to serving prisoners, and clause 4 of the Bill provides accordingly.

Finally, Mr. Speaker, clause 2 of the Bill makes a minor amendment of nomenclature. It is, however, important as a manifestation of the new spirit which now permeates our prisons administration and the treatment of offenders.

Mr. Speaker, I beg to move.

The Temporary Minister for Legal Affairs (Mr. Conroy) seconded.

Question proposed.

Mr. Usher: Mr. Speaker, Sir, there is one aspect of this matter which is of interest, I think, possibly to the House apart from those ethical and other considerations which we have heard about, and that is the effect on the prison population. I hope I shall not be taking the hon. Member by surprise when I ask if he can give us any information in regard to the effect on the prison population, because I am afraid my mathematics will not run to it. There would, of course, also be a consequential effect upon the staff. If he could give us any information upon that I shall be grateful.

Commander Goord: Mr. Speaker, Sir, I should like briefly to welcome this measure as being highly sensible and intelligent.

There is one aspect, Sir, of this Bill to which I should like to draw the attention of the House, and that is clause number 5, which contains approximately 125 words without a full stop. Sir, I do feel that the legal draftsmen might perhaps have a little sympathy for hon. Members and other people who have to interpret these measures.

I beg to support, Sir.

The Temporary Minister for Legal Affairs (Mr. Conroy): The hon. Member has put his finger on a problem which legal draftsmen constantly face. It is the fashion nowadays to have shorter clauses in Bills and sections in Ordinances, and we tend to divide them up into subsections or subclauses. Sometimes you cannot always do that, and it is the fashion not to have more than one sentence in a subsection or section. If you are going to divide your section up into sentences, then you divide it up into subsections, and this particular provision presumably would not divide up into subsections. I can point to—if the hon. Member would like to spend a little of his time outside this Council—very much worse examples than the one to which he has drawn attention this afternoon. I think I know of one sentence going

[The Temporary Minister for Legal Affairs] on for a page and a half of the Statute Book. We have not imposed anything like that on hon. Members, and of course, the purpose of this Bill, as I would remind him, is to shorten sentences.

Mr. Khamisi: Mr. Speaker, Sir, I beg to welcome this Bill, and I believe that it will do a lot which will help the situation in most of the prisons, which is very boring at times. I have visited some of these prisons, and I found them to be places where one ought to spend as little time as possible in these circumstances. However, although I do welcome the provisions of these remissions, I hope that the Government will not, by the fact that they are legislating to reduce the periods in which people will be imprisoned, they will not reduce, or at least, do not ignore the basic requirements of a prisoner who is in prison for a period of three or four years. I would suggest to Government that in most cases the prison sentence should serve to make the prisoner a better person when he comes out of prison. He should not only go there to be punished, but he should also go there to learn to become a better citizen when he comes out, and for that reason some of these prisons, as I have said, are very boring because there is nothing useful which can be learned by the prisoner to make him a better person when he comes out. I should like to suggest this is a very important point, and I hope the Government will take it into consideration to see that some sort of vocational training or some sort of training in one way or the other which will improve the capabilities of the prisoner when he comes out to be able to help himself and become a good citizen.

With these few remarks, I beg to support the Bill.

[Mr. Speaker (Mr. Slade) left the Chair]

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

The Temporary Minister for Internal Security and Defence (Mr. Ellerton): Mr. Deputy Speaker, Sir, in reply to the question asked me by the hon. Member for Mombasa, I can tell him that we estimate that some 1,700 prisoners will benefit from this measure. They are mostly minor offenders. I regret that if he is looking in this direction for any reduction in the staff of the Prisons Service, however, it will not be forthcoming. As the substantive Minister said when he spoke in the Budget debate earlier this year, the Treasury have already discounted this proposal as far as our Estimates are concerned. The reduction will, in fact, merely mean that our hard-working prison service will have a little more room in which to move.

I entirely share the sentiments of the hon. Member for Mombasa Area. I fully agree with him that it is very necessary that we must pay much closer attention to vocational training, but it is an unfortunate fact that sometimes we have prisoners sitting around for whom it is difficult to find useful or productive work. This is a matter which the Commissioner for Prisons and myself have very much in mind.

Mr. Deputy Speaker, I beg to move.

The question was put and carried.

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

The Road Authority (Amendment) Bill

The Minister for Works (Mr. Nathoo): Mr. Deputy Speaker, Sir, I beg to move that the Road Authority (Amendment) Bill, 1960, be now read a Second Time.

Sir, the Road Authority (Amendment) Bill is a very short and modest Bill with only three sections, including the title roll. The reason for the Bill is the Government's desire to bring the Local Authority Ordinance, now ten years old, up to date, and in line with modern practices. Advantage has been taken of the opportunity to make what I think are minor amendments which will clarify some of the phrases used in the original Ordinance.

Sir, the principles of the Bill have been discussed by the Road Authority and agreed by them, subject to one assurance regarding the appointment of their Chairman. I will deal with this point later. One of the principle effects of the Bill is to increase the membership of the Road Authority by one, to a total of 12, including the Chairman. This might call for a slight possible increase in the payment of travelling and other expenses by the Road Authority, depending on the numbers actually appointed. The Road Authority has shown its willingness to accept this. Eight of the 12 members, excluding the Chairman, will be what are called "nominated members". I will deal with this change of name in a moment. Of these, at least six must be unofficial members. The other two may or may not be official as seems necessary. The Chairman is normally an unofficial too, so that an unofficial majority on the Authority will be continued. The remaining three members are to be the representatives of certain Ministers. They are the representatives of the Minister responsible for Finance, the Minister responsible for Works and the Minister responsible for Local Government. The clauses dealing with this have been put in general terms to avoid confusion should there be any change in the titles

[The Minister for Works]
of Ministers during the next year or so, and I understand that such changes are not unlikely.

Another major change is the reduction of the term of membership from six years to four years. The present Ordinance allows for six unofficial members, one of whom retires every year, thus giving a term of six years to each member. This is a very long period, Sir, for a body such as the Road Authority. After careful consideration it has been decided that a four-year period would be more appropriate, although I have been given to understand that in the United Kingdom the period of appointment of such members is generally three years. This means that we cannot retain the present arrangement for one member to retire each year, and I have rejected the proposal to retire one and a half members each year. The term of office therefore simply runs for four years from the date of appointment. A member can, of course, be appointed again after four years. If a member has to retire before his four years are up, then his successor finishes off his four years. In this way the composition of the Road Authority can be regularly and properly reviewed.

These, then, Sir, are the two major changes, an increase in the total number of membership and a reduction in the period of office from six to four years.

Taking the other changes in the order in which they appear in the Bill, and ignoring the drafting correction in section 2, we have firstly dropped the requirement that the Governor must consult members of the Road Authority before appointing a Chairman because this as a strict legal requirement is objectionable on constitutional grounds. It is on this point that the Road Authority ask for an assurance from the Government that whatever the theory of it the Governor would, in practice, continue to consult the Road Authority about the appointment of its Chairman. Sir, I am happy to give that assurance on behalf of the Government—the present practice of consulting the members will continue.

Secondly, we have dropped the term "officials" and "unofficials". Although most of us are, I think, aware what these mean, I certainly thought I knew the difference between an official and an unofficial. It seems they are not really very precise terms. My hon. and learned friend, the Attorney-General, has given a great deal of thought to this, and the Government has decided to use terms to give a more exact meaning—more exact because there is a long history behind them. Officials, therefore become "public officials" and the unofficials become members who are not public officers.

At the same time we are introducing a little more flexibility by having the Governor nominate not six, but eight, members, not more than two of whom may be public officers. In the first place two probably will be public officers, but this can be changed at any time. All the public officers will hold office at the Governor's pleasure and not for a four-year period, and these two can therefore be changed or dropped in favour of members who are not public officers whenever it is necessary.

Lastly, Sir, the Bill has been drafted to bring the change of membership into operation as soon as it is passed. As a result two of the present members will immediately become due for retirement, a further one will be due in March of next year, a fourth in March, 1962, and a fifth at the end of 1962, and the sixth at the end of 1963.

Before I conclude, Sir, I want to take advantage of this opportunity to refer again to the invaluable services which have been rendered by the Road Authority in the past, and I am sure it will continue to give that service in the future. They have a far from easy task due to lack of money, serious and engineering problems and conflicting claims for special treatment being urged on all sides. They have achieved a great deal.

During the recent conference in Nairobi on Soil Conservation and Low Cost Roads it gave me great pleasure to hear from my quarters favourable references to Kenya roads, and to discover that even if we are not leading the world in the field, at least we are regarded by some countries similar to ours with envy. For a great deal of this and especially for the national systematic development of our roads we have to thank this body. The intention of the Bill is to give an increase of flexibility and legal provision and more power to their elbow so that they will continue the good work. I do not think, Sir, I need say any more at this stage, except beg leave to move.

The Minister without Portfolio (Mr. Madan) seconded.

Question proposed.

Mr. Khamisi: Mr. Deputy Speaker, Sir, I would like to welcome this Bill although I have a few remarks to make about it. I think that the amended Bill as it is drafted seems to have forgotten the wind of change that is blowing across Africa, and of course, across Kenya. It seems that the Minister forgot altogether that next year the majority of the Members of this Council will be Elected Members, and therefore I do not see the reason why the Road Authority should be constituted as it is constituted now with only a minor amendment of an additional one member only.

[Mr. Khamisi]

Secondly, I do not see the reason why the Governor should have the power to nominate members to the Road Authority without any consultation with the Members of this House. I feel, Sir, that this is an old idea, and as soon as the Ministers on the other side of the House get into the new idea that this House will be an almost entirely Elected House and that the powers of this House should pass from them to the Elected Members the better it will be for everybody concerned.

Sir, I do not agree that the members should have a term of service of more than three years, because I believe even in the local authorities elected Councillors only have three years, and the Minister has also stated in the United Kingdom the life of the members of the Authority is only three years, and I do not see the reason why in this country we should have the life extended to four years. I suggest that he should think over this again and the life of the Authority should be only three years. Sir, I feel that they should not speak about the activities of the Road Authority in the past. We feel and I feel personally that the Road Authority has not given a square deal to roads in the reserves, it has concentrated its activities on the roads which are in the settled areas and has completely ignored the demands and needs of roads in areas other than the settled areas. I feel, Sir, that the time has come for this Minister and for this Government to realize that communications are one of the most important things in the country and that they should not only think in terms of opening the communications in those areas where people of a certain class live and forget the areas where the majority of the people in this country live. Therefore, Sir, I suggest that the Minister should think over this matter and also I support him in moving this Bill, I hope he will see his way to make the necessary changes that I have suggested.

I beg to move.

Sir Charles Markham: Mr. Deputy Speaker, I would like to congratulate the hon. Member for Mombasa Area. Since yesterday he has spoken quite a lot and every speech he has made has been what appears to be the start of this Election campaign and each one has had a racial tag to it. I was going to say a "small" Sir, but that is perhaps a bit ruder. From his first speech yesterday, Sir, when he spoke in what appeared to this side anyhow to be in extremely bad taste to even now suggesting that there is a racial outlook on this particular amending Bill, is Sir, bringing this House into such ridiculous contempt that I would suggest that the Minister could well ignore the speech made by the hon. Member.

Sir, we are not debating today the policy on the Road Authority, this as the Minister explained was the amending Bill to get membership into line with what is happening today. If we were having a debate on the whole problem, Sir, of course we would discuss at length various aspects of the Bill. One thing I do think is very important, however, and having heard the Minister give the reasons for the question of four year appointments, is continuity. Nothing could be more disastrous than if the wind of change which the hon. Member for Mombasa Area wants so badly resulted in one policy changing regarding roads literally every two or three years. Then, certainly, Sir, he would have just cause to complain that the roads were not planned ahead.

I think his remark, Sir, that the roads were only built for the better class of person is a gross slander on the work of the Road Authority. In fact if he looks at the Report of the Road Authority which was published not very long ago, he will see, Sir, that his argument is not only fallacious but is definitely untrue. All of us, Sir, in this Council, of all races I think, want to have better roads all over the country but I wish the hon. Member in his wisdom would stop making some of the speeches he has been doing then we might have more chance of getting money to have better roads.

Sir, I beg to support the Bill.

Mr. arap Moi: Mr. Deputy Speaker, I should like to touch on certain points which perhaps my various colleagues have not touched on.

The Road Authority, Sir, has been a body which has not been truly representative. I want the Minister now to tell us how many Africans have been on the Road Authority Council because most of the sufferers are those Africans who own lorries and cars in the countryside and the Government seems to lay emphasis on the importance of Nairobi and the main road to Uganda and Tanganyika, forgetting the economic aspect of our people. The £4,000,000 borrowed by the Government for roads in this country, much of it has been spent on the main road Nairobi/Eldoret/Uganda. Nevertheless, Sir, I have raised on many occasions at the African Land Development Board meetings that areas other than areas of higher productivity should receive more money for development.

Now, Sir, I do not see here in this Bill Members who come from various areas in this country who know the various aspects and difficulties which confront the people. I see here the representative of the Minister for Local Government and the representative of the Minister for Public Works for the time being and the Chairman of the Road Authority. I do not know how they

[Mr. amp Mol] receive information, if they receive any information, Sir, they must be receiving second-hand information, handed over by the district commissioners, the Provincial Commissioners and others. The Minister for Local Government, then the Minister for Local Government, information such as this would not provide ample time for the Minister to spread services given by his Ministry to the people. I hope, Sir, the Minister will take into account the fact that the best way of putting across modern ideas and other things to our people is by getting better roads. Although the Minister has done some useful work in certain areas, still I believe that he could do more to show that he is interested in putting better roads in Kenya. I have heard many of the conferences held in Kenya and outside Kenya. Those who attend these conferences go with the impression that Kenya has better roads. But if one turns to the eastern side or the western side of Kenya one finds that roads are very difficult to pass, particularly during the rainy season, which makes it difficult for anyone to get information or to do anything. I hope when the Governor appoints such members he should consult this House so that we know who should represent us on this body.

Mr. Deputy Speaker, I think I have no more to say except to say that the Minister for Works should tour the country and get first-hand information before moving any Bill which affects the country.

Mr. Deputy Speaker, I beg to support very reluctantly.

Commander Goord: Mr. Deputy Speaker, both the hon. Member for Mombasa Area and the last speaker have suggested that the method of representation of the Road Authority is unfair and that Government is not taking proper account of the wind of change and consulting this House. But, Sir, in this measure the provision is made for the Governor to consult this House. If hon. Members will read section 3 (c) it says that eight Members are nominated by the Governor in Council of Ministers. Now who will the Council of Ministers be in the next Government but very largely a projection of the Elected Members? And so, Sir, provision is perfectly adequate in this to ensure that there is proper consultation of the House through its representative Ministers.

One other point, Sir, in the history of the Road Authority from time to time there has been very strong pressure exercised by various local authorities both in the European and African areas for there to be a system of area representation so that the Coast is represented, the Central Province, Northern Kenya and so on, and after a

great deal of discussion on every occasion it has been decided that a far better way of managing affairs is to have the best men for the job appointed. And, Sir, I hope things will remain that way.

Sir, I beg to support.

Mr. Cooke: Mr. Deputy Speaker, as a member of the Road Authority I entirely agree. I only heard the last African Member, but there should certainly be at least one more African on the Authority; they have not been properly represented throughout the years. I was originally on the committee which recommended the Road Authority in this country and we recommended a large number of members—I think there were 12 members nominated—and that did allow representatives from all races to be nominated. It is quite absurd—I say it with all seriousness—that there should be only one African on the Road Authority representing 4,000,000 people. But I would pay this tribute to the African member, he is from North Nyanza, that he is extremely active and he has looked after the interests of the African people extremely well during the period I have been there. But that does not alter the fact that when the Authority is next constituted there should be at least one or two more African members.

The Minister for Works (Mr. Nathoo): Mr. Deputy Speaker, Sir, the hon. Member for Mombasa accuses me of forgetting the wind of change and not ensuring that the Elected Members should be consulted in regard to the appointment of the Road Authority.

Sir, in the past, ever since I have taken over this Portfolio, I have resisted the fact that I am not going to be badgered by political associations on the appointment of the Road Authority. I am going to keep the Authority away, completely, from any political pressures and in saying that I am not ashamed to make this statement.

Sir, the hon. Member for the Coast, when he got up to speak advocated the appointment of African Members, and I am sorry, Sir, that he did not defend his Road Authority from the attack of the hon. Member for Mombasa. I think, Sir, that it is a matter of great regret that responsible Members of this Council get up and make accusations against the statutory Boards without any justification whatsoever. I, Sir, as the Minister in charge of the Portfolio would like to inform the House that throughout my term of office, never have I had any incident where I could accuse the Road Authority of having any racial bias in any of its decisions.

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

[Mr. Speaker (Mr. Slade) took the Chair]

[The Minister for Works]

Sir, I would like to mention here that the Members of the Road Authority are appointed not from sections of the community or sections of the country. They are appointed on a Colony-wide basis for the knowledge they possess of both local conditions and of the various areas, and one hon. Member also suggested—I think it was the hon. Member for North Rift—who suggested that people who are appointed like this had no knowledge of the requirements of the various parts of the country. I think, Sir, I can assure the hon. African Members that from my attitude in public life I have left them in no doubt where my sympathies lie, but when they come here in a responsible body such as this Legislature and make accusations against bodies and against people which are completely unjustified, I can only say they are doing their cause no good at all. The working of the Road Authority, Sir, is that the various local bodies make representations to the Road Authority of their requirements and the requirements are studied on an overall basis and then the priority is decided. I am completely satisfied, Sir, that *vis-à-vis* the local government bodies, the African councils, have had a fair share and if the hon. Member who made this accusation would like to bring any specific case to my notice I promise him I will go into the matter thoroughly, but I am quite sure, Sir, that when we come to investigate them there is hardly any truth in the accusations which the hon. Member has made.

Sir, I am grateful to the hon. Member for Uthamba for taking up the cudgel on behalf of the Road Authority. The hon. Member for North Rift accused me that perhaps I was not touring the country and I should do so, and I would know a lot more about the roads. I would like to assure him that over a period of the last three years I must have travelled at least 40,000 miles in Kenya in all parts of the Colony, including the Northern Province, and I am fully aware of the needs of the various Provinces. But the fact remains, Sir, that we have only got a certain amount of money on which there are so many claims. I do not stand and say that our road system is perfect or that we have done everything we should have done. We have not done everything we should have done because we did not have money enough to do it. I would like to point out to the Member, Sir, that the only way of getting more money in this country is to create an atmosphere which will induce foreign investments to come here and help us with our Development Programme. The matter, Sir, I think largely rests with the African Members themselves as to what they say and do in the intervening period.

The other point, Sir, the hon. Member for North Rift made was with regard to the £4,000,000 finance which he alleges has been spent mostly on the trunk roads and that nothing has been done in the African areas. I would like to point out to him, Sir, that even for the tourist industry it is necessary that people should be able to travel from one part of the Colony to the other from Uganda right up to the borders of Tanganyika. But, Sir, I would like to remind him that a certain part of this money has been spent on trunk roads which are passing through African areas and which by the fact that they are there will create a great deal of extra development and production. At the same time I would like to inform him that due to the efforts of the Minister for Finance, the Minister for Commerce and Industry and myself, we were able to get £800,000 from the World Bank, and most of this money is being spent in the African production areas. I think, Sir, I do not blame the hon. Members for feeling sore about certain points, but when they get up in public I think that along with the rough they should acknowledge the smooth, and at least pay some tributes to the efforts both of the various members and of the Government for whatever has been done under very difficult and trying circumstances.

On the point of the need for extra African representation, Sir, the Government is fully aware of it, but I think the hon. Member for the Coast will agree with me when I say it would be wrong particularly at the present juncture to classify Members in the various communities. I think it is the intention to move away from this racial segregation or separate compartments and the Government will ensure that as and when the new Members are appointed, the needs of the country, the present conditions, the change of wind as my friend has said, will be taken into consideration and due regard will be paid to that point.

I do not think, Sir, that there are any other points which have been raised and which I have not answered and therefore, Sir, I beg to move.

The question was put and carried.

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

The Aerodrome Regulation Bill

The Minister for Commerce and Industry (Dr. Kiako): Mr. Speaker, Sir, I beg to move that the Aerodrome Regulation Bill be read a Second Time.

Mr. Speaker, Sir, this is more or less a routine Bill which is aimed at tidying up the administration of the Nairobi Airport and the other

[The Minister for Commerce and Industry] aerodromes which come under my Ministry. We hope that by passing this Bill we shall put the position of the aerodromes on the same par as with the more developed and advanced countries so that there will be no more confusion as to who has the power or the authority to regulate some of the items which I shall list hereafter.

The fact of the matter is that the population of Kenya has been very, very kind to the staff at the airport because they have been able up to now to tell people, for example not to smoke because of the considerations within the airport and they have obeyed but they did not know they could have smoked in the airport and my staff would not have been able to do anything about it. They have also been able to regulate the movement of people within the airport and they obeyed quite perfectly, also inside the airport they did not have any power to direct them, all they could do is take notes and outside the airport find a policeman, tell him something has gone wrong, tell him to come in and take care of the matter. We have therefore been having within the airport a very happy relationship with the public. However, the time has come for the House to realize that an airport is very much like a small town and like a small town it does need some regulations, some by-laws as it were, which could enable the people who are doing the work there, the airport commander and the Minister to be able to regulate the area, the behaviour of persons inside the airport or even to take care of such things as animals coming in—I would not like to see, perhaps, members of the public coming into the airport followed by a number of cows, goats and so on. We do want to make the life of the employees at the airport satisfactory. Therefore, we have been having a discussion between my Ministry and other interested persons for rather a long time and I find that discussions as to how these regulations are to be carried out have been taking place since 1958. There does seem to be a difficulty as to who is responsible should this be done by the High Commission, should it be done by the local authority in which the airport is situated, should it be done by His Excellency by persons delegated to do so by him. And after all these discussions it has appeared that the best way is to recognize the fact that aerodromes do come under the Minister for Commerce and Industry, and if they do come under the Ministry for Commerce and Industry then the Minister for Commerce and Industry does have the responsibility for passing the necessary regulations which will see to the effective control and administration of the proceedings in the airport. I have therefore come to this House really to

ask the House to pass this Bill in order to enable me as the Minister for Commerce and Industry to have the power so that instead of depending upon the good sense of the public, I can have some power to induce the others who do not have the good sense to follow the proper procedures, because we must realize one thing, Nairobi Airport particularly is an international airport and being an international airport we must maintain the highest standards possible, both in terms of security and in terms of personal relationships and so on. Secondly, we must realize that a small careless mistake by someone who is, perhaps, not properly informed could cause a great disaster, for example, air-planes are filled with tons and tons of oil and inflammable material, we must have control of people who smoke around there and so on and at present we have to rely on their good sense.

These are some of the things which have necessitated the introduction of this Bill. If you look at the relevant section of this Bill we find for example that the security officers in the airport have been given power to arrest somebody within the airport should he break the regulations that we intend to make. But this is modified by the fact that while the security officer has power to arrest somebody, he must immediately take him over to the police because it is the Police Department and not ourselves who keep people under arrest. I thought I would clear that because that is something people may be worried about, why should the security officer within the airport have the power to arrest. I did want to point out that if they do arrest anybody, if somebody for example is acting in such a way as to bring danger to the aeroplane, or is smoking around so that something might get on fire, if such a person is arrested it is the duty of the security officer immediately to take him over to the police who then can deal with the matter in the usual manner.

I would also like to point out that in making this Bill we have followed as much as we could the type of aerodrome regulations that apply in the airports in Great Britain. We did that because as you might have heard on the radio last night and today, Britain is one country in which regulations of the airports and other matters connected with civil aviation are the most advanced and the most efficient.

If you look at the back part of this small Bill you will see some of the other regulations which we have looked into. The Bill, therefore, deals with three parts, the restrictions of individuals within the airport in order to make sure that no danger could be incurred. Secondly, to give us the power to regulate the entry into the airport of the vehicles, motor-cars and so on,

[The Minister for Commerce and Industry] again for the efficient administration of the airport. Thirdly to keep animals out and I do not think any person objects to that. Lastly, should anybody appear to disregard the staff members we have, the security staff we have at the airport to give those persons the authority to arrest a person and hand him over to the authorities concerned. I therefore believe that as long as we live in this country we do need people to see that the law is obeyed and we can do this through this Bill.

Mr. Speaker, I beg to move.

The Acting Chief Secretary (Mr. Griffith-Jones) seconded.

Sir Charles Markham: Mr. Speaker, Sir, I welcome this Bill and I must admit that I had not realized until the Minister told the House that the powers were not there before and it speaks well of the fact that people have obeyed instructions so far.

I have only got two very brief points to ask the Minister when making regulations to consider. The first is, Sir, the two-legged animal—we will come to the four-legged animal afterwards—the human animal, regarding the use of the airport increasingly for demonstrations, whether physical or otherwise, which can cause difficulties for people who are travelling in the normal way or who are visitors in transit. I will not make any criticism of what has happened, Sir, because I do not think that is the concern of this Bill, but perhaps he might consider that there are occasions when you do not particularly want, when an aircraft is arriving, for the entire facilities at the airport being swamped by visitors who are cheering or jeering their particular friend or foe.

Second, Sir, the four-legged animal. I notice, Sir, that the Minister will have powers in the regulations to control animals and even down to the destruction of any animal which might imperil the safety of an aircraft or person or any valuable property. Perhaps, Sir, although it is not quite within the scope of the regulations, I hope that the Minister might eventually be able to fence the ground up to the airport, actually outside the boundaries of the airport because at the moment it is quite dangerous late at night—I am not talking about the main Mombasa road now, I am talking about the Aerodrome Road, the turnoff from the main road to the airport, because of these animals. I did see the other night, Sir, quite a large herd of giraffe very close indeed to the runway. I do not know how you can control them by regulation, because I am unaware of how you inform a giraffe of regulation of what they must not do—there is the other way, of course, which we all

have to see of the bullet method but that does not go with democracy. I think, Sir, that it is important that if the airport is to be fenced or demarcated sufficiently that there should be security fencing so that the animals, if possible should be kept strictly away from that part of the airport.

But, Sir, one other small point does come up on this. We have talked about Nairobi Airport, but this Bill does give the Minister power to make regulations for any aerodrome in Kenya. We have heard a lot in the House of the importance of Mombasa and, I hope, the ever increasing importance of Mombasa. I hope therefore the Minister will make regulations for those airports and try to make them as uniform as possible as affecting the airport at Mombasa and, again, perhaps even at Wilson Airport, the small civil airport near Nairobi. Otherwise there is the great difficulty of one set of regulations in Mombasa and if any different to another set in Nairobi there might be confusion.

Finally, Sir, before I sit down, the Minister did say how his officers had received the courtesy of the public when we obeyed them on instructions. But I think at the same time we should say very clearly the reason, Sir, the Minister's staff at the airport have received co-operation is because, Sir, they themselves have earned it in every way possible. I think all of us who have come into contact with Mr. Thompson and his staff have found the utmost consideration at all times and very willing help on every possible occasion.

I beg to support, Sir.

Mr. Khamisi: Mr. Speaker, Sir, I am a bit hesitant as to whether I should welcome this Bill or not because from what I have heard from the Minister this afternoon it seems that there is no point whatsoever of bringing about this Bill before the House. He himself has admitted that ever since the Nairobi Airport came into operation everybody has obeyed orders and there has been no breach on the part of the general public towards disobeying the orders which have been given to them by the officers concerned in the aerodrome. As, Mr. Speaker, I am very proud indeed that we in Nairobi have got one of the most beautiful aerodromes in, perhaps, East or Central Africa, but at the same time if people have been behaving in the way they have behaved, I cannot see in my mind why there has arisen the necessity to introduce a Bill to further restrict the people from the use of the aerodrome.

Sir, unfortunately, this aerodrome of course has been built in a very peculiar manner in which the passengers and the people who accompany

[Mr. Khamisi]

these passengers cannot be able to go to the restaurant and be served there because the door is closed and the restaurant is only restricted to passengers coming in and out. I think that is very unfortunate. I have seen other restaurants in other towns where passengers and people who are accompanying them or people going to meet them are able to go and enjoy themselves with soft drinks and so on before the arrival of the aircraft or after the aircraft has gone.

Sir, I feel that since the Minister has admitted there has been no breach on the part of the general public, I do not see also the reason why in these regulations the penalties provided are so heavy in terms of fine of Sh. 5,000 or imprisonment for a term of six months. I think this is too much. I feel, Sir, a nominal figure, we do not know the reason in which disobedience has occurred, a nominal fine of, say, Sh. 200 for a breach of discipline would be enough and I think in this respect I hope the Minister will reconsider these heavy fines which undoubtedly will perhaps be incurred by people who did not do it purposely but by mistake they committed the offence.

The second point is this if this Bill is meant to restrict people who go in big numbers, for instance to welcome guests and so on, I would very strongly oppose it. I believe that this is not the intention of the Bill as it is.

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

The Temporary Minister for Legal Affairs (Mr. Cooney): The last speaker mentioned the penalties imposed by this Bill, but I would, of course, point out that the Bill does not impose any penalties at all. What it does is to provide the regulation-making authority with the permissive power to impose penalties up to this maximum amount. No doubt where it is a very small offence a very small maximum penalty will be imposed, but where you have a potential offence which may well endanger the safety of the aircraft or the passengers in an aerodrome then you may have to impose deterrent maximum penalties.

Mr. Nyagah: Mr. Speaker, I rise to support the Bill and also to bring to the notice of the Minister two or three points which have been mentioned in the Bill.

I am not very sure whether the regulations, fine and sentence do not seem to be out of proportion. There can be imposed a sentence up to a maximum of six months' imprisonment or a heavy fine. These do not seem to be in proportion. I

would like to see a smaller fine imposed as a maximum.

With regard to section 3 (b), Sir, I would like the Minister, when he replies, to inform the House and give further information as to what is really meant by "security officer" and a "police officer" and what he considers to be "reasonable grounds" of suspicion on which a man can be arrested without warrant.

Finally, Sir, I would like to appeal to the Minister that there are very many illiterate people who frequent the aerodromes. When he writes the regulations, Sir, he must make sure that provision is made for illiterate people so that they can see what they should do. Also, the languages used should be familiar languages of the majority of users of the aerodrome. I note, Sir, that these provisions are laid down in sections 4, 5 and 6. I would appeal to the Minister to keep in mind that there will, or may, be many people who will come to the aerodromes and find themselves in trouble because they do not understand the notices, or if the notices themselves are not self-explanatory.

Mr. Speaker, I beg to support.

Mr. Mwachira: Mr. Speaker, Sir Charles Markham spoke about four-legged and two-legged animals and that these regulations will be drawn up equally for all the aerodromes in Kenya. It is true, and probably some of you know, that we have a small aerodrome at Kisumu which is more or less a grazing ground. That goes to confirm what the hon. Member for Ukamba has asked for, that there should be some means to protect the ground from animals walking into aerodromes.

With that plea, Sir, when it comes to 3 (2) (d) dealing with destruction of animals it will be found in this location probably that the whole of the population around Kisumu would be up in arms because they would have no sheep or cows or anything left in accordance with this section unless there was some physical control so that the sheep and cows and herd boys do not wander into the airport and even on to the runways. Those things must be taken into account, that these people go on to the airport, and if things are left without indicating this and physically keeping the herd boys and the rest out of the airport there will be a lot of trouble there, there is bound to be. There is enough trouble about this but it would be necessary for it to be worked out by the aerodrome staff.

Therefore, Mr. Speaker, with all the other observations that have been put by some other Members, I would ask the Minister to bear them in mind carefully.

The Minister for Commerce and Industry (Dr. Kioko): Mr. Speaker, I am very happy that the House has supported this measure, including my hon. friend, the Member for Mombasa Area, who spent about two minutes on what he had to say. Therefore, I will be brief.

I would like first of all, Sir, to say that this Bill is not aimed at all at the political demonstrations that take place at the airport. I personally have enjoyed them quite often and I hope that they will continue to take place. If some misbehaviour takes place during the political demonstrations there, that is a matter for the police. They are usually around there to handle the individuals concerned. I think, however, that it would be wrong for anybody to consider this Bill as a Bill that could be used to restrict the coming into the airport of people who wish to meet their friends or to send their friends off. Already, as you are aware, we have a Minister for Tourism as well as touring Ministers, and we like to be met there as well as everywhere else. I am glad that the Member for Ukamba requested a statement on this question of demonstrations because I do want to put it on record, and very clearly, that these regulations which I want to make are not aimed merely at the political crowds that gather there. Of course, Sir, should there be people, members of one party, meeting their leader, and members of another party come, and the two begin exchanging blows, well that is a matter for the regular police. Criminal behaviour is a matter for the regular police.

I, personally, welcome the fact that so many people show so much interest in civil aviation that often we have our Nairobi Airport full of people coming to see people off or welcoming them; so I want to make it very clear that this is not aimed at political demonstrations as long as people are simply expressing their pleasure by seeing somebody arrive or somebody take off.

At this stage, the point I want to make is this. My friends—and I say my friends not from the parliamentary point of view but because they are my real friends—and in particular the Member for Mombasa Area feel that this Bill is not necessary because so far we have not had anybody misbehaving at the Airport in Nairobi. He said this. Now, Sir, I do not believe in locking the door when the cattle have already been stolen. I am not going to risk a situation whereby careless smoking in the airport might destroy a £1,000,000 aeroplane belonging either to this or to another country. I cannot also risk having a situation whereby such damage might be caused which might involve the deaths of 80 or 81 or 82 people in an aeroplane. I do realize that as the Minister in charge of the Airport I am responsible, one way or the

other, for the lives of many people from all over the world, and, therefore, instead of waiting until one aeroplane has been burnt up, let me ask the House to give me the ability to stop that, keeping in mind, as I said before, that the public, the people of Kenya, have up to the present time acted excellently, and on the whole the majority of the people in Kenya are law-abiding people, people who listen and who do not get up to mischief. The majority of the people of this country do not like to refuse to listen to directives, and so on. I do not think that the Member for Mombasa Area has a very good argument when he tells me to wait because things have been very nice so far. I can imagine somebody going and perhaps wanting to create a bad situation, and when he begins to play around with an aeroplane in a way that perhaps might make that aeroplane collapse when it goes up into the air, then the only thing that a security officer can do today in the Airport is to take note of that and rush out to the police station to find out where the policeman is to come and see what this fellow is doing. All I am saying is that we should be able to allow that security officer to say: "What are you doing" and, if he is misbehaving, "Please go out." By the time the security officer is able to take a note and then rushes out to the police station to get a policeman the man will have done the damage. These are the sort of things I am thinking about. I am not so much talking about what happens outside the Airport; I am concerned with behaviour inside the Airport and to make sure we have the maximum security.

With this business of flying in the air I never feel completely sure of myself whenever I look down and see the earth about 2,000 feet away. We do not therefore want to take any risks at all. All we are doing is enabling myself to carry out the necessary regulations which will ensure the security of the people.

Then, Sir, the Member for Mombasa Area stated that the public is not allowed to go to the restaurant. Now, Sir, I am rather puzzled, because I do like the airport and I am very proud of the Nairobi Airport. I am glad that I am the Minister for it. I always call it "our" airport because it was built by hand. I do sometimes go there in the evening, not intending to fly to Britain or Tokyo or Germany, but just to look round. I do go up there. I am not sure about this, but I believe that the British say that it is the first floor and the Americans say it is the second floor. Anyway, I do go up to the first floor. There, I have a drink or I go to the restaurant section. The public is not stopped. What we stop the public from having complete freedom to do is to walk into the first floor where the passengers are going to be weighed before going

[The Minister for Commerce and Industry] into the aeroplane because, after all, the immigration officers want to make sure that somebody does not somehow sneak into the aeroplane, and therefore it is not so much our problem as the problem of the customs and immigration officers. But that is not the restaurant; that is just the downstairs lounge. You can go to the restaurant any time you want to and I know that the catering authorities there will be very happy to make an extra £1 from the money you spend. However, that is indirectly connected with it.

Whenever, as the Minister for Works has said, we do criticize the authorities let us be quite sure that the criticism is correct. I do hope that that is understood.

Thirdly, Sir, he said that the fines are too high. Well, let me make it clear that my security officers and other people will not be there only interested in arresting anybody; they are not going to be the sort of people looking for a way to get somebody into a difficulty so that they can arrest the man and make some revenue out of this fellow. As a matter of fact, Sir, I do hope that we shall not have to bring anybody to the police. But when you say that the maximum should be so much money, it does not necessarily mean that whoever is caught will pay all that, and remember one thing: I do not like fines myself. I hate fines. In fact, I do hope that as Minister for this Airport I will not have to cause anybody to be fined. But really when we are trying to stop people from committing damage which might cause the Kenya Government, or the Government country owning the plane, millions of pounds, then I must say that a fine of Sh. 20 will not stop a man doing millions of pounds' worth of damage; it is not really a fine at all. However, I do hope that nobody will be fined.

Now, Sir, we come to another problem, the problem of animals. I mean here, Sir, the four-legged animals mentioned by the Member for Ukamba. Yes, I am aware of that. I have personally been concerned several times in accidents and I do not want to suffer another one. Several times as I have driven from the airport I have seen animals crossing the road and so on. I am quite concerned about it. The other day—I think it was the incident mentioned by the hon. Member for Ukamba—I remember seeing the giraffe there because I had to drive slowly. I think it is a matter that I should take up and consider with my colleague the Minister for Tourism and Game and see what can be done to reduce the danger because so far what we have done is to put up notices "Beware of Game". I do quite see the danger and I will discuss it with the Minister for Game to see what we can do to reduce that risk.

Now, Sir, I come to the other point about making the regulations uniform. The provisions of the Bill state that the regulations can be applied generally to all the aerodromes or to a particular aerodrome. This really means that those regulations that will apply to the question of security and efficiency in all aerodromes will be made general. This, however, is a particular airport with a particular problem.

The hon. Specially Elected Member, Mr. Muchura, mentioned the sheep grazing at Kisumu Airport. Now, Sir, that is a particular problem applying to Kisumu; Nairobi Airport does not have the same problem, neither does Mombasa Airport have this problem. However, I will keep in mind what the hon. Member has said. I do not remember myself having seen any sheep at Mombasa when I flew there, but if sheep do frequent the Mombasa Airport then I will take note of that particular problem.

I find it rather difficult, Mr. Speaker, to know how to reply to my hon. friend the Member for Embu and Nyeri. What he has said does serve to remind us that we have in this country a considerable number of people who cannot read or write and to whom therefore the putting up of a sign may not mean very much. Let us hope that, as much as we can, we will make some of these notices pictorial; but it is a constant problem, not only for the Minister for Commerce and Industry but also all the other Ministers and staff, of how to make the public know of what the regulations are as published in the *Kenya Gazette*. Many people who can read and write do not read the *Kenya Gazette*. We shall therefore try to publicize, as much as we can, what we do and do not want people to do at the airport. On the whole, Sir, I do know that it is not only the people who cannot read and write, but even many of us who read and write who find the laws so dull that there may be room for a little more publicity in less legal language, with all respect to members of the legal profession.

Now, lastly, Mr. Speaker, I would like to say again how impressed I have been with the members of the public at the Airport. These regulations are not punitive; they are simply enabling us to have the highest possible efficiency in the administration of the airport. As for these fines, I hope the Minister for Finance will not expect much revenue from the public as a result of these fines. We shall not have much of that but we must remember that having one of the best airports in the world—and when I say that I am not exaggerating—we must constantly keep in our minds the importance of the security of the passengers. As you know, the Boeings which will be very soon using our airport may be carry-

[The Minister for Commerce and Industry] ing 80, 90 or 100 people, and so on, and I am informed by the Acting Chief Secretary that some of them have been carrying as many as 180 passengers. Under these circumstances it is important for us to make sure that we do not take any risks that might endanger their lives. Because we want to safeguard their lives and the property that we have, we are proposing this Bill.

The question was put and carried.

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

The Special Pensions Bill

The Temporary Minister for Finance and Development (Mr. Butter): Mr. Speaker, Sir, I beg to move that the Special-Pensions Bill be now read a Second Time.

As explained in the Memorandum of Objects and Reasons, cases sometimes arise in which it is considered reasonable to judge that a person who is entitled to a pension under the Pensions Ordinance should receive a higher award than that calculated strictly in accordance with the provisions of the Ordinance, and it is also sometimes reasonable and just that awards should be made in special circumstances to persons who do not strictly qualify for pensions.

Brief details of all the cases referred to in the Schedule to this Bill are given in the Memorandum of Objects and Reasons but I would be glad to give further details of any particular case if any hon. Member wishes.

I beg to move.

The Minister without Portfolio (Mr. Madan) seconded.

Question proposed.

The question was put and carried.

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

The Election Offences (Amendment) Bill

The Acting Chief Secretary (Mr. Griffith-Jones): Mr. Speaker, Sir, I beg to move that the Election Offences (Amendment) Bill be now read a Second Time.

This Bill is designed to repair two deficiencies in the principal Ordinance. Section 7 of that Ordinance creates the offence of personation, if, having voted at an election, a person then applies at the same election for another ballot paper. In order to succeed, however, in securing a conviction for this offence, it is necessary as the section stands to prove the first voting and this, of course, may be difficult if not impossible

without a scrutiny of the votes cast, because the person concerned may have obtained a ballot paper but not used it. Proof of the first voting is also inhibited by the secrecy of the ballot.

In the United Kingdom in the Representation of the People Act, on which these particular provisions in our own laws are founded, there is provision that the mere application for a ballot paper shall be deemed to be voting. We accordingly propose in clause 2 of this Bill to introduce a similar provision in our law which will then be on all fours with the English provisions.

Section 11 of the principal Ordinance provides the punishments and incapacities for corrupt practices and specifically provides for aiding, abetting, counselling and procuring the commission of the offences of personation, treating, undue influence and bribery, as well as for the substantive commission of those offences. There is, however, no provision for punishing an attempt to commit these offences; whilst four other corrupt practices with which the same section deals are not covered in respect of aiding, abetting, counselling or procuring. Accordingly in clause 3 of the Bill we propose to remedy that deficiency.

I beg to move.

The Minister without Portfolio (Mr. Madan) seconded.

Question proposed.

Mrs. Shaw: Mr. Speaker, Sir, merely on a point of information, am I allowed to ask what happens under this first provision if an application for a ballot paper is accounted as voting and you lose the ballot paper? It might conceivably be lost in the post in Kenya.

The Acting Chief Secretary (Mr. Griffith-Jones): I feel perfectly certain that that would be a sound defence if it were shown to be a bona fide. What the section is aimed at is, of course, a person seeking to vote twice in the same election. But if a ballot paper could be shown to have been lost and to have been replaced by authority and the person clearly established that he or she has only voted once, then of course no proceedings would be taken.

I beg to move, Sir.

The question was put and carried.

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

The Law of Contract Bill

The Temporary Minister for Legal Affairs (Mr. Conroy): Sir, I beg to move that the Law of Contract Bill be now read a Second Time.

[The Temporary Minister for Legal Affairs]

Sir, although this is a very short Bill it is a very important one because it affects the whole of the Law of Contract in Kenya, the fundamental Law of Contract in Kenya, which affects every citizen in most of his every-day activities. Sir, the law of Kenya is the common law, the doctrines of equity and the statutes of general application in force in England on 12th August, 1897, except where they have been replaced by Kenya law or by applied law from outside, for example from England or from India. In respect of contract, the Indian Contract Act of 1872 was applied in East Africa in 1897. I think it is generally agreed that it is not a very good Act, but it was broadly based on the United Kingdom common law of contract. However, it was not a complete code and there were conscious differences that were deliberately made between the United Kingdom common law of contract and the codification of the East African law of contract in India which was subsequently applied to us.

Sir, further difficulty has arisen in Kenya in that the Indian law as applied here was crystallized as at 27th November, 1907; that is to say, the amendments made to this law by the Indian Legislature before that date in 1907 automatically apply, and that the ones made in India after that date do not apply. It is up to us to enact our own legislation to supply any deficiency which comes to light in practice. This position makes it very difficult for lawyers and businessmen and judges because it is not easy to get hold of the text of the Indian Act as it was amended to 27th November, 1907, and it is also not easy to be sure that a text book or a decided case is referring to the Act as it was before 1907 or as it was after 1907. That is one of the difficulties which we are trying to overcome in this Bill.

Sir, another somewhat surprising position which I do not think is generally known is that the Indian Contract Act as applied in Kenya does not apply to Africans, so we have two different laws of contract in Kenya. One is for Africans, which is the English Common Law, and the other is the Indian Contract Act as applied here to people who are not Africans. That again is a difficulty which has arisen from this application.

Now, Sir, the Indian Contract Act, as I have said, was a code of the law of contract; but many of its particular aspects have been replaced by specific legislation in Kenya. For example, in 1931 we enacted our own Sale of Goods Ordinance. In 1932 we enacted an Ordinance called the Contracts in Restraint of Trade Ordinance. In 1934 we enacted our Partnership Ordinance, and we have from time to time enacted legislation which

deals with particular and specialized branches of the law of contract.

Sir, for all those reasons we consider that it is desirable to move away from this application of this 1872 Act as it was in 1907 and to apply the English law of contract in so far as we have not made the specific provisions in our specific Ordinances. There are clearly legal and commercial advantages in abandoning this 19th century Indian Act and securing uniformity with modern English law. We have consulted the Board of Commerce and Industry and they agree. We have had long discussions with the Law Society of Kenya and they agree. We have had discussions with the judiciary and they agree, although at one time they did suggest that it would be preferable to replace the Indian code by our own specific code. However, after considerable discussions—and very helpful discussions—we came to the conclusion that it was better to apply the English Common Law which is a living law which changes with circumstances as it is developed and explained by the judges, which is easily ascertainable and on which we will have the full weight of judicial authority. I have no doubt this will appeal to the Minister for Finance for when you apply the English law you get the full weight of the English judicial authority without having to pay for it, which is always a very satisfactory thing to do.

Mr. Elendell: Provided it works.

The Temporary Minister for Legal Affairs (Mr. Conroy): Sir, it always works!

I do not want hon. Members to think we have rushed into this. I see that the earliest correspondence on the file is where we agreed with the Law Society of Kenya and the Law Society of Mombasa to enact this legislation in the year 1925. Sir, discussions have been going on since then, sometimes faster, sometimes slower, and the present suggestion was brought up as recently as 1956, when we had careful discussions with the judiciary, with the professions and with commerce and industry. The Bill was published, as hon. Members will see, on 28th April, 1959—not 28th April, 1960—so there was no rush about it. The reason that we published it then and did not go forward with it was that this was such an important piece of legislation that we wanted to give all interested parties the opportunity to come forward and suggest amendments and point out where we were wrong, if we were wrong—

Mr. Odinga: No, no.

The Temporary Minister for Legal Affairs (Mr. Conroy): I am so glad the hon. Member agrees with me that I could not possibly be

[The Temporary Minister for Legal Affairs] wrong! Indeed, we have had amendments suggested to us both by the Law Society and by the judiciary which will be the subject of amendments, of which I hope notice will be published in the Order Paper tonight and which will be moved in the Committee stage when we reach that stage.

Sir, I hope I have explained the Bill adequately to hon. Members. If I have no doubt they will raise the points with me, and in the meantime, Sir, I beg to move.

The Acting Chief Secretary (Mr. Griffith-Jones) seconded.

Question proposed.

Mr. Nazareth: Mr. Speaker, considering the weight of the arguments which the learned and hon. Mover has advanced in support of this Bill, I certainly feel the most serious misgivings in expressing my own feelings with regard to the Bill.

One disadvantage of placing the law on an unwritten basis—at least placing the law of contract on the unwritten basis on which the English law of contract rests—is that the common man then finds it much more difficult to know what the law is. In Uganda I believe the Indian Contract Act has been enacted, and it appears in the laws of Uganda. I do not know what the position is in Tanganyika, but the result of enacting this Bill will be to place us in a different situation from that in which Uganda is at the present time. One of the principal objects in commercial legislation has been to have uniformity of legislation in East Africa so I can see in that respect this Bill is going to be a disadvantage. Also, in a primitive country it is desirable to place matters of such importance on a codified basis, and therefore we will be taking a step which will be a retrogressive step—in going from written or codified law to unwritten law. The learned and hon. Mover said that at one time the judiciary were inclined to support the basis of amending the Indian Contract Act rather than proceeding on the lines of the Bill. I should have thought that that would have been the better approach. The Indian Contract Act may not be one of the best pieces of legislation in India—there are better pieces of legislation—but I would have thought that the best method of dealing with this matter would have been to correct the defects in the Indian Contract Act, to the extent that it is outdated, and also to the extent that there were defects in the original legislation, but the step that has been taken is rather like throwing the baby out with the bath-water instead of just throwing the bath-water out. I should have thought the best thing would have been to amend the Indian Contract Act rather than put us on

a different basis from what Uganda is and proceeding from a system of written law to unwritten law. I therefore have felt it necessary to express my doubts as to the wisdom of the Bill, although when the Bill was first published I was inclined to support it. But on reflection I felt it was a mistaken step, and I still feel it is a mistaken step. The better thing would have been to have amended the Indian Contract Act.

I therefore oppose the Second Reading.

Mr. Odinga: Mr. Speaker, I support the last speaker because when we come to compare ourselves with the English law or the English common law, we must know that the English common law is passed by the elected representatives of the people.

The Temporary Minister for Legal Affairs (Mr. Conroy): Mr. Speaker, on a point of order, surely the hon. Member will support what he says. The common law is the thing which is not passed by any elected representatives.

The Speaker (Mr. Slade): Mr. Odinga, allegations of fact must be substantiated. However, you have now been corrected on this point.

Mr. Odinga: Mr. Speaker, I was speaking on something which is referred to in this House for our approval, and if it is brought into this House it means that it is something which was passed in the British Parliament.

The Temporary Minister for Legal Affairs (Mr. Conroy): Perhaps I could assist the hon. Member. Common law is the law which is not passed by the English Parliament. Statute law is the law which has been so passed. Common law is customary law and the law of merchants.

Mr. Odinga: Mr. Speaker, it is wrong to bring customary law into comparison in this House because we are talking about laws to be passed by the Parliament of this country, and as such it must compare well with statute laws which have been passed into the Parliament of Britain. I would like to get your ruling on this.

The Speaker (Mr. Slade): This is not a case for any ruling. You must speak according to your understanding of the position; and if it is wrong some other Member will doubtless correct you in due course. Please proceed with your speech.

Mr. Odinga: Thank you very much Mr. Speaker. I will just go on to say that if we are going to compare the laws which are passed in this House with those which are happening in the British Parliament, or in British common law, we are going a little bit outside the way because here the House is not so represented as the House in Great Britain which passes these

(Mr. Odinga) laws, and therefore I would very much like to speak on the laws as they were practised in India, because there they were being imposed as they are being imposed here, and therefore, with only this short explanation, Mr. Speaker, I beg to oppose this particular Bill and say that that one which is applied in India should apply in Kenya until this House is fully representative, and then we shall make what we think is suited.

Mr. Speaker, I beg to oppose.

The Acting Chief Secretary (Mr. Griffith-Jones): Mr. Speaker, Sir, I think that perhaps I should follow the example of the last hon. Member and do something any angel would fear to do—that is to speak in this debate.

Sir, for the hon. Member's enlightenment, I should explain that the common law of England is the same sort of thing as the customary law of the African people of this country. It is not the law which is enacted by a legislature. It is a law which is built up by society through the particular controlling authority. In the case of England, through the Judges. It is a law which is, in effect, a form of discipline, and in its original concept it remains immutable, but so sound is it fundamentally, having evolved by the wisdom of centuries, so sound is it fundamentally that it adapts itself to every change of circumstances. The common law, for instance, has been in existence in England for many hundreds of years, and yet without any Act of Parliament or legislation of any variety, it now deals with such matters as aeroplanes, trains, motor-cars, which were not in existence when the common law was conceived.

The hon. gentleman suggested that we should not adopt anything in this House—if I understood him rightly—it was very difficult to understand what he was getting at—which had been passed by another legislature—the legislature of England. He then went on, with his usual show of consistency, to suggest that we should continue to adopt the statute which has been enacted by the Legislature of India—

Mr. Odinga: Imposed, not enacted.

The Acting Chief Secretary (Mr. Griffith-Jones): Which has been enacted by the Legislature of India—I repeat. There is, of course, not only no consistency, but a diametric inconsistency in those two suggestions.

I do not suppose that I have really impinged on the hon. Member's consciousness in my attempt to explain the situation, but at any rate I have tried, and I sit down, Mr. Speaker, Sir, in the knowledge that I have probably wholly failed.

The Temporary Minister for Legal Affairs (Mr. Conroy): Mr. Speaker, Sir, if I might deal first with the more serious contribution to the debate, the one from the hon. and learned Member for the Western Electoral Area. We did give very careful consideration to the point of view which he has put forward, and we discussed it at great length with the Law Society: the Law Society represents lawyers who are in private practice, and are therefore dealing more constantly with questions of contracts than lawyers are in the Attorney-General's Chambers. We discussed it also with the Judiciary, and it was only after the very fullest and most careful consideration that we ultimately came to the conclusion that is now embodied in this Bill.

The hon. Member put forward this argument. He said it is a pity we are moving away from a code of contract law because the common man will not be able to find his law if it is going to be an unwritten law. Sir, my mind boggles at the thought of the common man trying to find his way round the Indian Contract Act. I might take a few minutes to read what Sir Frederick Pollock had to say on this subject, because Sir Frederick Pollock was one of the joint authors of probably the finest book on the Indian Contract Act, called *Pollock and Mulla*, and what he had to say was this. He was dealing with the sources from which it was taken. He said: "Another source of unequal workmanship and sometimes of positive error is that the farmers attempted to borrow a section here and a section there from the Draft Civil Code of New York—an infliction which the sounder lawyers of that State have happily been successful so far in averting from its citizens. This Code is, in our opinion"—this is Sir Frederick Pollock and Mr. Mulla speaking—"and we believe in that of the most competent lawyers who have examined it, about the worst piece of codification ever produced. It is constantly—"

Mr. Odinga: On a point of order, Mr. Speaker, is the hon. gentleman correct in quoting laws which were passed by the Civil Code in New York without referring to the constitution which passed it?

The Speaker (Mr. Slade): Mr. Conroy is, of course, in order in quoting what the learned author has said in regard to the merits or demerits of the Indian Contract Act.

The Temporary Minister for Legal Affairs (Mr. Conroy): Sir, going on to speak of the code he says:—"It is constantly defective and inaccurate, both in apprehending the rules of law which it purports to define and in expressing the draftsman's more or less satisfactory understanding of

[The Temporary Minister for Legal Affairs] them. The clauses on fraud and misrepresentation in contracts, which are worse, if anything than the average 'badness' of the whole, were most unfortunately adopted in the Act. Whenever the Act is revised everything taken from Mr. Dudley Field's Code should be struck out and the sections carefully recast after examination from the best authorities." I hate to think of the common man going away and being misled by the late Mr. Dudley Field. It is said that a man who advises himself has a fool for a client, and I should not like to encourage the common man to go away to the Code of Contract.

Sir, then to turn to the lighter relief supplied by the hon. Member for Nyanza Central, who gave us a short explanation which I confess left me wholly and absolutely confused. He said he opposed the Bill, and then I thought him to say that we did not want any United Kingdom law introduced here—the suggestion apparently being that this Bill was introducing all the United Kingdom laws. Sir, it is introducing the common law of the merchants of England; which has been the law of contract in Kenya for Africans since 1897—

Mr. Odinga: We are not British, and will never accept English customary laws.

The Temporary Minister for Legal Affairs (Mr. Conroy): And I must say, looking at the hon. Member he does not seem to have done badly on it. The hon. Member appears to be neither British nor courteous if he constantly interrupts like this.

Then he says this is a law passed by the United Kingdom Parliament. Sir, I once tried to intervene in his speech to explain to him that it was not. My learned and hon. friend tried a second time, and I only fear that I should be wasting the time of the House if I tried for a third time, but I hope it is clear to all other hon. Members that common law is not passed by a legislature.

Mr. Odinga: But it may be imposed as you are trying to do.

The Temporary Minister for Legal Affairs (Mr. Conroy): Sir, that interjection has, I think, added no more to the debate than anything else the hon. Member has said previously, and I therefore propose to sit down having moved that this Bill be read a Second Time.

The question was put and carried.

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

ADJOURNMENT

The Speaker (Mr. Slade): Hon. Members will see that the next item on the Order Paper is a Motion. It is hardly fair on the Mover to start with only five minutes to go, and with your approval I think it would be better if I now adjourned Council until 2.15 p.m. tomorrow, Thursday, 27th October, 1960.

The House rose at twenty-five minutes past Six o'clock.

Thursday, 27th October, 1960

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

[Mr. Speaker (Mr. Slade) in the Chair]

PRAYERS

COMMUNICATION FROM THE CHAIR

PRESENTATION OF DESPATCH BOX BY SIR FERDINAND CAVENDISH-BENTINCK

The Speaker (Mr. Slade): Hon. Members, the despatch box on the Government side of the House is a familiar object but I do not know whether many Members realize that it was the property of my distinguished predecessor, Sir Ferdinand Cavendish-Bentinck, and he kindly lent it to the Council. I now have much pleasure in telling you that Sir Ferdinand has made a present of this despatch box to the Council.

He tells us that it is from India and, as you will see, it is inlaid with brass. I am sure that you will all wish me to write a letter to him on behalf of the Council expressing our warm appreciation of this generous gift.

I should add that on a silver plate inside the lid of the despatch box there is now engraved a brief record of Sir Ferdinand's long and valuable service to this Council which reads as follows: "Presented by Sir Ferdinand Cavendish-Bentinck, K.B.E., C.M.G., M.C., Member of this Council from 3rd April, 1934; Speaker from 4th October, 1935, to 2nd March, 1960."

NOTICE OF MOTION

EXEMPTION OF INCOME TAX FOR WELLCOME TRUST EMPLOYEES

The Temporary Minister for Finance and Development (Mr. Butler): Mr. Speaker, Sir, I beg to give notice of the following Motion:—

That this Council approves the exemption from tax for the year 1960 and succeeding years of the income received by virtue of their employment in Kenya by non-residents of East African employed by the Wellcome Trust on research work.

BUSINESS OF COUNCIL

The Acting Chief Secretary (Mr. Griffith-Jones): Mr. Speaker, Sir, with your permission I would like to make a statement to the House of future business and the arrangements which the Sessional Committee have made in regard to its despatch. Sir, on the completion of the business on today's Order Paper—be that today or tomorrow if we have to sit over until to-

morrow—it is proposed that the House should adjourn until the 15th November. We would then reassemble and sit until 25th November, on which date we will adjourn until a date fairly early in December, probably 6th December, depending on the state of business then outstanding. We have to adjourn over that time, apart from anything else, because the Central Legislative Assembly, of which a number of our Members are also members, will be in session. It will probably be necessary for the House to sit until 22nd or 23rd December before rising, probably for the last time as the presently constituted Legislative Council.

There is one other point I should like to mention. Two Notices of Motion, Mr. Speaker, have been given by different Members of the House on the same subject, namely capital punishment. Now, it is recognized by the Government that this is a matter of national importance and of wide interest. The Government will, therefore, make Government time available at a suitable time to debate this Motion without the limitations which are imposed upon Private Members' Motions. It will only do that in respect of one Motion, though, and it is to be hoped that the two hon. Members who have given Notice of the different Motions will be able, perhaps, to agree, so to speak, to cannibalize their two Motions so that we can deal with a suitable Motion on the one occasion and in the one debate.

Thank you, Sir.

Mr. Cooke: Mr. Speaker, I wish to make a few remarks about that. I do not know whether I am in order or not, about what my hon. friend, the Leader of the House, has just said. Am I in order in speaking?

The Speaker (Mr. Slade): It is quite in order for you to speak. These, I take it, are arrangements that have been made by the Sessional Committee, but it is quite in order for a Member to comment on them.

Mr. Cooke: I was going to say, Sir, that I think it is a pity that we were not informed when we assembled here last Tuesday. I was under the impression that we were to go on until we had finished the business on the Order Paper continuously. Indeed, it interferes with my own private arrangements quite a lot, but that does not matter too much. It may also interfere with other people's private arrangements. I think that Government should really know its own mind at the beginning and tell us when we do assemble how long we will continuously sit, because it came as a great surprise to me yesterday, and I think to other Members, to hear we were going to adjourn for a fortnight. I thought we were going to go on to

[Mr. Cooke]

finish the business and then Parliament would be prorogued. I think Government have been a little bit discourteous in not letting us know what the position was.

Mr. Hassan: I think that the Chief Minister will give a suitable reply to this question. Mr. Cooke has raised, but I would like to point out to him and other Members that the Sessional Committee when they meet arrange the sittings of the House according to the work at the disposal of Legislative Council, and in view of the amount of work we go through the first day and second day the other sittings are regulated for the benefit of the Members of this House so that nobody should be wasting time here when there is no work to be done, so taking those things into consideration the Sessional Committee decided on a programme such as that which the Chief Minister has just explained to this House, so it should be of no inconvenience to anybody in this House to hear some changes of the sittings of the Council to fit in with their future programme.

Mr. Cooke: They were perfectly aware of this weeks ago and nothing new has happened.

The Acting Chief Secretary (Mr. Griffith-Jones): Mr. Speaker, Sir, I think perhaps I had better say I am very sorry that the hon. Member for the Coast, and perhaps other hon. Members, have been put to inconvenience by the fact that the Council is not going to sit for a fortnight. I had hoped that perhaps that might have been conducive to most Members' convenience. It is not always possible, Mr. Speaker, to foresee with precision how long business is going to take in this House. Normally, if one is realistic one assesses the period of time which is going to be occupied on any particular item of business fairly generously. Sometimes, quite inexplicably, one's estimate is an over-estimate. All too frequently, however, one's estimates are under-estimates and we find ourselves debating in excessive length, in my opinion, something which should be disposed of in a much shorter time. We have dealt with great expedition in the last two days with some 12 Bills. It is again very difficult to assess in anticipation how much time the Council is going to require on a particular Bill. Then we have dealt with and shall be dealing today with a number of Private Members' Motions. Some hon. Members have not been present when their Motions have come forward and, therefore, that has introduced a further unforeseen gap in the proceedings. I think it is probably true to say that we could have brought the Council back on Tuesday next for one or two small pieces of business, but it seemed to us that would have been both an intrusion on Members' convenience and also an

unwarrantable expense of public funds and, therefore, with the best of intentions and what we hoped was the widest consideration for the convenience of Members of the House generally, we felt it best that the House should go into a short recess of two weeks. I do apologize if we have caused any Members undue inconvenience.

BILLS

COMMITTEE OF THE WHOLE COUNCIL

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

IN THE COMMITTEE

[J. J. M. Nyagah, Esq., in the Chair]

The National Loans Bill (Bill No. 49)

Clauses 2, 3, 4, 5 and 6 agreed to.

First Schedule agreed to.

Second Schedule agreed to.

Title agreed to.

Clause 1 agreed to.

The Diplomatic Privileges (Extension) (Amendment) Bill

Clause 2 agreed to.

Title agreed to.

Clause 1 agreed to.

The Statute Law (Repeal) Bill

Clause 2 agreed to.

Schedule

The Temporary Minister for Legal Affairs (Mr. Conroy): Mr. Chairman, I beg to move that the Schedule to the Bill be amended by inserting therein the following item—No. 23 of 1939—The Military Units Ordinance, 1939.

Hon. Members will recall that the purpose of this Bill is to repeal the Ordinances set out in the Schedule, and we found another Ordinance that we wanted to be repealed so we are adding it to the Schedule. This is the Military Units Ordinance, 1939, which has not been completely replaced by the King's African Rifles Ordinance, 1958, and therefore we want to get rid of it from the Statute Book.

I accordingly beg to move that the Schedule be amended in this manner.

Question proposed.

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

Schedule, as amended, agreed to.

Title agreed to.

Clause 1 agreed to.

The Housing (Amendment) Bill

Clauses 2 and 3 agreed to.

Clause 4

The Minister without Portfolio (Mr. Madan): Mr. Chairman, Sir, I beg to move that subclause (5) of clause 4 be amended by the deletion of the words "with the exception of the auditor's report," which appear therein. That is in the third line from the bottom of subclause (5). When I was moving this Bill yesterday I explained that Government think it fit and proper that all reports that are submitted to the Minister under subclause (1) and subclause (2) of this clause should be published for the information not only of this House but also of the public, and I accordingly beg to move the deletion of the words to which I have referred.

Question proposed.

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

Clause 4, as amended, agreed to.

Clauses 5 and 6 agreed to.

Title agreed to.

Clause 1 agreed to.

The African Courts (Validation) Bill

Clause 2 agreed to.

Title agreed to.

Preamble agreed to.

Clause 1 agreed to.

The Education (Amendment) Bill

Clauses 2 and 3 agreed to.

Clause 4

Mr. Zafrud-Deen: Mr. Chairman, I would like the Acting Minister for Education to give this information. I would like to know if he could tell us what constitutes a school under the heading "Government schools". My reason for asking this particularly is that we know that there are, not only on the coast, but all over the country, religious schools which are not Government schools and which have a large school population and where no other education is imparted other than religious education. What will happen to these schools?

Mr. Gregg: I think, in reply to the hon. Member's question, that a school which is a Government school is defined in the main Ordinance as a school which is established and maintained directly and administered directly by the Education Department. The reference is to all other schools, every type of school which is not included in that definition.

Mr. Zafrud-Deen: Would these religious schools be under the direction and control of the Director of Education? This is a difficult question that I want answered because I want to be quite sure what the position of these religious schools is, such schools as Muslim schools where preliminary religious education is given to the children. Do these schools come under this clause?

Mr. Gregg: Mr. Deputy Speaker, a school which is not established solely for religious purposes is a school within the meaning of this Ordinance and the powers of the Minister for Education and the officers of the Ministry of Education are varied. There are powers of inspection and control of schools. The main difference between non-Government schools and Government schools is that the Ministry of Education is responsible directly for their administration, in other words, the Minister or the Department is the manager; that is the only distinction.

Mr. Hassan: We wanted a very clear reply to that, whether religious schools where religious education is imparted are going to be controlled by the Director of Education. Could we be told very clearly on that, Sir, because religious schools are not exempted in this order?

The Temporary Minister for Education (Mr. Miller): Mr. Chairman, Sir, I think this depends on the definition of schools in the main Ordinance. If I may quote, the definition of "schools" does not include "any institution or assembly in which the instruction is in the opinion of the Director wholly or mainly of a religious character". It does not include either "any institution owned and maintained by a religious society for the purpose of training persons (1) for the ordained ministry; or (2) for admission to a religious order under the direction of, or associated with, such religious societies".

Clause 4 agreed to.

Clauses 5, 6, 7, 8, 9 and 10 agreed to.

Clauses 11, 12, 13, 14, 15 and 16 agreed to.

Title agreed to.

Clause 1 agreed to.

The Prisons (Amendment) Bill

Clauses 2, 3, 4 and 5 agreed to.

Title agreed to.

Clause 1 agreed to.

The Road Authority (Amendment) Bill

Clauses 2 and 3 agreed to.

Title agreed to.

Clause 1 agreed to.

The Aerodrome Regulation Bill

Clauses 2, 3, 4, 5, 6 and 7 agreed to.

Title agreed to.

Clause 1 agreed to.

The Special Pensions Bill

Clauses 2 and 3 agreed to.

Clause 4

Mr. Alexander: Just seeking information, Mr. Chairman, have pensions ever been funded at all?

The Temporary Minister for Finance and Development (Mr. Butler): Mr. Chairman, Government pensions have never been funded. The pensions of the High Commission are funded, but the pensions of the officers employed by the Kenya Government are not funded.

Mr. Alexander: Mr. Chairman, what has happened to the contributions in the past?

The Temporary Minister for Finance and Development (Mr. Butler): Mr. Chairman, I would be grateful if the hon. Member for Nairobi West would tell me what contributions have been voted. The only contributions we make are contributions to the Widows' and Orphans' Pensions Fund, but the pensions of officers themselves are free pensions provided out of money voted each year by this House. The pensions are therefore non-contributory.

Clause 4 agreed to.

First Schedule agreed to.

Second Schedule agreed to.

Title agreed to.

Clause 1 agreed to.

The Election Offences (Amendment) Bill

Clauses 2 and 3 agreed to.

Title agreed to.

Clause 1 agreed to.

The Law of Contract Bill

Clause 2 agreed to.

Clause 3

The Temporary Minister for Legal Affairs (Mr. Conroy): Mr. Chairman, I beg to move that clause 3 be amended by inserting at the beginning of subsection (1) the words "save as may be provided by any written law for the time being in force".

Sir, this amendment I move at the request of the Law Society who wish to make it absolutely clear that any legislation passed in the Legislature

of Kenya will prevail over the general application of the common law of England under this section. I accordingly beg to move that section 3 be amended in that way.

Question proposed.

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

The Temporary Minister for Legal Affairs (Mr. Conroy): Mr. Chairman, Sir, I wish to move a second amendment to this clause, which is that clause 3 be amended by inserting the words "by the Acts of Parliament applicable by virtue of subsection (2) of this section" immediately after the words "the doctrines of equity," which appear in subsection (1).

Sir, this again is designed to remove any possibility of doubt. A suggestion was made by the President of the Court of Appeal for East Africa and, Sir, if any hon. Members have troubled to read the clause together with the amendment they will appreciate why it has been moved. Therefore, it is unnecessary for me to explain it in any detail.

Question proposed.

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

Clause 3 as amended agreed to.

New Clause

The Temporary Minister for Legal Affairs (Mr. Conroy): Sir, I should like to move that the new clause be added to the Bill of which notice has been given to hon. Members in the Order Paper for today as follows:—

(1) No suit shall be brought whereby to charge the defendant upon any special promise to answer for the debt, default or miscarriages of another person unless the agreement upon which such suit shall be brought, or some memorandum or note thereof, shall be in writing and signed by the party to be charged therewith or some other person thereunto by him lawfully authorized.

(2) No suit shall be brought whereby to charge any person upon or by reason of any representation or assurance made or given concerning or relating to the character, conduct, credit, ability, trade or dealings of any other person, to the intent or purpose that such other person may obtain credit, money, or goods, unless such representation or assurance be made in writing, signed by the party to be charged therewith.

[The Temporary Minister for Legal Affairs]

(3) For the avoidance of doubt, it is hereby declared that after the commencement of this Ordinance the Statute of Frauds and the Statute of Frauds (Amendment) Act, 1828, shall not apply to the Colony and Protectorate of Kenya.

As hon. Members are aware the provisions in questions come from the Statute of Frauds and it has never been quite clear in Kenya whether that statute applies here or not. There are three decisions, two of which apply to a specific part of it, that is to say the second part does not apply and the third position is merely *obiter*. We have had long discussions with the Law Society on this point, and we have decided what we shall do is that first of all the Statute of Frauds shall not apply and the Statute of Frauds (Amendment) Act, 1828, shall not apply, and then take the two very small portions we want and specifically apply them here, which we have proposed to do in the new subsection (1) and subsection (2) of this new section which we are seeking to add to this Bill. Sir, the purpose of the new subsection (1) is to prevent anyone being made liable on a guarantee unless he has given his undertaking in writing, and, secondly, to make no one responsible for a representation as to the character of another person unless he puts it in writing. The latter, of course, as all hon. Members will immediately realize comes out of Lord Tenterden's Act.

Sir, I beg to move.

Question proposed.

The question that the new clause be read a Second Time was put and carried.

The question that the new clause be added to the Bill was put and carried.

Schedule agreed to.

Title agreed to.

Clause 1

The Temporary Minister for Legal Affairs (Mr. Conroy): Mr. Chairman, Sir, I beg to move that clause 1 be left out of the Bill and that a new clause be inserted in place thereof as follows:—

"Short title and commencement. 1. This Ordinance may be cited as the Law of Contract Ordinance, 1960, and shall come into operation on the first day of January, 1961."

Sir, as I explained to hon. Members yesterday, we have published for a long time in order to allow any interested parties, particularly the Law Societies of Kenya and Mombasa, to make representations to us on it. The Bill was initially published in April, 1959, and it was our original in-

tenation to bring it into force at the end of 1959. In fact discussions have taken longer than we thought so we no longer want to call it the Law of Contract Ordinance, 1959, but the Law of Contract Ordinance, 1960, and instead of bringing it into force on the 31st day of December, 1959, we want to bring it into force on the 1st day of January, 1961.

I accordingly 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 in place thereof be inserted put and carried.

Clause 1, as amended, agreed to.

The Acting Chief Secretary (Mr. Griffith-Jones): Mr. Chairman, I beg to move that the Committee do report to Council its consideration of the National Loans Bill, the Diplomatic Privileges (Extension) (Amendment) Bill, the African Courts (Validation) Bill, the Education (Amendment) Bill, the Prisons (Amendment) Bill, the Road Authority (Amendment) Bill, the Aerodrome Regulation Bill, the Special Pensions Bill and the Election Offences (Amendment) Bill without amendment and the Statute Law (Repeal) Bill, the Housing (Amendment) Bill and the Law of Contract Bill with amendments.

The question was put and carried.

The House resumed.

(Mr. Speaker (Mr. Slade) in the Chair)

REPORTS AND THIRD READINGS

The National Loans Bill

Mr. Nyagah: Mr. Speaker, Sir, I beg to report that a Committee of the whole Council has gone through the National Loans Bill and directed me to report the same without amendment.

The Temporary Minister for Finance and Development (Mr. Butter): Mr. Speaker, Sir, I beg to move that the Council do agree with the Committee in the said Report.

The Acting Chief Secretary (Mr. Griffith-Jones) seconded.

The question was put and carried.

The Temporary Minister for Finance and Development (Mr. Butter): I beg to move that the National Loans Bill be now read a Third Time.

The Minister without Portfolio (Mr. Madan) seconded.

Question proposed.

The question was put and carried.

The Bill was accordingly read the Third Time and passed.

The Diplomatic Privileges (Extension) (Amendment) Bill

Mr. Nyagah: Mr. Speaker, Sir, I beg to report that a Committee of the whole Council has gone through the Diplomatic Privileges (Extension) (Amendment) Bill, Bill No. 40, and directed me to report the same without amendment.

The Acting Chief Secretary (Mr. Griffith-Jones): Sir, I beg to move that Council doth agree with the Committee in the said Report.

The Temporary Minister for Legal Affairs (Mr. Conroy) seconded.

The question was put and carried.

The Acting Chief Secretary (Mr. Griffith-Jones): I beg to move that the Diplomatic Privileges (Extension) (Amendment) Bill be now read a Third Time.

The Minister without Portfolio (Mr. Madan) seconded.

Question proposed.

The question was put and carried.

The Bill was accordingly read the Third Time and passed.

REPORTS

The Statute Law (Repeal) Bill

Mr. Nyagah: Mr. Speaker, Sir, I beg to report that a Committee of the whole Council has gone through the Statute Law (Repeal) Bill, Bill No. 41, and directed me to report the same with amendments.

Report ordered to be considered tomorrow.

The Housing (Amendment) Bill

Mr. Nyagah: Mr. Speaker, Sir, I beg to report that a Committee of the whole Council has gone through the Housing (Amendment) Bill, Bill No. 42, with amendments.

Report ordered to be considered tomorrow.

REPORTS AND THIRD READINGS

The African Courts (Validation) Bill

Mr. Nyagah: Mr. Speaker, Sir, I beg to report that a Committee of the whole Council has gone through the African Courts (Validation) Bill and approved the same without amendment.

Mr. Walwright: Mr. Speaker, I beg to move that the Council doth agree with the Committee in the said report.

The Temporary Minister for Legal Affairs (Mr. Conroy) seconded.

The question was put and carried.

Mr. Walwright: Mr. Speaker, I beg to move that the African Courts (Validation) Bill be now read a Third Time.

The Minister for Information and Broadcasting (Mr. Harris) seconded.

Question proposed.

The question was put and carried.

The Bill was accordingly read the Third Time and passed.

The Education (Amendment) Bill

Mr. Nyagah: Mr. Speaker, Sir, I beg to move that the Committee of the whole Council has gone through the Education (Amendment) Bill and has directed me to report the same without amendment.

The Temporary Minister for Education (Mr. Miller): Mr. Speaker, I beg to move that the Council doth agree with the Committee in the said report.

The Temporary Minister for Internal Security and Defence (Mr. Ellerton) seconded.

The question was put and carried.

The Temporary Minister for Education (Mr. Miller): Mr. Speaker, I beg to move that the Education (Amendment) Bill be now read a Third Time.

Question proposed.

The question was put and carried.

The Bill was accordingly read the Third Time and passed.

The Prisons (Amendment) Bill

Mr. Nyagah: Mr. Speaker, Sir, I beg to report that the Committee of the whole Council has gone through the Prisons (Amendment) Bill and has directed me to report the same without amendment.

The Temporary Minister for Internal Security and Defence (Mr. Ellerton): Mr. Speaker, I beg to move that the Council doth agree with the Committee in the said report.

The Temporary Minister for Finance and Development (Mr. Butter) seconded.

The question was put and carried.

The Temporary Minister for Internal Security and Defence (Mr. Ellerton): I beg to move that the Prisons (Amendment) Bill be now read a Third Time.

Question proposed.

The question was put and carried.

The Bill was accordingly read the Third Time and passed.

The Road Authority (Amendment) Bill

Mr. Nyagah: Mr. Speaker, Sir, I beg to report that a Committee of the whole Council has gone through the Road Authority (Amendment) Bill and directed me to report the same without amendment.

The Minister for Works (Mr. Nathoo): Mr. Speaker, I beg to move that the Council doth agree with the Committee in the said report.

The Acting Chief Secretary (Mr. Griffith-Jones) seconded.

The question was put and carried.

The Minister for Works (Mr. Nathoo): Mr. Speaker, I beg to move that the Road Authority (Amendment) Bill be now read a Third Time.

The Acting Chief Secretary (Mr. Griffith-Jones) seconded.

Question proposed.

The question was put and carried.

The Bill was accordingly read the Third Time and passed.

The Aerodrome Regulation Bill

Mr. Nyagah: Mr. Speaker, Sir, I beg to report that a Committee of the whole Council has gone through the Aerodrome Regulation Bill and directed me to report the same without amendment.

The Acting Chief Secretary (Mr. Griffith-Jones): Mr. Speaker, I beg to move that Council doth agree with the Committee in the said report.

The Minister for Information and Broadcasting (Mr. Harris) seconded.

The question was put and carried.

The Acting Chief Secretary (Mr. Griffith-Jones): Mr. Speaker, I beg to move that the Aerodrome Regulation Bill be now read a Third Time.

The Minister for Information and Broadcasting (Mr. Harris) seconded.

Question proposed.

The question was put and carried.

The Bill was accordingly read the Third Time and passed.

The Special Pensions Bill

Mr. Nyagah: Mr. Speaker, Sir, I beg to report that the Committee of the whole Council has gone through the Special Pensions Bill and directed me to report the same without amendment.

The Temporary Minister for Finance and Development (Mr. Butter): Mr. Speaker, I beg to move that the Council doth agree with the Committee in the said report.

The Acting Chief Secretary (Mr. Griffith-Jones) seconded.

The question was put and carried.

The Temporary Minister for Finance and Development (Mr. Butter): Mr. Speaker, Sir, I beg to move that the Special Pensions Bill be now read a Third Time.

The Acting Chief Secretary (Mr. Griffith-Jones) seconded.

Question proposed.

The question was put and carried.

The Bill was accordingly read the Third Time and passed.

The Election Offences (Amendment) Bill

Mr. Nyagah: Mr. Speaker, Sir, I beg to report that the Committee of the whole Council has gone through the Election Offences (Amendment) Bill and directed me to report the same without amendment.

The Acting Chief Secretary (Mr. Griffith-Jones): Mr. Speaker, I beg to move that the Council doth agree with the Committee in the said report.

The Temporary Minister for Legal Affairs (Mr. Conroy) seconded.

The question was put and carried.

The Acting Chief Secretary (Mr. Griffith-Jones): I beg to move that the Election Offences (Amendment) Bill be now read a Third Time.

The Temporary Minister for Legal Affairs (Mr. Conroy) seconded.

Question proposed.

The question was put and carried.

The Bill was accordingly read the Third Time and passed.

REPORT

The Law of Contract Bill

Mr. Nyagah: Mr. Speaker, Sir, I beg to report that the Committee of the whole Council has gone through the Law of Contract Bill and directed me to report the same with amendment.

Report ordered to be considered tomorrow.

COMMITTEE OF WAYS AND MEANS

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

IN THE COMMITTEE

[J. J. M. Nyagah, Esq., in the Chair]

EXEMPTION FROM INCOME TAX: KENYA DAIRY BOARD CESS

The Temporary Minister for Finance and Development (Mr. Butter): Mr. Chairman, Sir, I beg to move that this Council approves the exemption from income tax for the year 1958

[The Temporary Minister for Finance and Development]

and succeeding years, of the income of the Kenya Dairy Board derived from any cess imposed under paragraph (e) of section (19) of the Dairy Industry Ordinance, 1958.

The Governor's consent has been given to this Motion.

Sir, the Dairy Board came into being as a result of an Ordinance passed in 1958 and it is in accordance with the Government policy, as previously accepted by this House, that statutory boards such as the Dairy Board should be exempted from the tax in so far as the income from any cess is concerned. This exemption has already been given to the Sisal Board, the Coffee Board, the Fruit Board, the Tea Board, the Pyrethrum Board, the Cereal Producers' (Scheduled Areas) Board and the Canning Crops Board, the first five in the Schedule to the East African Income Tax Management Act, and the last two in accordance with the procedure now being adopted, which is that the Council is invited to approve of the exemption being granted; and, under the power given to the Governor under section 12 (2) of the East African Income Tax Management Act the Governor then may by order published in the Gazette give effect to this exemption.

Sir, I beg to move.

Question proposed.

The question was put and carried.

The Temporary Minister for Finance and Development (Mr. Butter): Mr. Chairman, I beg to move that the Committee do report its approval of the Resolution in terms of the Motion on the Order Paper without amendment.

The question was put and carried.

The House resumed.

[Mr. Speaker (Mr. Slade) in the Chair]

REPORT

Mr. Nyagah: Mr. Speaker, Sir, I am directed to report that the Committee of Ways and Means has approved the Resolution in the terms of the Motion on the Order Paper without amendment.

The Temporary Minister for Finance and Development (Mr. Butter): Mr. Speaker, Sir, I beg to move that the Council doth agree with the Committee in the said report.

The Temporary Minister for Legal Affairs (Mr. Conroy) seconded.

The question was put and carried.

MOTION

COMMUNAL FINES IMPOSED ON STOCK THEFTS

Mr. ole Tipli: Mr. Speaker, Sir, I beg to move that this Council being aware that communal fines are unjust, calls upon the Government to stop all forms of communal fines imposed upon the people of the Masai tribe as a result of stock thefts and urges the Government to work out an appropriate method of ascertaining and punishing the culprits of any stock theft.

Now, Mr. Speaker, Sir, I would like to make it quite clear from the start that the motive behind the introduction of this Motion to the House is to ask the Government seriously whether in its own fair judgment it thinks that the imposition of arbitrary communal fines on innocent people can in itself achieve anything in preventing those bad youngsters indulging in stock thefts or in any other criminal act. Now, I feel rather frustrated because I feel it is a great pity and I also feel that it is rather to the discredit of the Government that, after 60 years of British rule in this country with communal fines being imposed during this time, Sir, for stock thefts on the Masai people, this should continue. We still hear even today of stock thefts and the continuation of the imposition of these fines, which are collective fines, for such thefts. In this connexion, to submit very, very strongly that in my humble opinion when, say, a culprit is allowed or given the chance of getting away scot free with the theft and instead the innocent people are made to pay, or there is a punishment, then surely we must ask ourselves whether this is not a direct encouragement to these bad boys rather than a deterrent in their movements and their behaviour. This surely compels me, Sir, to wonder as to what is at the back of the Government's mind or as to what justification there is at all in Government's application of these arbitrary measures whereby the innocent citizen is punished instead of the culprit. Now, if you allow me, Mr. Speaker, to illustrate my point further, I know of some cases where two or three head of cattle were stolen from European farms bordering on to the Masai Land Unit. The losses were reported to the police; the tracks were followed into the Masai country; when the tracks were lost the Government resorted to seeking cattle in the area or the section concerned without taking any further action to trace the thieves and bring them before a court of law with a view to imposing a heavy punishment on them, and also, Sir, trying to recover the stolen stock.

Now, I feel, Mr. Speaker, very, very strongly indeed that to impose communal fines on any people or on the Masai simply because the tracks

[Mr. ole Tips] of stolen cattle have disappeared in their country is very unfair and quite unjustified, apart from being a gross miscarriage of justice.

I would go further than that, Mr. Speaker. I would like very sincerely to submit very strongly that it is really beyond any human imagination and the administration of justice that I should be punished for a crime committed by somebody else many miles away from my home because in nearly all these stock theft cases they take place during the night when all the decent Masai are deep asleep in their *manyattas*, having no connexion or knowledge that a group of young *morans* is invading a European farm miles away to try to get a steer or two to go and kill it in the bush. Therefore, I cannot really see any earthly reason to justify Government's action in coming to my home after a lapse of a day or two to seize my cattle leaving me in a very desperate state, having deprived my family and all my dependants of their sole source of livelihood on account of a crime committed by somebody else which I know absolutely nothing about.

It has been discovered also, Mr. Speaker, Sir, that cattle stolen from farms in such places as Naivasha or Nakuru Districts are driven into the Masai Reserve. Their tracks disappear in the bordering section and then the Government orders that particular section to collect cattle from its members in order to compensate the farmer concerned for the loss of his animals. Now, Sir, this, having been done, events after a lapse of a few months have proved that that particular section or that particular location which was compelled to pay compensation had nothing, absolutely nothing, to do with the theft because the same stolen cattle are traced as far away, in some cases, as Tanganyika, a distance of 300 miles, and some are traced right to the other end of the Masai country, another different section altogether, quite a long way off.

Now, I think it would be very interesting, Mr. Speaker, to hear from the Government what is done in such cases in order to make good the loss, the damage caused, and all the inconvenience to the original section which paid the communal fine to compensate the farmer. Now, I think that if tracks alone can justify the imposition of communal fines on the Masai then the farms, surely, which the stolen cattle are driven through before entering the Masai country, should likewise be communally fined. I mean, if you are only interested in the tracks, some of this cattle passed through the farms.

Now, if I may quote a few cases to show clearly that there is a serious mistake in the whole affair, I remember only recently a few months ago when some of our friends from the border, the

Kikuyu, some bad lads, thought they might get away with it very easily. What they did, Mr. Speaker, was to drive their own cattle across the border; they penetrated into the Masai country for about six miles, hid themselves somewhere in the bush until in the evening they had to bring in lorries on which to load the cattle in order to drive them off. The following morning the loss would be reported and then the Masai would be communally fined. Now, Sir, fortunately enough, there so happened to be a police truck which was passing by. They noticed this, and I am glad that these men with their trucks and cattle were rounded up and really had the best of it. That is only a point to show that there is something seriously wrong in the whole affair. Now, also, we cannot really dismiss lightly the delay that in some cases happens. We have some bad herdsmen who do not really count their cattle in the morning and in the evening they possibly take a count and they see that, perhaps, two cattle are missing. Now, the thief has been allowed ample time to go very, very far indeed, and to do everything to manoeuvre the cattle and to conceal the tracks. Also we have heard of cases where some employees on some farms when they want to have a feast of meat, especially those on the border, especially those, if I may mention here, in places like the Mau Narok, simply steal a ram, drive it across the Masai border and possibly tie the beast in the forest and come back and fetch it in the evening and have a really good feast of meat. Then, when the tracks are followed, they will be seen to have gone into the Mau country. I cannot understand the whole thing, Mr. Speaker.

Now, Sir, the other anomaly of the whole thing is that I think in some cases the Administration is overdoing the job. I say this because there was a case recently—and I have brought this to the Government's notice for reply when the time comes—where three head of cattle were stolen and the Government saw it fit and justified to seize 65 head. I do not know what valuation they put on these animals, honestly.

Now, I think that we are faced with a great danger of really spoiling the chances of getting the co-operation of the Masai leaders and the Masai people who have suffered most from the fact of being let down by these young boys and who are trying to do everything possible to stop this nonsense. By continuing to impose these collective fines: we are just spoiling that chance, and we are just spoiling the chance of getting the co-operation and the goodwill in various projects in the Masai country, because when you are left just empty, your cattle having been confiscated, you really do not feel justified in co-operating with somebody who has sold your property because of something you have not done.

[Mr. ole Tips]

Now, Sir, to go on, I would say that of late there have been a few incidents especially among the Masai who live on the border. They are terribly frightened; they are terribly worried every now and then, because they unfortunately happen to live on the border and all the cattle are driven through their country almost to the other end, and they suffer for nothing. Some of them have moved very far from this border country to the remotest parts to try to keep away from the routes of these stock thefts, to try to keep away from the danger spots. This, of course, has brought a lot of hardship and suffering because it causes over-grazing and shortage of water, and eventually the deterioration of the land. This is something which must be considered, Sir, because the people themselves had no alternative and they have had enough of it.

Now, Sir, the other thing I would like to say is that I think that it is rather a discouragement to our efficient police force and tribal police force and also of the parties concerned that in some cases the only thing to do is just to follow the tracks and as soon as you lose them you go back and report that they disappeared at a certain place and that that is all that can be done by them; they therefore issue a warrant to seize whatever cattle happen to be near to that particular spot.

Now, Sir, I would suggest very, very strongly that if we could only employ a few efficient Criminal Investigation Department officers, people who are really keen on their job, they could conceal themselves in the reserves. Let them do a good job of investigating these criminals, of trying to trace any strange cattle which are suspected of having been stolen. Let them recover the cattle and bring in the men concerned for punishment.

Now, Mr. Speaker, I have held recently quite a series of meetings in the Masai country and in all these meetings we have done all that we could to try and help the Government, to try and help our people to see the danger and to see the loss they suffer through their young boys going and stealing a steer or two. I can tell you that events will prove me right or wrong; but I hope they will prove me right. If we get no embarrassment from the Government in such pursuits, then I am sure that the incidents of stock thefts will decrease and eventually die out.

Now, to show this very clearly, sometimes the Masai are accused of trying to hide and conceal the men concerned. I think it is only fair on the part of the Government to tell us exactly the number of stolen cattle which have been recovered by the forces of law and order and

thieves apprehended. In order to compare whether the Masai are co-operating or not, they could also tell us the number of stolen cattle which have been recovered by the Masai themselves where they have also arrested the man concerned and taken them to the authorities to be dealt with. At times when a lad is arrested for stealing a single cow, he is taken to a magistrate and he gets one year's imprisonment and roughly, say, a fine of Sh. 500. This lad, this boy, has got no property of his own. His father is compelled to pay this fine. In addition, the punishment imposed is not in any way a deterrent at all, because as soon as he leaves the gaol he goes back and he says, "Well father, five head of cattle were taken because I stole, so let me have another go—I might get away with this one and recover or make good what you have suffered through me!" It is not a deterrent at all. I should like to see really very severe punishments imposed on these people who are a disgrace not only to the tribe, but to the whole well-being of the country.

Now, I think that you must really consider very, very seriously—you have got all the brains, you have got all the knowledge through many years of experience—how best we can tackle this, or how best we can work out a programme for tackling this situation. By so doing, I think we can remove a lot of the damage which has been done. I do not want to appear to be pressing too much here, but I think it is a thing which I must press. It is quite unfair, it is quite unjustified, and I think hon. Members will receive this in the spirit in which I have given it. I am not out at all to help anybody who does something wrong, but I feel that, all the same, justice must be done.

With these few words, Mr. Speaker, I beg leave.

Mr. arap Moli: Mr. Speaker, Sir, in seconding this Motion I should like to make it quite clear to the Government that our intention is not to protect the culprits or the thieves, but to see that the innocent people are protected. I hope, Sir, the Minister for Legal Affairs will stand the racket of our attack. We are not attacking him as a person, but we are attacking this piece of legislation which has been going on for many years. I remember, Sir, the Minister concerned stating yesterday, when he moved a certain Bill, that it had become obsolete. I would suggest that this legislation which we are trying to get the Government to abolish, is also becoming obsolete simply because we are moving towards a better future and trying to teach our people a better way of handling things.

Now, Sir, while I see the magnitude and importance of maintaining law and order, I also see the injustice done to some of the Masai and

[Mr. arap Moi]

Samburu people. Although the Motion, Sir, does not cover the two tribes, I think that this Motion, comes within the purview of these pastoral people.

To illustrate my point, Sir—to try and drive my point home—there was a case in the Samburu area where several steers, I think five, were driven away from a European farm into the Samburu area. The chief was consulted and he provided several *moram* to track the cattle and they were found. Then they were driven back to the farmer concerned. The cattle again disappeared later, and the very village was asked why the cattle were again stolen. Communal or collective punishment was imposed upon them. This collective punishment, Sir, to me, is not a fair way of dealing with people who depend very largely on cattle.

Now, Sir, I should like to look at this matter from the human angle. A man who is being punished, or fined, for having helped or for being one of the culprits, is asked to pay several head of cattle. He has a family to feed, also he has certain relatives who depend on that particular man, and if the Government imposes fines on such a person or such a group of people, the sufferers are not the culprits but the families and children who belong to innocent stock owners.

Now, Sir, I feel the time has come when Government ought to revise the laws of this country. Pastoral tribes have suffered a good deal because of communal fines. I remember, Sir, in Trans Mara three years ago when a clash between the Nandi and the Masai occurred, and this incident, Sir, was regarded by Government as a matter for those groups of tribes. Then the Government sent the General Service Unit to stay in the area and the people were asked to maintain and pay for their salaries. This, Sir, I feel is part of the Police administration who are paid by the Government. The people who caused the riot, or who caused this incident ought to have been punished individually, rather than having fines imposed on the whole tribe.

Sir, I need not try to speak on matters that have been dealt with by the hon. Mover. They have been dealt with very admirably. I am only trying to tell the Government that when dealing with these matters they should be dealt with reasonably and with greater understanding of what might happen as a consequence of imposing these fines. It is not my intention, Sir, as I made it quite clear before, nor is it my idea, that the culprit or the man who steals the animals should be unpunished, but be brought to the court of law.

Now, the last point I should like to try and drive home is that many tribes—although this Motion affects the Masai only—have been

affected as far as this law is concerned, for example, the Suk, the Tugen, the Nandi, the Samburu and some other tribes. I remember, Sir, one of the trackers in the Laikipia area was also among those who were asked to pay the communal fines, and yet he was himself busy trying to track some other animals who had been stolen by the Mugogodo tribesmen. This, I feel, Sir, was very unfair when this man was busy dealing with the same problem and at the same time the Government was punishing him in some other place.

So, Mr. Speaker, with these very few remarks I hope—I sincerely hope—that the Government will take this very seriously and see that this legislation is abolished.

I beg to second.

Question proposed.

Mr. Walawright: Mr. Speaker, Sir, I have got a good deal of sympathy for the hon. Mover in this Motion. He feels very strongly indeed about this and so do quite a number of his tribesmen, the Masai. I also have sympathy with him because I think he has been unfortunate in the timing of this Motion. He originally brought it up last year before the troubles between the Kamba and the Masai a short time ago, arising directly out of this propensity of the Masai to steal stock.

Unfortunately, for the hon. Mover, being a Masai himself, perhaps he is not sufficiently able to appreciate how strongly other people—the people from whom the stock is taken—feel as well. The numbers and the tribes that feel very strongly indeed about this is really quite large. In particular, the Kamba, the Kikuyu, the Scots and the English, a few Irish, the Kipsigis and the Luo. How strongly some of them feel was shown in a very dramatic incident in respect of the Kamba. I wonder what the general feeling in this country would be if the tribe that has had by far the largest number stolen by the Masai, the English, had at any time taken the same action as the Kamba took and had picked up their weapons and marched into Masai land and taken as a retaliatory measure 2,000 or 3,000 head of Masai stock.

I think, Mr. Speaker, the fact that the Masai are beginning to feel very strongly about this at last is perhaps a good sign. Perhaps they are now beginning to feel as strongly as those who lose the stock. Perhaps they will begin to mend their ways. In this respect, it is very pleasing that the hon. Member for the Central Rift should have brought this Motion because in fact to date the greatest objections have been taken by those that lose the stock and as a result the Government have been continuously criticized by them, rather than the Masai against whom the measures taken by the Government have been patently ineffectual to

[Mr. Walawright]

I hope all those that are for ever complaining against the Government for our lack of initiative against the Masai will note this debate.

Now, Sir, the argument is that this is so unjust. The hon. Member talked about seeing that the innocent are protected. Well, Mr. Speaker, that is precisely what the Government is doing or trying to do in using this Ordinance, to try and protect the unfortunate innocent people who are for ever having their stock stolen by the Masai. You will note, Mr. Speaker, that the Member of the Motion mentioned the only other tribe he knew of against whom these actions had to be taken were the Samburu, an offshoot of the Masai. In actual fact he is not quite correct. There is a third tribe against whom the same action is taken and that is the Mukogodo, another offshoot of the Masai. Why do we have to take this action? It is because there is no public opinion in Masai in respect of the offence of stock theft on the side of law and order. No police force in the world can be effective if the general public are on the side of the offender and not on the side of the forces of law and order. I need only point out that the size of Masai land is 15,000 square miles, with a population of only four to the square mile, a great deal thick forest, to make you appreciate how difficult the task of the police is if they get no help from the general public in that district.

It arises, as everyone knows, from the *moram* age grade system and from the very convenient past tradition of the Masai that God originally gave all the stock to the Masai and hence they have a very good reason for taking it back from anybody else who has now got some. The Government did make an attempt many years ago to remove the *moram* system, but it was not supported by the fathers of the young men, and in the end the conclusion was reached that it was better to have the system under some control than to have it without control. I am terribly afraid that until the *moram* system does go, we shall never finally get rid of stock theft by the Masai. I agree that the best method of getting rid of it is to educate the Masai and put all the young men into schools. But, as a past district commissioner of one of their own districts, I know only too well how difficult it is to persuade the Masai fathers to send their children to school. In fact, I remember a little inconveniently perhaps, fortunately it is some time ago now, we even resorted to a form of fining of some fathers who took their children away from school when they had once gone, in spite of the fact that there was very little legal support for doing so. It still did not help.

Now, it is suggested by the hon. Mover that the Government takes the easy way and they do not bother to investigate the offence properly; and that they seize stock indiscriminately from the nearest Masai *manyatta*. That is quite incorrect. There is very careful investigation indeed. There is no seizure of stock if the offenders can be brought to justice by any other means. The cattle must be tracked well into Masai land, the tracks must be quite clearly going to some particular section or *manyatta*, and normally the elders are shown the tracks. They are shown that it is going to a particular area and they are shown why the tracks cannot be followed any further. If the elders or the Masai generally of that area can show that the tracks do go on no stock would be confiscated from that area.

Sir, fortunately the hon. Mover very kindly himself gave an excellent illustration in respect of some Kikuyu of the fact that the Government does make a jolly good effort to investigate, and when it is found that the Masai are not the offenders there is no question whatever of confiscating their stock.

The hon. Mover suggests that this stock theft is rather a minor affair. Why should we take such strong action when just the odd head or two is stolen? Let us look at some of the facts. From January to June, 1959, there were fifteen murders in respect of thefts of stock by the Narok Masai. There were 65 different thefts. In one month at the end of that year there were nine separate thefts from Kipsigis, 52 head of stock being stolen. The tracks were clearly tracked well into Masai and there was no doubt at all that they were all Masai tracks. In those particular forays against the Kipsigis one man was killed and two others injured. In respect of that period of January to June last year, as the direct result of these seizures of stock, no less than 17 Masai were taken to court. I have no doubt none of those would have been brought to court if we had not had to seize cattle first. In the corresponding period this year there have been only 42 cases from the Narok Masai and in respect of seizures of stock, 25 Masai have been brought to court.

I started off by saying that I had some sympathy with the hon. Mover, partly due to timing, as he has unfortunately had to bring this Motion soon after the very severe umbrage taken by the Kamba as a result of stock thefts by the Masai has led to fighting and seizure of stock by the Kamba. He had another occasion when his timing was unfortunate when he met myself and the District Commissioner, Narok, to complain precisely of this same thing and to object that it did no good. But unfortunately it was exactly 24 hours

[Mr. Walwright]

after the district commissioner had signed an order to seize a certain number of stock. The police officer had taken the order to the *manyatta* concerned, had given the *manyatta* two hours in which to produce the 23 head of stolen cattle and the accused before he actually took the stock which he had an order to seize. Needless to say, the entire *manyatta* complained that they knew nothing about it. The thieves came no where near their *manyatta*; how can they be expected to know? As the hon. Mover said, the theft took place in the night and all the Masai would be asleep. They could not possibly know anything about it! But in fact at five minutes to the hour when the stock were going to be seized the 23 head of cattle and the thieves were produced by that *manyatta*.

The hon. Mover, Mr. Speaker, has genuinely tried to think out ways with the Government of removing this objection, this crime, by his people. He has suggested here today, and previously to me, that very much heavier sentences should be passed on the youths concerned. That is certainly one way of dealing with it. Unless, however, we hold the tribe partially responsible, and unless we put pressure on the tribe so that there shall arise a public opinion against this stock theft, we shall not catch a sufficiently high proportion of the youths for this to be a sufficiently heavy deterrent. I personally, Mr. Speaker, would not like to put these young men who, apart from this one peccadillo of stock theft—obviously, no doubt, to please the young ladies because they can no longer kill people as they used to instead—are not animals, I would not like to put those young men behind bars for long periods of time. I believe that the very strength of the hon. Mover's feelings and the very strength of the Masai's feelings do show that we are beginning to have an effect. The figures for stock thefts by the Masai have gone down since we started to be tougher and the number of convictions has gone up.

There is another way of dealing with this. The hon. Mover has suggested that the police ought to be more efficient. Although I still maintain that with the size of the area and the difficulties of the country they can never be really efficient, by greatly increasing the police we could certainly be more efficient. But why should the general taxpayer of this Colony pay all that extra for police for the offences of one particular tribe and of one particular sort? If we were going to do it by that method, we should have to do it by the legal method of the provision of a levy force. We have done it in respect of Samburu and we have done it in respect of Masai in the past. But if we do that the cost of that levy force must be

paid by the Masai. The cost will be greater—quite a lot greater—than the seizure of stock that is done at the present time. The cost will inevitably be divided, moreover, over a large number of Masai than is the case in the seizure of stock. So in effect, while people might well say it sounds more just, in fact a larger number of Masai would be penalized and for a larger sum than those whose stock is seized.

Finally, Mr. Speaker, the hon. Mover did mention a recent case in which he complained that the number of stock seized was excessive in view of the number of stock stolen. He stated that three head of stock were stolen and 65 had been seized. In actual fact, these are the facts. The stock stolen were three in calf heifers, high grade Ayrshires, probably worth £50 a piece; in other words, about £150. Now, even if we get those stock back they are of no further use to the farmer. They cannot possibly go back on to his farm after the amount of disease they will have become infected with in Masai. The stock seized was not 65 but in fact 55, and as the elders were themselves given the authority to state who provided what, they were naturally not the best Masai stock. Their value probably was not more than £5 or £7 apiece. In fact, the discrepancy is not as great, therefore, as it seems, specially when you remember that the customary repayment by Masai in the long distant past for a theft of stock was either five or seven head for each head of cattle stolen.

And finally, Mr. Speaker, the hon. Secondor asked that this Bill should be finally removed from the Statute Book as being obsolete. I should like to say that I would like to be the Mover of that Motion, when, in fact, this Bill becomes obsolete, like the other Bills mentioned by the hon. Minister for Legal Affairs yesterday as being no longer required to be used.

With regret, Mr. Speaker, I beg to oppose.

Mr. Ntūmama: Mr. Speaker,

(Inaudible)

Mr. Cooke: Speak up!

Mr. Ntūmama: When I was in the African District Council about two years back I remember we used to have some letters from what they called the Valuation Board, or the Valuation Committee, I think, where (inaudible)..... European stock, and in most cases the African District Council was never really satisfied about the price of the animals. In many cases the district commissioner himself questioned the values that were being submitted by the Valuation Committee.

Mr. Cooke: Speak up!

Mr. Ntūmama: I want to point out that if the Government will agree they should really have a representative of the Masai on that committee which valued the stolen animals—probably a Masai with some knowledge of veterinary science—because I know when I was on the African District Council the Masai felt that, because they were not represented on the Valuation Committee, the farmers would normally overestimate the value of the cattle stolen, and I would ask the Chief Commissioner to consider, if possible, the inclusion of a Masai with some knowledge of veterinary science on the Valuation Committee and probably an administrative officer from that district—the Masai district—because, probably at the moment they only get the value of the animal from the committee and they do not know when they meet and no representative of theirs is there.

Mr. Walwright: Mr. Speaker, on a point of explanation I should explain that when stock is confiscated like this, it has no relation to any compensation paid, and therefore there is no question of these 55 head being used, or the specific amount for which they are sold being used, to compensate the complainant who lost the three head of stock.

Mr. Ntūmama: I am not referring to this particular case which was mentioned. I am just talking about the general policy. I am not particularly trying to talk about this case, but the general policy because I know we paid hundreds for these sheep and cattle when I was on the African District Council, but we always felt that a certain percentage of these animals should not have been paid at all because of some trying to over-estimate the price of the animals.

Secondly, during those times when I was on the African District Council, the District Commissioner, Nakuru, and the District Commissioner, Narok, had a committee of the prominent farmers and the Masai elders locally, with a few educated men to accompany them, and doing this we found they were really very helpful because we could find certain anomalies because certain Europeans did not know the actual number of stolen stock. Europeans probably know more about the cattle than stolen stock and the Masai sometimes found out that there were other cattle which were not stolen by the Masai, but which were taken by the Masai farm employees and put with the herds in the farms. There was one case in that district and we had a gentleman farmer called Nychart, and he claimed that about ten of his cattle were stolen by the Masai, and on investigation, by the European farmers in the area and the Masai committee elders, about five of the animals were eaten by wild animals on his farm and another three were eaten by the chaps

who herded the cattle, but if we had a committee between the farmers and the Masai, then the Masai would have clearly been able to bear the responsibility of the cattle stolen, so I wanted to make those two points to the Chief Commissioner and the Government so that they can consider this further.

Mr. Klamba: Mr. Speaker, Sir, I rise to support the Motion. It is not only the Masai tribe that has been communally fined, but other tribes have been fined as well. The idea of fining people communally is because the Government has failed to ascertain who are the wrongdoers—who are these thieves. Sometimes they cross the border during the night and the Government cannot know who the people are, and therefore they take it up and punish the whole community, and I think that is a very bad thing. Now I think it is not the proper time for the Government to oppose this Motion because I feel that if it was put up 20 or 30 years ago it would have been all right because at that moment, at that time, the elders could control their young people, but at the moment the young people in the tribes, and within the tribes, are not controllable since many of the tribes have been civilized. The Government did their job in building schools for these people and missionaries did the same, but did not do much for these people in Masailand and they cannot blame them at this moment because they have not been civilized, and that being so they found all the tribes in their natural habits when they came, but they were not civilized in the Western sense; they had their African civilization.

The other thing is that if the Government was efficient to follow up the cattle thefts, then they would be able to catch the thieves and punish them heavily instead of punishing people communally or collectively. Now when some thefts are done, sometimes it is during the day and sometimes during the night, the thieves cross the border and there is nothing to stop you going to recover your cattle because you have seen the thieves taking the cattle. It is just the same thing as thieves coming and breaking into a shop. You see them, and I do not think there is anything to stop you from running after them. They may hurt you or you may hurt them by so doing, and therefore I think that the Government should not try, and oppose this Motion as if it was 20 years back when the tribal elders had control of their youth, but now they do not have it, and if some 20 or 30 people go and commit a crime it is not a good thing to punish the whole tribe because of the 20.

[Mr. Speaker (Mr. Slade) left the Chair]
[Mr. Deputy Speaker (Mr. Nyagah) took the Chair]

[Mr. Kiamba]

Mr. Deputy Speaker, Sir, I think that if the Government cannot find out who the thieves are they had better call it a loss.

With these few words, Dr. Deputy Speaker, Sir, I beg to oppose the Motion.

Mr. ole Tipli: Mr. Deputy Speaker, Sir, I feel that we have had a good "go" at the Motion before the House. It is a thing which is difficult for the Government to admit, that it is trying to shelve its responsibility in a matter of this nature. Now I want to make it very clear to my hon. friend the Chief Commissioner that I feel very strongly and know the actual feelings of the people who have their stocks stolen. Also, he should take into account the feelings of the Masai who are having their stock stolen because of a crime they have not committed. I mean, he should look at both sides.

Now, the other thing is that he went on to mention cattle stolen from the Kikuyu, Luo, Kipsigis and fighting between the Masai and the Kamba, and they are things which I think we all regret, and are things which I know have shocked and perturbed everybody, and I strongly feel that since the two tribes have lived side by side for many years even before the Europeans came to this country, we should not do anything wrong to spoil the good relationships which existed even before the Europeans came to this country between the Kamba and the Masai. Now we hope that it will not occur again.

I entirely disagree with the Chief Commissioner when he says that Masai are on the side of the offender. I challenged him when moving my Motion to produce the figures of offenders who have been brought to court, and who have been arrested by the Masai themselves through their own initiative without any help from the forces of law and order.

Then also it would have been a very, very good comparison if he had produced the figures for both sides, the Masai side and the forces of law and order, and to say, or to allege, that the Masai are on the side of the offender is entirely wrong Mr. Deputy Speaker. Why should they be on the side of the offender? They are the main sufferers. What do they gain when two youngsters steal a steer and eat it in the bush, and then the following day 20 or 30 head of cattle belonging to people who have had nothing to do with the theft are seized. It is entirely wrong to suggest this. They are more concerned than anybody else, and they are doing everything possible to stop it.

Now, he also went on to mention the *moran* system, and I think, if I remember rightly the hands of the Government are not quite clean from the encouragement of these *morans*. There was a time when even the Government went to the extent of employing what it used to call "*moran* officers" out of the taxpayers' money to encourage them so that when tourists come into the country they will see these young *morans* with their spears and shields and be attracted. There is that much, and the Masai, of course—some of them—they also have part of the blame—so we cannot blame one side alone.

Now, he went on to mention the reluctance of the Masai to send their boys to school. Well, during the days when he was a district commissioner in one of the Masai districts—I do not know how long ago it was—how long was it? Do you remember? Twenty or 15 years? Because if it is about ten years ago, things have changed tremendously, and the Masai are asking for more and more schools, and the Government says there are no funds. It is not a question of the Masai being reluctant to send their boys to school, it is that the Government is not providing sufficient funds.

Now, he went on to say that these cases are thoroughly investigated, but I fail to see how they are thoroughly investigated. They might have investigated the track, but he only says the tracks are followed, but you are not investigating tracks, you simply follow tracks. If these thefts are investigated, then surely you cannot impose a fine on a people simply because the tracks have led in a certain direction.

Well, he went on to say that I did not attach much significance to the whole affair, or I looked at it as a minor affair. I entirely disagree. I take the most serious view of the whole affair. I am not happy about it. It is no good because for one thing you cannot really allow people to steal other people's cattle, and on the other hand, nobody is ever pleased with cases of murder and the rest of it, and he quoted a chat we had—three of us—himself, myself and the district commissioner. That chat was really very interesting because when these stolen cattle were found it did not imply at all that they were stolen by people in that particular *manyatta*, but there was a warrant in that the cattle of that *manyatta* issued by the district commissioner. It clearly means the opposite, that the district commissioner himself was only interested in issuing a warrant to seize Masai cattle, and then leave it at that, but the Masai were interested in seeing that their cattle were not confiscated for nothing, and then they followed the thieves up, apprehended them and recovered the stolen cattle.

[Mr. ole Tipli]

Now, he went on saying that the police should be made more efficient and went to the extent of saying that he does not see any reason why the taxpayers' money should be spent to prevent crimes which are committed by a certain community or a certain section. Might I ask, Mr. Deputy Speaker, whether it is not the duty and the responsibility of any decent Government to preserve law and order, and to employ its forces to prevent things from becoming worse. He went on to suggest that if the Government had to increase the police force, then naturally there would be a levy levied on the Masai people to pay for the cost of such a force. Well, I entirely disagree with him here, because crimes are committed all over—even here in Nairobi—serious crimes, and the police force and the whole Government machinery should detect the wrongdoers and bring the culprits to the courts and have them punished, the same should apply in the case of the Masai. Do I understand that when somebody commits a crime—somebody breaks into a certain Indian shop here in Nairobi, and then he is chased by the police and he goes and disappears somewhere near Racecourse Road—you have to go and confiscate people's property in that area simply because the thief has disappeared in that area?

He went on to say that even the Masai, according to their own traditional customs used to impose heavy penalties on anybody who was found having stolen a sheep or a cow. It is quite true. He quoted a figure of five, but the actual figure is seven. The difference between his imposition and our imposition is that he imposes on somebody who had nothing to do with the theft. Whereas we thoroughly investigate the case and impose on that particular man who stole the animal and not to those living in the vicinity of where the tracks have led to or the direction. I think we must really try to get quite clear on the whole affair, because there seems to be a slight inconsistency in the Government policy as far as this question of collective punishment is concerned.

Now, some time during a debate in this House our present Acting Chief Secretary, then the Solicitor-General, had this to say, in a debate which took place on 26th November, 1952. If you will allow me, Mr. Deputy Speaker, I would like to read an extract from it. He said: "Collective punishment is ordinarily the last resort. In itself it achieves nothing. It can be the most dangerous double-edged weapon. It is at its worst when imposed on persons who are subject to intimidation, it breeds resentment, etc." Then, in another paragraph, he went on to say: "I do, therefore, stress that it would be unwise and, in

my humble opinion, lead to disappointment if we set too much store on collective punishment as a remedy." What a contradiction, Mr. Deputy Speaker, from what the Solicitor-General said then and what the Chief Commissioner said a few minutes ago.

Now, to conclude, Mr. Deputy Speaker, I would say this and stress it very, very hard, that it is no good trying to evade the issue. The issue is already there with us. It is no good thinking that the continuation of these collective punishments is going to remedy the situation. It has been going on, as I said in my Motion, in the Masai country for many, many years. Today we still hear of stock thefts. Are we going to deprive all these people of their cattle and let them die because we hope one day something will drop from Heaven to stop them from stealing people's stock or are we really going out in all our force to bring it home to them that the Government is determined to stop it and that they on their part must try their utmost to stop it. I earnestly hope that the Government and the hon. Chief Commissioner, in particular, who is the head of the Administration will be very sympathetic, will use all the brains of his Ministry, will use all the brains available among the Masai who have suffered more than anybody else, and will use also the brains of those farmers who suffer through these stock thefts and who know the intricacies of the whole position to try and work out a real, fair, reasonable policy of how to tackle the whole situation.

I am very disappointed that the Government saw fit to oppose this Motion, a Motion which clearly states that in the last part of it "To work out an appropriate method of ascertaining and punishing the culprits of any stock thefts". What interpretation can we make out of that? Does the Government mean that it is not prepared to find out a proper and appropriate method of tackling the situation, or what is it? I hope it does not mean that any way, Mr. Deputy Speaker, and I hope my friend, the Chief Commissioner, and the Government machinery as a whole will do everything possible and we on our side will give every possible help to get rid of this nonsense.

I beg to move.

The question was put and negatived.

MOTION

UP-GRADING OF ALL POLICE RANKS

Air Commodore Howard-Williams: Mr. Deputy Speaker, Sir, the first and only Motion that I have introduced to this House I won by some three to four. I hope I have an even greater success this time.

[Mr. Commodore Howard-Williams]

The wording of the Motion which I will read to the House is:—

"THAT this House approves the immediate up-grading of all ranks in the Police, so that they may receive pay commensurate with their dignity and duty."

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

[Mr. Speaker (Mr. Slade) resumed the Chair]

Now, Sir, I have been told that the pay of the Police is tied to the Prisons Department and the Customs Service and until one can get the pay of the Police up-graded, one can do nothing about it. Now, if I do the Prisons Service or the Customs Service any harm by proposing this Motion, let me at once say that should we get an increase in pay for the Police as a result of it, I promise subsequently to develop the argument for the Customs Service and the Prisons Service, for like and different reasons connected with their arduous responsibilities.

The pay and allowances which the Government afford the police are appallingly low for all ranks. The police are an active force requiring executive command and initiative of a high level, whereas the roles of the Customs Department and the Prisons Service, onerous though they be, are essentially passive. Yet, their pay is considered in the same bracket and is, indeed, tied by the Colonial Office in my view wrongly one to the other. Unlike most Government servants the police are required to take initiative, responsibility and decisions to command men in the field. The men they command are required to operate long hours both by day and night and at weekends. The constables are today doing excellent work, showing remarkable abilities and courtesy in quite difficult roles such as controlling traffic, for instance. With very few exceptions they are worth far more than the pittance that they are paid today. Their officers carry out their duties to the complete satisfaction of all of us, with what reward? Some of the junior officers are so badly paid that they get into debt: the only way they can get out of debt is that they finish their contracts and sign off. The pay of all ranks in the Police Service, Sir, is in my view, an all-time blot upon Kenya and is something we should attend to.

To look at it in another way, we have seen the penultimate control of the Congo vanish overnight because they could not trust their police force or their army. We see there the importance to security of law and order, something which not only strikes at the present European jurisdiction of Kenya, but will strike it harder when our

African friends become independent. Therefore, it is of even greater import to have a Police Service second to none and to pay for it. *Uhuru* is all right as a political cry, but we do not want it to become a police whistle.

If it is impossible for the Colonial Office to alter their damn silly system whereby an active service is tied to passive ones for pay but not the duty, then let me first say they should change their minds. If they cannot do that, then at least give command pay to those of all races who are in command of police stations to cover their responsibilities during the long and arduous hours they work.

To be practical, Sir, I have in mind an untaxed allowance of some ten shillings a day for command pay which I figure would cost the country a mere £50,000 a year and would at least go half-way towards meeting for the nuance, to enhance the security of every single one of us. In truth, of course, I would really like to see each constable's pay after one year's service raised by, shall we say, one shilling a day and every officer's pay after a year's service raised by some, shall we say, ten shillings a day, as a tax-free allowance for being on active service. The cost of this, Sir, will be about £100,000 and it will be borne equally between the ranks and the ratings. A man of few words, Sir, I beg that the House does not consider this Motion in terms of the length of my address but on the merits of the case.

I beg to propose the Motion with the hope that our African friends will see the daylight at the end of the tunnel.

Mr. Cooke: Mr. Speaker, I beg to second and reserve my right to speak.

Question proposed.

Mr. Shany: Mr. Speaker, Sir, I only want to intervene to say I support very heartily the principle underlying this Motion, because I have always thought, ever since I made my maiden speech 24 years ago on the Police Vote that the police have been woefully underpaid in all ranks. I do agree with the speaker when he says, particularly when they are on active service. They are indeed on active service and living under conditions of active service all the time because they are on call. I do think it is wrong to tie their pay and emoluments to any other Government department or service, because the Police are quite different and I think in the case of the Police it is very wrong to put men in the position where they find it hard to meet their day-to-day commitments, with certainly a wife and family, in the higher ranks of the inspectorate, in the position where they might be tempted to accept bribes or something of that sort. I think it is essential that all the Police Force, from the top rank to the

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lowest should be sufficiently well paid and have sufficiently good terms of service to put them out of reach of that temptation. I think the standard of service we have had so far is a very high one and I am perfectly certain that between now and independence they are not going to have an easy row to hoe, I think it is essential that we should go into independence with a police force of the high standing and calling that we have today, therefore I do plead with Government to review their terms of pay and allowances.

Mr. Maxwell: Mr. Speaker, Sir, whilst I am in sympathy with this particular Motion, I am wondering whether the hon. Proposer really means "up-grading" or whether he means there should be a revision in regard to salary scales. The up-grading of all ranks of the police will not meet the position. Presumably the hon. Mover of this particular Motion, as I have already said, had in mind to the up-grading of salary scales and not the up-grading of ranks because that, surely, is not the answer.

Sheikh Mahfood Mackawi: Mr. Speaker, Sir, I rise to support the Motion moved by the hon. Member for Nairobi North.

Sir, the police are working very hard and well and we have full confidence in the police in this country. Mr. Speaker, Sir, in the Congo there was some trouble of the police wanting increased salary there and that trouble gave us an example of what can happen here, Sir, I would like the hon. Minister for Security and Defence to give his recommendation to increase the salaries of the police and also to put them in the Provident Fund and to give them some allowances.

Now, Sir, the other point is the pressure of housing the police constables. I have seen the houses of the police constables at Changamwe in Mombasa, and also of the police constables at Pumwani, Nairobi, are built in iron sheets and very often no one other than the policemen can live in these houses, which is absolutely dangerous to them, and to their health.

I request the Minister for Security and Defence to instruct the Commissioner of Police to inspect these houses and to give his report to the Minister for Security and Defence about these houses. I urge the Government to build good, strong houses for the police constables at Changamwe, Mombasa, and at Pumwani in Nairobi and I want an assurance from the hon. Minister when these houses will be built.

Sir, I beg to support.

Mr. Ngome: Mr. Speaker, I do not want to repeat what hon. Members have said, but strongly support the Motion on the revision of the salaries of police officers in this country. Much

has been said about salaries from the lower grade to top and I believe the only sufferers are the African members of the police force in this country.

I support the speaker who has just sat down that it is disgraceful to see the quarters of the African police officers in this country, not only in Mombasa and Changamwe, but I should say they are the same all over the whole country. I see a few sheets of corrugated iron with an iron roof and then an African constable and his family live in such quarters. I do not know what the medical authorities are doing about it; they condemn many houses. I do not know why they do not condemn these quarters which are not fit for human dwelling-houses.

Mr. Speaker, if as the last speaker said, if the Commissioner of Police would go round and visit his officers where they live, I think he would at once condemn these houses; they are not fit for human dwelling-houses.

Mr. Speaker, I do not want to waste the time of this House, but as it is I think it is worthwhile that a revision of salary should be begun as early as possible.

I support the Motion.

Major Roberts: Mr. Speaker, Sir, I fully support the principle behind this Motion, but like my hon. colleague the Member for Trans Nzoia I do feel that the Motion as worded is a little misleading. I am not at all sure what is meant by "upgrading". I, too, feel that the hon. Mover really means the upgrading of salary scales.

Mr. Speaker, Sir, in order to clear the position I would like to move an amendment that after the words "upgrading" the words "salary scales" should be inserted.

I beg to move that amendment.

Sir Charles Markham seconded.

Question proposed.

The Acting Chief Secretary (Mr. Griffith-Jones): The Seconder has already spoken.

The Speaker (Mr. Slade): Only someone that has not spoken can second an amendment.

Mr. Usher: On a point of order has permission been obtained under the relevant Standing Orders to introduce this Motion?

Mr. Commodore Howard-Williams: On a point of order, Sir, what Standing Order?

Mr. Usher: I am, of course, referring to the Standing Order which requires the permission of the Governor to a Motion which would have the effect of increasing the expenditure of the Colony.

The Speaker (Mr. Slade): I am acquainted with the Standing Order to which the hon. Member

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refers, but should be grateful if any Member can give me the reference, as I cannot find it at this moment.

The Acting Chief Secretary (Mr. Griffith-Jones): I think, Sir, it is Standing Order 105.

The Speaker (Mr. Slade): Standing Order 105 provides that except on the recommendation or with the consent of the Governor, signified there-to by a Minister, the Council shall not "(a) proceed upon any Bills which in the opinion of Mr. Speaker would dispose of or discharge any public revenue or public funds or revoke or alter any disposition thereof or charge thereon; (b) proceed upon any Motion including any amendment to a Motion, the effect of which in the opinion of Mr. Speaker is that provision should be made for any of the purposes aforesaid".

I am of the opinion that the Motion before the Council now is to the effect that there should be provision for further charge on public revenue and for alteration of the present disposition by the Estimates that were approved for the current year. I must therefore uphold the point of order and rule that this Motion is out of order and cannot continue.

Sir Charles Markham: Mr. Speaker, due to the fact that I seconded a Motion out of order—

The Speaker (Mr. Slade): When a substantive Motion is out of order, I am afraid it cannot be corrected by an amendment. It is out of order *ab initio* we should not proceed upon it at all.

Sir Charles Markham: Sir, can I have yet another amendment, Sir?

Hon. Members: No.

Sir Charles Markham: It is not for them to say "No", Sir, but for you.

The Speaker (Mr. Slade): I thought I had explained that the substantive Motion is out of order and it cannot be corrected now by amendment and we therefore proceed to the next Order of the Day.

Mr. Cooke: Mr. Speaker, I formed the impression with a Motion of this nature that it was vetted by the Speaker beforehand and the fact that it had appeared on the Order Paper was taken that Mr. Speaker had approved of that particular Motion being moved. But, perhaps, it has not come before you, Sir.

The Speaker (Mr. Slade): The Speaker may well have been in error at the outset, but that is no reason for not correcting the error when brought to his notice.

Sir Charles Markham: Sir, Speaking on a point of order, with the greatest respect, Sir, if my amendment can put the Motion in order and if it is acceptable, is that not allowed, Sir, if the Proposer, with your permission, alters the wording to urging Government to do something rather than leaving the wording which is almost executive action.

The Speaker (Mr. Slade): I have already said we cannot proceed with the Motion.

Mr. Cooke: Sir, on a point of order, would it not expedite the business of this House if the Leader on the other side had made his objection at the very start, before the Motion is even moved?

The Speaker (Mr. Slade): We will proceed to the next order.

MOTION

AFRICAN BUSINESS AND MINISTERIAL REORGANIZATION

Mr. Mboya: Mr. Speaker, Sir, I beg to move:—

"THAT this Council, being convinced of the need to stimulate and encourage African business and commerce in the rural as well as urban areas, is concerned at the lack of co-ordinated efforts and the existence of apparent confusion over legislation and policy arising from the fact that the Ministry for Local Government and sometimes the Provincial Administration are made responsible for these activities and calls on the Government to reorganize the area of Ministerial responsibility so that all the efforts and programmes and policies of encouraging African business may come under the Minister for Commerce and Industry.

Mr. Speaker, I gave notice of this Motion some months ago and at the time there were a number of questions and developments that were uppermost not only in my mind but also in the minds of many of my colleagues. The passage of time, of course, has tended to blunt some of these issues and questions. I still feel, however, that there is a case to try and point out what I regard—and I am sure many others regard—as apparent confusion in the present set-up in dealing with African business.

May I immediately say how much many of us have looked with pride at the work that has been done by the present Minister for Commerce and Industry. And we believe that during his period of office, even after only a few months, a lot has been done, in our view, in the right direction. We want, however, to make it possible for his Ministry to be directly answerable for all aspects of encouraging and expanding African

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business. We want to feel that it would be possible for him and his Ministry to tackle more effectively and efficiently all aspects concerning African business. Many a time there have been a number of questions arising, especially regarding the small business man in the urban areas and in the rural areas, questions which could easily have been dealt with in no time at all and eliminate grounds for frustration arising from confusion, but which take many months before even an answer can be got because they have to go through so many other people and in the end one comes to the point where it virtually becomes impossible to know who one should deal with. At the time when I was giving notice of this Motion, for example, we raised in this Council the plight of the small African business man in the towns, the petty trader who wanted to do no more than start his business: there was the woman who wanted to sell a bunch of bananas or *uji* or hawk clothes, or a little trader who wanted to sell some cigarettes and so on. And we came up against the problem that it was impossible to know just who should take the final decision in the matter of encouraging this man on a business basis. Now you find that the municipalities, for example, the local government, have powers to introduce by-laws on the recommendation of the medical officer of health which did not take into account at all the business angle of the activity in question. They came along and said "This is not in accordance with public health." They did not ask the economic questions involved, they did not consider the fact that some of these people drew their only livelihood from this activity. They did not consider the fact of unemployment in the urban areas. They did not consider the fact of competition, ordinary competition, in business as between the petty trader and the established retail trader or shop owner. They were concerned with public health. Now, we appreciate just as much, if not more, sometimes, as the Medical Officer of Health, the need to have certain standards of health in the urban areas and in this country. But, Sir, our country cannot afford the luxury to begin to live above the standard they can afford. To be told to adopt a standard on the one hand of 100 per cent compliance with health regulations when that same authority—the local government—had on its doorstep some of the most unhealthy conditions promoted by its own activities and sometimes of its own making. Its housing could be declared uninhabitable on health grounds, but that is left to go on. But where the African petty trader is concerned health standards must be 100 per cent.

When you go to the Ministry of Commerce and say "Look, what are you doing for these people?"

the Ministry says "Of course, we would like to assist them. As the Ministry for Commerce and Industry we are interested to see that these people are helped."

They, Sir, are defended and protected, but the small man is not protected against unfair competition by the more established businessmen. But he turns round and says: "In the matter of these by-laws I can do nothing." It is a matter for the Minister for Local Government. Now, Sir, there is an obvious lack of co-ordination in the decisions and the activities of the Ministries to the disadvantage of African business.

The other day, too, I was dealing with a case which I drew to the attention of the Ministry of Commerce and Industry, but which again met with the same reply. The case was of a number of Africans who have been carrying out some small business as mechanics in an open site just at the back of Racecourse Road in Nairobi. Some of these people have been there for ten years, others for five years. They have taken this open space, brought in some cars and trucks and they are doing some repair work. It is in the proximity of certain well-established garages which they use for welding and other purposes, so these garages are almost an accessory, as it were, because business is given to them, just as much as these garages make it possible for them to do some business. One day the Medical Officer of Health, Nairobi, got the bright idea after ten years that this activity was unhealthy and that on health grounds it must be stopped. This open space happens to be a piece of Crown land and so a notice was duly framed and these shops were ordered in a matter of two weeks to vacate this plot. There were a number of issues involved. One, of course, was the question of these people's future. Most of them for years have depended on this activity for their income. Most of them, who are good mechanics and good businessmen, would be out of business and out of a job, and with the serious unemployment that exists in the country we checked at the labour exchange and confirmed that it would be very difficult, if not impossible, for them to get any jobs. In addition to that, as for them to get any jobs, it is not possible, that it would be very difficult, if not impossible, that they had undertaken certain contracts which they had to finish. They had accepted people's money and vehicles, which contracts they had to honour. But nobody seemed to care about this at the time when the notice was drawn up. All that the City Council considered was that the Medical Officer of Health had said that this was unhealthy for them to continue to use this open piece of land; and so the *awkari* started going to this place and harassing everybody, closing down their business as and when they felt even before the notice had expired, threatening them and scaring off everybody. When we

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intervened and took the matter up with the Ministry of Commerce and Industry they said: "Certainly, we have been thinking of developing some industrial projects which would help find an alternative site for these African mechanics, but our programme will not be for some months." The Minister was very sympathetic. I thought he genuinely wanted to help, but again the ultimate decision as to whether this piece of Crown land could be used by these businessmen did not lie in his hands. It was a decision (a) of the Ministry of Local Government to support the action of the City Council and (b) the Ministry of Lands to decide whether this Crown land could still be available. I tried to find out whether they had any immediate alternative use for this land, whether there was any immediate programme or project for this land, and I was assured that there was no such project; all they wanted was that this piece of land must be cleared of African mechanics. Now, Sir, I tried to find out whether in recent weeks there had been any epidemic arising from the use of this piece of land, whether in the history of five to ten years of the usage of this piece of land by these mechanics there had been any case of ill health arising from its use by these mechanics. I was assured there had not been any. But someone had decided that by now it presented a very ugly picture. Now, when I suggested that Pumwani presented an even worse picture and that the floors of Shauri Moyo houses presented a much unhealthier condition of immediate seriousness and health consequences I was told: "We are sorry, but this is our final decision." Fortunately, Sir, there were some sympathetic persons in the Land Office who agreed to look into this question, and even then when the notice was ultimately suspended there was no assurance that these people would continue in business for any length of time. I asked that they be given six months' notice, or nine months' notice, or that the notice be dependent on the Government helping them to acquire a new suitable site. No such assurance could be given, so that from day to day these unfortunate people continued to live in fear that perhaps the next day, the notice having expired, the *askari* would arrive and ask them to leave. This anxiety, of course, in itself is no good, but the point I am trying to illustrate is this: that if there had been some co-ordination, the Ministry of Commerce and Industry states they have a programme that will come into effect in a few months' time to take care of cases like this, that this project of theirs would in fact provide an alternative place for these people; but not only that; that it would be possible with some co-ordination for this Ministry not only to provide an alternative site but also to be able to assist these persons in form-

ing themselves into a suitable organization and, being enabled to get the necessary loans and funds, to be able to develop this business. The Ministry of Commerce agreed with me that there was a need to assist these people. The Officer-in-Charge of Nairobi agreed with us that there was a need to help them find an alternative site. But nobody was in a position to make a decision and we kept going round in circles.

Now, Sir, this is just one aspect, one example where this lack of co-ordination leads to inability to decide in realistic terms as to how far decisions taken in respect of health or other considerations should be related to other factors that are equally, if not more, important, and especially in the short term. A country with unemployment will try to conceive ideas to help the situation, sometimes even at the expense of what one person may regard as a 100 per cent standard of health. You cannot have a 100 per cent standard; you can aim at having a 100 per cent standard, but whether or not you are going to have it just now must depend on certain practical questions, and it is both stifling African initiative and effort for these decisions to be taken without due regard to all the factors as in fact it is stifling to the general trend of economic development that there should be no positive co-ordination and that the Ministry of Commerce and Industry should not be directly involved in determining how far decisions taken in one area are bound to affect its own programme and its own policies with regard to encouraging African business.

The other area in which there are some apparent difficulties, which again can be improved upon, is in dealing with loans and credits. Sometimes the African district councils or municipalities have decisions to make as to whether titles will be granted to African businessmen or property owners which eventually determine whether these people will become credit-worthy and considered for loans. The Minister for Commerce and Industry feels that there should be an acceleration in encouraging African business on a larger scale and so they go around and tell the African businessmen, "You must plan and organize yourselves, you must get together; you must aim at bigger business." Just as soon as the African is getting ready to do that and has put together some money and needs the facilities with which to achieve this objective he is immediately struck up because someone in a municipality or local government has decided that he is not going to create the necessary conditions to provide the titles, immediately. We can take the case of Nairobi where Africans were encouraged to put up big buildings in Bahati and other areas. Years went by before any decisions would be

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taken to grant them titles and to create the necessary facilities for them to exploit this opportunity that had been thrown out at them. The Minister, of course, wants to help these people, but the fact is that for all those years when the Nairobi City Council could not make a decision none of these people, as any other businessman of another race could have done in this country, could go to a bank or to one of the credit organizations to get a loan to enable him to do business. You end up with this situation: there are shops and buildings in Bahati today where a person was encouraged to sink some £2,000 into a building. When he finished he could not get loans or money or credit facilities from anywhere. He ended up with big loans that he could not repay because he was not doing any business. His shop stands empty until someone comes along and buys it by exploiting his predicament. It is unfair that this sort of thing should be allowed to continue. It is unnecessarily exploiting the position of the African businessman and it shows a lack of foresight on the part of the Government in appreciating that unless there is co-ordination it is not going to be possible for the Ministry of Commerce and Industry to carry out the programmes which we know it has in mind for accelerating the pace of African business and industrial development. You still have a situation, Sir, where a person today may be encouraged to have a permanent building put up in one of the African markets in the reserves or sometimes in some of the trading centres, and, having up this huge building, spent all the money he has accumulated, he is unable to make use of it because until now if he builds in a market there is no security, and the banks and other financial organizations will not accept this building as any security because, they agree, the local authorities have not yet decided to give titles to such plots and that they cannot therefore be used or made use of as would be the case if they had done so in some of the urban areas. These are obvious handicaps.

Again, you have, of course, the International Co-operation Administration loans, and again here is an area where lack of co-ordination in some cases has resulted in stifling African initiative and African effort. Take Nairobi. For a long time International Co-operation Administration loans were available for the use of African businessmen in Nairobi. For many years, when African businessmen were able to use these funds in some of the African district council areas, in Nairobi they could not do so. What was the reason? It was a simple question that there had not been an agreement with the City Council as to the composition of the committee that would administer these funds. Now, this simple reason,

this simple question of the composition of the committee, resulted in a situation where for many years money was left to lie about. African businessmen were unable immediately to fulfil their objective because someone was still arguing as to how the committee should be composed. Now, this is the height of what I might regard not only as foolishness but completely unwise thinking and unwise policy of those who at the same time contend that they have the very best interests of African business at heart.

Now, Sir, we have positive suggestions to make that we think would help African business to expand and develop more rapidly. We are convinced not only that this country has a big potential in African businessmen but that it needs immediately and urgently to encourage African commerce and industry, to encourage all forms of African business. It is this gap in the economy of this country that I consider to be the greatest weakness in it. There is too much reliance on business or economic activities of other communities, of the Asians or of the Europeans; that constitutes a major weakness in the economic set-up of this country. It is urgent that Africans should be helped to move in as rapidly as possible and to take their legitimate place in the economic life of this country. To do this there must be a practical approach to the question of assistance, of guidance, and of help. It is my submission that there cannot be a practical approach to this question of assistance and guidance if the Ministry of Commerce is going to decide something today and find it impossible to implement it because the Ministry of Local Government or Lands is not yet ready to move, or if the Provincial Administration is going to be free to make its own independent decisions even without referring the matter to the Ministry of Commerce and Industry or to those who are immediately affected in determining the economic factors that are involved in a question such as this. It is not going to be possible if the medical officers of health are going to decide from time to time matters that are of real economic importance to this country, without even ever having cared to think of the immediate economic effects of their decisions on the African community and on the country as a whole.

We insist that the time is ripe for immediate action to remove this confusion and lack of co-ordination if there is going to be practical assistance to African business, commerce and industry. We insist that African business cannot be accelerated if medical officers or health inspectors are going to be free to make decisions without due regard to the immediate economic consequences of their actions or decisions. Now, it is for this reason that I and my colleagues considered it

[Mr. Mboya] necessary to bring before the Council these facts with the hope that action would be taken to right this situation. I have referred to these petty or small traders, and I want to emphasize especially this point because in the last few years we have had cause, in Nairobi and Mombasa, to complain most vigorously against the actions taken by these authorities against African traders and African hawkers. Decisions have been taken arbitrarily from time to time on various pretexts without due regard to the immediate economic consequences of those decisions.

In the last few months after our protests and repeated demands in this House, some of these decisions have been reversed in Nairobi. When three years ago Nairobi City Council decided to do away, to eliminate, any form of hawking on the streets or in certain areas of Nairobi, they suggested this was necessary for health reasons. It led to the disappearance of a very important part of African economic activity, not only from the point of view of the trader but also from the point of view of the African consumer. Our whole approach must take into account both the consumer and his habits, as they are at the moment, and his capacity, as it is at the moment; not only some vague standards that, however desirable they may be, are completely out of keeping with our present state of development. Take the small man who sold *uji* or tea in some of the busiest streets leading to the African locations. Now, some medical chap walks through to these places and says: "Here is an open tin of tea. This tin looks very dirty. This tea is no good for consumption. Here is a loaf of bread. It is exposed to dust and flies. It is no good for consumption." Now, generally this man is right. This is what is desirable. It is desirable, perhaps, that all of us should have refrigerators. But we do not all have refrigerators and that is a fact we have got to accept. It is desirable that all of us should live in homes that have all the fine sanitary facilities, with running water. But the fact is we do not have those sanitary facilities of running water. It may be desirable that all our food should be protected from dust and flies; but it is a fact that not all our food is protected from dust and flies. And it is equally a fact that we have people in legitimate areas of employment and business who live in these undesirable conditions with the full knowledge of the Government and the City Council; sometimes with the encouragement of the Government and the City Council in so far as they are responsible for providing some of the facilities. These things must be related to the conditions prevailing in this country.

If a man has his food exposed to dust in his own home, why should he not eat some food exposed to dust sold by some hawkers? If a man in his own home eats food exposed to flies, why should he not eat food exposed to flies sold by some hawkers? Now, I am not saying that we should establish this as our standard. Far from it! We should encourage people to aspire to higher standards. But if we want to force a man to live above his means, we are creating unnecessary hardship and frustration. You cannot force all our people to eat cakes if there is no money to buy cakes. You cannot force them all to take tea in the morning if they have only money to buy *uji* at lunch-time. It is not their fault that they can only afford *uji* at lunch-time. It is the fault of the conditions in which they live; it is the economy in which they live. It is that that has to be righted, and not the punishment of the people who do business because it is the only thing they can do. When you stop the hawker from selling *uji* in the industrial area you are creating a situation in which we have thousands of workers in the industrial area who used to buy *uji* at lunch-time who cannot now get *uji* because you have stopped its sale with the immediate consequence that they are going throughout the day without a meal. Even the light meal of *uji* is important to this person who has nothing else. And it is no use the Medical Officer of Health sitting at the City Hall and thinking that everybody else is drawing the large salary that he is drawing; that everybody can afford three meals a day like himself, and that everybody can afford a refrigerator like himself. These are the facts which we would like to see considered. We submit that one of the reasons—and, in our view the main reason—why these facts are overlooked is because there is no co-ordination in Government departments dealing with these problems. We believe that if the Minister of Commerce assumed all these responsibilities for framing and directing the policies of African business he would be thinking first of the need to encourage African business. He would be thinking first of the economic factors involved, and then his medical advisers—public health advisers—would say to him: "There may be certain grave dangers." Then those dangers can be discussed in their true perspective; in the context of how much real immediate danger is involved. We are not quarrelling with action taken in the event of an epidemic. By all means take it! We are not quarrelling with action taken in the event of a real threat of an epidemic. By all means do that! But when you stop African business, when you stifle this small African business, on the grounds that you want 100 per cent adherence to health standards, we say you are stifling African business. You are doing harm to

[Mr. Mboya] this country's economy, because the potential of African business, African consumers, must become the backbone of any policy in developing fully and effectively this country's economy.

Now, it is these points, Sir, that we would like to bring out to show very clearly that we, the Africans, want to see more African business, more recognition of the part it can play in our development. Above all, we regard some of these activities as deliberate efforts on the part of some people to make it impossible for Africans to compete effectively with the European and Asian traders and businessmen. The City Council of Nairobi is particularly notorious for the fact that it has a clique of people who live in the past century, people who make decisions—and there are numerous examples that we can show of the foolishness that is to be found in the City Council of Nairobi. Their entire approach is devoid of reason and of realistic acknowledgement of the facts of our present situation. There is domination there by this clique that takes first the interests of the Europeans; the interests of the Asians are considered later; and the interests of the Africans are of very little importance.

Mr. Odunga: Shame!

Mr. Mboya: And the actions of the Medical Officer of Health in Nairobi are not entirely divorced from the attitude—the negative attitude—of this clique in the Nairobi City Council which has gone a long way to influence the attitude of other local authorities. When they meet in the so-called Municipal Association of East Africa or Kenya, the City Council has a dominant position. We know that, and it is their attitude, which seems to be gaining ground, even in the new and smaller municipalities. It is quite obvious to us that this attitude has resulted in arbitrary decisions. Very often health has been given as the reasons, but this is not the main reason why these decisions are taken. Health is just the cloud that they want to use. The Health Department is being used as a convenient vehicle for defending this negative clique in the City Council.

I know—and I hope the Minister for Local Government will agree with me—that there have been occasions when the decisions of this clique have embarrassed him no end, with little opportunity for the Government to do anything about it because there is that thing called the autonomy of local governments. "We have responsibility to do what we like. The Ministry is not going to force us!" I have been told on some occasions when I have said I would appeal to the Minister "We do not care. We—the City Council—make our own decisions." I have known occasions when

I thought the Minister was quite sympathetic to our appeals to him, but the position in the City Council and other local authorities have made it impossible for the right decisions to be taken. Consequently, it is also my submission not only that decisions have been taken without regard to all the factors that need to be considered; without regard to the conditions in which we live; but I also say—and I accuse the City Council of Nairobi of this—that there is a deliberate act of stifling African business for no other reason than to be able to defend and protect European business first; and only in order to make the Asians feel that they are a part of the township occasionally to throw a few bones to them. It is true! It is true—

Mr. Odunga: What about the Africans?

Mr. Mboya: The Africans? They do not even give them bones! It is quite true, and this is where I call for a stronger policy, a stronger Government policy, an effective Government policy, where Government decisions can be implemented and not be stifled by these cliques in the City Council or other urban areas or local authorities.

Of course, it is my hope that very soon we shall be able to eliminate this clique from Nairobi. I hope it will be done soon. Some of us are quite tired and I have decided never to go to the City Hall.

The significance of these little African traders can be seen, Sir, by those who have cared to travel a little bit. In some countries I have seen the busiest circulation and exchange of money—money passing from hand to hand, from this man to the other, from this woman to the other—I have seen that taking place in some cities in Africa—a sign of prosperity. They have generated an economic activity that has led to greater initiative by African business men. They have created a situation where you will find side by side with the biggest stores of the oldest established firms equally impressive stores. It is not true that the reason you have this development in other African countries is because they are better businessmen than we are. It is not true that they have more money than we have in all cases. We, too, with the necessary opportunities and conditions, could today be having shops in Government Road in Nairobi. We could today be having shops—impressive shops—in the Bazaar, in Stewart Street, in River Road—the upper and more impressive part of River Road. Why should African business be relegated to the African locations only, to selling *posho*, cigarettes and milk? Why should it be that that is the only business that we are doing in this city and in other towns? Why is it that there is not even a single African shop in Government

[Mr. Mboya] Road? Something is missing in the Government's programme. The other day I saw in Uganda a positive effort to encourage African business, to enable them to compete effectively where the Government itself has built some of the most impressive shops in the main streets of the city and enabled Africans to rent them on a special arrangement. This is what is needed, but you are not going to do that when you have on the one hand people who would not care less about economic facts of our situation—people who are deliberately out to promote the interests of one section—of the Europeans as against those of the Africans, or for that matter, of the Asians as against those of the Africans. We are not being racial, but we are facing the facts as they are at the moment. The fact is, if you ask me to be non-racial on this issue, I refuse to accept that position, because the fact is that because of the racial pattern of things the African is not competing effectively. He is not having a fair opportunity and, therefore, for the time being I must emphasize the need to help and assist the African. For the time being I must insist on the African being given special opportunity and special treatment. For the time being I must insist that the Government is in a position to do more effectively than it has done so far with these negative efforts, deliberate efforts to stifle African business.

Mr. Speaker, Sir, I beg to move.

Mr. Kiamba: Mr. Speaker, Sir, in seconding this Motion I say that I feel it is a necessary one and the Government will not be able to reject it, because it only deals with the question of overlapping of ministerial duties. The two Ministries concerned could have sat down and discussed these things quietly and then handed it over to the Minister, but since it is before this House, and it has been ably and clearly put forward to the House, I must say when the Administration and local government and the Ministry of Commerce and Industry are all asked to deal with African trade, then it becomes very difficult, if not impossible, for them to do the job properly. It raises the question of many cooks. However clever they may be, maybe they will spoil the broth. Maybe this was the case when African trade was considered as something different, but now, since their progress, the African traders are experienced and they will be able to compete with other people. It is no use putting this work into the hands of many people—it will hinder the people from progressing—and I feel it is time the job was given to one Ministry, so that co-ordination will be unnecessary. We only have to have co-ordination if there are many people doing the same job, and I feel that if the work can be done by one Ministry it would be straightforward

and the Africans will be helped in trade just like the people of other races, and by so doing they will be brought into line with the other progressed traders, because nobody can deny the fact that the African will rule this country in the near future, and if he is not now put into the position of a good trader he may be a difficult one in the future. Therefore, Sir, I beg to second.

Question proposed.

Mr. Rogers: Mr. Speaker, I am afraid I must oppose this Motion as it stands because there is, of course, a marked criticism of Ministries of this Government which I, personally, could not accept. It is, of course, essential that there must be only one policy-making body, and in the case of trade it can only be the Ministry of Commerce and Industry. It is equally, however, not possible for every Ministry to have an office in every part of Kenya. This would be far too costly, and its duplication, I am perfectly certain, would not be acceptable by this House. Accepting that as a fact, as I feel we must, I think it is a very great advantage for businessmen to be able to deal with a local body—to deal with a man on the spot—a man he knows—a man he can discuss his problems with—who knows his problems—and usually the solution as well as he does himself. Naturally, this local authority must follow the policy of the Minister, but here I have a first-hand knowledge as to how this is being done. When the reserves were opening after the Emergency, business enterprise was given the greatest assistance by the Provincial Administration in going into those reserves and building up trade and developing the African businessman, because the African was the only man in there. It was a wonderful opportunity to train the Africans in business, and I can assure the House that it was done most successfully.

Mr. Odinga: Shame, shame!

Mr. Rogers: I hear some sort of parrot noise from over there! I feel here the Provincial Administration were carrying out the policy of the Minister for Commerce and Industry, and carrying it out extremely well.

Mr. Mboya: Mr. Speaker, Sir, is not the word "parrot" unparliamentary language?

The Speaker (Mr. Shade): It is not insulting or offensive language to describe an interjection as a parrot noise.

Mr. Rogers: I am sorry if I upset the hon. Member. I certainly did not mean it. What I meant was to sit opposite calling the same word "Shams, shame!" is a little bit like the sort of thing a parrot does. I was not indicating that the hon. Member in any way looked like a parrot.

[Mr. Rogers]

To return to our debate, Sir, the hon. Member, as regards his complaint that African petty traders were pursued particularly by the health authorities, I feel that it is really very interesting because the extraordinary thing is that the larger business enterprises feel, in fact, that they are the ones who are being pursued by the health authorities and it is the petty trader who is virtually allowed to do what he likes. Now it looks as if then, that the law is pressing equally heavily on all of us, and so, although we may say that the law is too severe, I do not think, on that count, we can say it is unjust. I am sure the hon. Member will agree that it is necessary to have health regulations, which was one of his big points, and health laws in buildings and in shops, and accepting that, which I think we must, they must be interpreted by experts who are the advisers of the Minister for Commerce and Industry. I think, however, the hon. Member can take comfort from the fact that the owner of the garage who seemed to be faced with being turned off a vacant plot at any moment, and indeed many others he spoke of, are now able to apply for a loan from the committee just appointed by the Minister for Commerce and Industry—a loan for a proper building or anything else of that nature—and I can assure the hon. Member as chairman of that committee, all these men will receive the most careful consideration.

I feel that the appointment of this committee is a strong indication—strong evidence—that the Minister wishes to help in every way he possibly can. The Member for Nairobi Area mentioned refrigerators. I can inform him that we have already made a number of loans for refrigerators, and that is another illustration of how the Minister's policy is, in fact, doing just what the Mover of the Motion asks him to do.

Mr. Mboya: Private homes.

Mr. Rogers: In shops, entirely—none in private homes at all. Perhaps as we develop we may be able to get those as well.

I feel I must record the appreciation of the Committee for the help which is being given by representatives of the Nairobi City Council who are serving on the Committee. The hon. Member had some rather hard things to say about the City Council, but I must record the Committee's appreciation for all the help they are giving.

I agree, of course, that sometimes we businessmen do feel a little frustrated. I do not think that is confined to us, and perhaps we feel frustrated when we should not do so. I feel sympathetic to the Motion on that basis, but as I have said, I

think we must have regulations for health and other matters in a developed society, and I am perfectly certain the officers who have to say "no" to businessmen do not, in fact, enjoy saying "no", and I am perfectly certain they say "no" indiscriminately. By that I do not mean to say they are saying "no" every five minutes, but they do not say "no" to one race and "yes" to another.

For the reasons I have given, Sir, I therefore cannot support the Motion as it stands.

Mr. Khambali: Mr. Speaker, Sir, I rise to support the Motion before the House, and in doing so I am really very much surprised to hear from the Government side that they are unable to support the Motion. It seems to me very strange indeed that all the African businesses in this country do not come strictly under the Minister for Commerce and Industry. It is very, very strange because most of the businesses I know of are either under the provincial administration or the local authorities or some other municipality or local government or some other members. But the real Minister who should concern himself with African business is deprived of his real duty towards these people. It is quite clear from what has been said in this House by the Mover of the Motion that the conditions that he described were obtaining in Nairobi are to a much greater extent operating in Mombasa and in the smaller areas. In Mombasa the small businessmen are at all times constantly being harassed and hunted by the so-called inspectors of the local authority. Even in places where there are no markets, on the main-land areas, where there are no organized markets run by the local authorities, there the African also is not free to operate: even to sell his snuff, let alone *uji*, but he cannot sell snuff or even a few tomatoes from his *ikapu*. It is very embarrassing to the African to be told: "I am sorry, you must not operate here because there is no market", and there is no market to which he can go to operate. We do not know whom we have to approach. We would like all businesses to be placed under the tutelage of the Minister for Commerce and Industry, because we believe in that way he would be able to understand the problems they are facing—not only big businessmen—but also the very smallest businessmen.

Sir, the country does not live only with the help of the large business and industry. It must depend also on the small trader. The small trader who sells his snuff to passers-by under a tree where there is no question of health, for instance—I do not see the reason why a man sitting under a mango tree selling snuff to people at 10 cents a piece is obliged by the local authorities to hire a very big house or that he must sell in a very hygienic place. Why is this required for a man who wants to sell his snuff?

[Mr. Khamisi]

Now, it is becoming very, very difficult, and wherever we move—particularly we, the Elected Members—wherever we go we find our people in these difficulties. We find that they cannot move even a step to the right, or to the left or to the front or even behind. Wherever they go there is someone to tell them, "You are doing something wrong". If it is not the health inspector, it is the policeman who has power over them, and the ordinary man who has a small *shamba* and produces a few pounds of *muhogo* or a few pounds of tomatoes finds it extremely difficult to be able to sell his produce and get a price from the people who want to buy it.

Sir, the whole question of this African business must be looked at with better prospects than has been the case before. It is a great pity to have heard from the Government that they cannot accept the Motion. They ought to give us the reasons why they cannot accept this Motion. The Motion is very straightforward. One of the reasons which were given by the Member on the other side is that it is impossible for the Minister to have his office everywhere. I wonder, he being a man who runs a big industry in tobacco, how he is able to have his offices everywhere. He and other companies can have their offices throughout the country. Why cannot the Minister do the same. If he can do it I am quite sure the Minister with all the Government funds behind him can do it much better, and I am quite sure that the Minister, if he is given that opportunity will be able to do it in a more efficient way. You see we have for instance, in Mombasa, the question of the Kenya Meat Commission. We do not know who is the Minister who is looking after the Kenya Meat Commission. When we go to the Minister for Local Government we are referred to the Minister for Agriculture, and we do not know whether the Minister for Agriculture is in charge of the case or whether it is the Minister for Commerce and Industry, or whether it is the provincial administration, or whether it is the local authority. We do not know. Everybody has a say on the poor African businessman.

Mr. Odunga: Shame, shame!

Mr. Khamisi: It is indeed a great shame that this Government should allow these conditions to continue in the way they are at present. We have, for instance, speaking about my own particular area, Mombasa, on the mainland south a large area where people with their own livestock are not allowed to slaughter even for their own consumption because the Kenya Meat Commission does not permit such a thing to be done, and nobody is allowed to slaughter any goat or sheep even if it is for any traditional ceremonies which

are very important in the life of the African customs. I feel, Sir, that something must be done and must be done very quickly, so that the responsibility of the Minister for Commerce and Industry are extended, and so that the local authorities may not try to stifle African trade by using the health authorities or the health laws as their most Holy Bible to which everything is referred. I feel, Sir, there are a lot of things which they could spend their time usefully on to improve the health of the people and not necessarily trying to hinder the Africans from enjoying their freedom even in a small way, in the way of selling their small items of produce to the people who are passing by.

The Speaker (Mr. Slade): Mr. Khamisi, have you much more to say?

Mr. Khamisi: Yes, Sir.

ADJOURNMENT

The Speaker (Mr. Slade): I think this would be a convenient time to adjourn then. I adjourn the Council until 9 a.m. tomorrow, Friday, 28th October, 1960.

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

Friday, 28th October, 1960

The House met at Nine o'clock.

[Mr. Speaker (Mr. Slade) in the Chair]

PRAYERS

NOTICES OF MOTION

VIETNAM VICE-PRESIDENT OF PORTUGAL

Mr. Mboya: Mr. Speaker, Sir, I beg to give notice of the following Motions:—

(a) THAT this Council, being aware of the fact that Portugal maintains the most vicious and barbaric colonialism in modern times, and being aware that hundreds of thousands of Africans have lost their lives and millions have been denied their basic democratic rights in Portuguese possessions; and having regard to the fact that Portugal is impervious to the United Nations and world opinion, and to the fact that forces in Africa condemn strongly Portuguese policies; declares that the Kenya Government's invitation to the Vice-President of Portugal to visit Kenya shows complete disregard for morality and human decency and African feelings and constitutes a complete misappropriation of public funds and a danger to good relations in Kenya.

WITHDRAWAL OF MEMBER'S PASSPORT

(b) THAT this House, being aware of the important role played by its Members in the affairs of the country and the responsible place they hold in the eyes of the public, is concerned at the humiliation suffered by African Members and Ministers who are subjected to unexplained search of luggage and person at the Nairobi Airport; and more recently at the confiscation of Mr. Odunga's passport; and calls on the Government to explain these actions, restore Mr. Odunga's passport and stop this provocative humiliation.

JUSTICE IN AFRICAN COURTS

Mr. Odunga: Mr. Speaker, I beg to give notice of the following Motion:—

THAT in view of the highly unsatisfactory practices employed in the administration of justice in the African Courts by interested staff of the Department of Administration, where there threats to respect for justice, this Council notes with grave concern the continuity of these practices and therefore urges the Government to appoint a commission of enquiry into the administration of justice in the African Courts with a view to placing the said Courts in the hands of the appropriate Department—the Judiciary,

SALARY SCALE OF ALL POLICE RANKS

Air Commodore Howard-Williams: Mr. Speaker, Sir, I beg to give notice of the following Motions:—

(a) THAT this House requests Government to raise the salary scale of all ranks in the police so that they may receive pay commensurate with their dignity and duty.

WHITE PAPER ON THE CIVIL SERVICE

(b) THAT this Council applauds the principles contained in the British Government's White Paper on the Civil Service, but deplores pressure which is thereby put upon civil servants to change their allegiance and regrets that this White Paper does not cover a wide enough range of civil servants.

REVIEW OF LAW OF CAPITAL PUNISHMENT

Mr. Nyagah: Mr. Speaker, Sir, having withdrawn my previous Motion, I beg to give notice of the following Motion:—

THAT this Council urges Government to review the law of capital punishment to see whether it would be possible to abolish the death penalty in the interests of humanity.

Sir Charles Markham: Mr. Speaker, With your permission, I have withdrawn the Motion that is in my name.

BALLOT FOR PRIVATE MEMBERS' MOTIONS

The Speaker (Mr. Slade): Hon. Members we shall now hold a ballot of Motions of which notice has been given to decide on the order in which they are to be taken. Government has already agreed that the Motion by Mr. Nyagah should be taken in Government time, so that will not be included in the ballot. The other three hon. Members who have given notice are Mr. Odunga, Mr. Mboya and Air Commodore Howard-Williams. The ballot will be in those three names, although several of these hon. Members have given notice of more than one Motion. He whose name comes first will be asked to say which Motion he wants to read first.

The first number to be drawn is No. 3, which is the number we allocated to the name of Mr. Mboya. It is up to Mr. Mboya now to say which Motion he would like to take first.

Mr. Mboya: Do I have to say that now?

The Speaker (Mr. Slade): It is preferable, but not essential if you would rather wait your time. You know that you have one Motion first on the list, and if you will inform the Clerk as soon as possible.

Mr. Mboya: I will.

[Mr. Khamisi]

Now, it is becoming very, very difficult, and wherever we move—particularly we, the Elected Members—wherever we go we find our people in these difficulties. We find that they cannot move even a step to the right, or to the left or to the front or even behind. Wherever they go there is someone to tell them, "You are doing something wrong". If it is not the health inspector, it is the policeman who has power over them, and the ordinary man who has a small *shamba* and produces a few pounds of *muhogo* or a few pounds of tomatoes finds it extremely difficult to be able to sell his produce and get a price from the people who want to buy it.

Sir, the whole question of this African business must be looked at with better prospects than has been the case before. It is a great pity to have heard from the Government that they cannot accept the Motion. They ought to give us the reasons why they cannot accept this Motion. The Motion is very straightforward. One of the reasons which were given by the Member on the other side is that it is impossible for the Minister to have his office everywhere. I wonder, he being a man who runs a big industry in tobacco, how he is able to have his offices everywhere. He and other companies can have their offices throughout the country. Why cannot the Minister do the same. If he can do it I am quite sure the Minister with all the Government funds behind him can do it much better, and I am quite sure that the Minister, if he is given that opportunity will be able to do it in a more efficient way. You see we have for instance, in Mombasa, the question of the Kenya Meat Commission. We do not know who is the Minister who is looking after the Kenya Meat Commission. When we go to the Minister for Local Government we are referred to the Minister for Agriculture, and we do not know whether the Minister for Agriculture is in charge of the case or whether it is the Minister for Commerce and Industry, or whether it is the provincial administration, or whether it is the local authority. We do not know. Everybody has a say on the poor African businessman.

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are very important in the life of the African customs. I feel, Sir, that something must be done and must be done very quickly, so that the responsibility of the Minister for Commerce and Industry are extended, and so that the local authorities may not try to stifle African trade by using the health authorities or the health laws as their most Holy Bible to which everything is referred. I feel, Sir, there are a lot of things which they could spend their time usefully on to improve the health of the people and not necessarily trying to hinder the Africans from enjoying their freedom even in a small way, in the way of selling their small items of produce to the people who are passing by.

The Speaker (Mr. Slade): Mr. Khamisi, have you much more to say?

Mr. Khamisi: Yes, Sir.

ADJOURNMENT

The Speaker (Mr. Slade): I think this would be a convenient time to adjourn then. I adjourn the Council until 9 a.m. tomorrow, Friday, 28th October, 1960.

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

Friday, 28th October, 1960

The House met at Nine o'clock.

[Mr. Speaker (Mr. Slade) in the Chair]

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The first number to be drawn is No. 3, which is the number we allocated to the name of Mr. Mboya. It is up to Mr. Mboya now to say which Motion he would like to take first.

Mr. Mboya: Do I have to say that now?

The Speaker (Mr. Slade): It is preferable, but not essential if you would rather wait your time. You know that you have one Motion first on the list, and if you will inform the Clerk as soon as possible.

Mr. Mboya: I will.

The Speaker (Mr. Slade): The next number is No. 1, which is allocated to Air Commodore Howard-Williams. I think Air Commodore Howard-Williams gave notice of only one Motion—no, two.

Air Commodore Howard-Williams: Four!

The Speaker (Mr. Slade): Can you say which you would like first?

Air Commodore Howard-Williams: I would like to have the Motion on the Police taken first.

The Speaker (Mr. Slade): That puts Mr. Odunga third in the list, who has given notice of one Motion only, I think.

Mr. Odunga: One.

The Speaker (Mr. Slade): So that the Motion on the African Courts will be the third to be taken.

The next on the list is Mr. Mboya again, so that puts your other Motion, Mr. Mboya, fourth in order. Then it only remains to have Air Commodore Howard-Williams' Motions.

MOTION

AFRICAN BUSINESS AND MINISTERIAL REORGANIZATION

(Continuation of debate interrupted on 27th October, 1960)

The Speaker (Mr. Slade): Before I call on Mr. Khamisi to resume his speech I think I should point out that this Motion has only 50 minutes left out of the allocated time of two hours.

Mr. Khamisi Mr. Speaker, Sir, as the time has already run short I shall be very, very brief indeed.

When the Council adjourned last night I had explained the plight of the small African businessman and the disadvantages of the duties or the responsibilities of the African trade being placed in so many hands. This morning, Sir, I want to explain how difficult it is for an African trader to obtain a loan from the local authorities and from the Government, and for that reason all that I would say, since the time is short, is that it takes as long as nine months from the time an application is made for an African trader to get the little loan that is now generally given to these people.

Mr. Rogers: I can assure the hon. Member that since our committee moved into formation the time is certainly under nine months. I would say that it is more like two months in many cases.

Mr. Khamisi: Mr. Speaker, I do not understand which committee he is referring to. I am referring to cases which have happened in Mombasa where a trader applies for a loan. The application goes to the district officer; from the district officer it goes to the officer-in-charge of Trade

and Supplies; from there it goes to the African Affairs Officer; from there it is thrown back to a committee of Africans in the Advisory Council; from there it goes back to the African Affairs Committee of the municipality concerned; from there it goes back to a special subcommittee which has been selected to sort out applications; from there it goes back to the African Affairs Committee; and from there it goes back to the Council. By the time the man gets his loan nine months have passed; and sometimes it takes longer. Therefore I do not understand which committee he is referring to, Mr. Speaker.

Mr. Rogers: Nairobi.

Mr. Khamisi: I am referring to Mombasa in particular. By the time the applicant gets his loan he is almost out of business because by that time about nine months have elapsed since he started his small business. He has nothing in his business and by that time he is out of business.

Now, Sir, I would not like to waste the time of Council explaining all that. All that I wanted to say was that a central committee should be established, and particularly I would say that in places like Mombasa the advice given by the officer-in-charge of Trade and Supplies should be enough for a trader to obtain his loan as quickly as possible, because almost all of these committees depend almost entirely on the advice they receive from this officer who keeps in close touch with businessmen and their shops; and also he knows them and visits them; he knows what type of people they are and he knows what type of business they do. Therefore, Sir, all this red tape should have been cut down so that if this man makes an application he goes straight to him and the officer recommends the application and the man gets his loan immediately.

Now, Sir, another thing which I wanted to draw the attention of the House to was that efforts should be made by the Government to see that loans are not restricted as they are at present to something like £50 or £150, which is the most they get. A trader should be able to get the big loans, something like £1,000, so that he can do business and make some profit, rather than something like what they get now which is not enough to make anything at all.

Mr. Speaker, Sir, I wish that the whole question of the African trader and African business should be centralized into one authority so that we and the people can know where to go to seek advice and to seek help and assistance. At present in most areas I believe these officer-in-charge of Trade and Supplies are the agents for the Minister for Commerce and Industry and

[Mr. Khamisi]

they should be the only people to deal with trade and not the Provincial Administration or the local authorities or the African district councils or anybody at all.

With these few words, Sir, I beg to very strongly support the Motion before the House.

The Minister for Commerce and Industry (Dr. Kiano): Mr. Speaker, Sir, I do not think I am the proper person to speak on behalf of Government today as far as this Motion is concerned because what the Motion says in short is that all the work to do with trade should come under my Ministry.

I have never been afraid of work, Mr. Speaker, and therefore will not discuss this Motion from the point of view of whether that would be too much work or too little work. However, I am reminded of the day when I was not a Member of this House and my son, who was then seven years old, used to refer to the Mover of this Motion as "Mr. Government". Now it appears that the Mover wishes to make the Minister for Commerce and Industry "Mr. Government". He implies that anything to do with public health, shops and so on, building standards, etc., should come under my Ministry.

Mr. Mboya: Question!

The Minister for Commerce and Industry (Dr. Kiano): Now, Mr. Speaker, I do want to thank the Mover of this Motion very sincerely for giving the House an opportunity to discuss this matter which I quite agree can be and has been a bit confusing. I am glad that I am able to clarify a number of points and to agree with him as far as I can on the point of view of encouraging African businesses. First, I want to say that the Motion is quite correct in the phrase in it which is that the Ministry of Commerce and Industry should stimulate and encourage African business and commerce in rural as well as in the urban areas. That, Sir, is quite correct; anybody who has checked the records of the Ministry of Commerce and Industry will notice that positive actions have been taken, more actions will be taken to stimulate and encourage small businessmen, and particularly the small African businessman, so that he can therefore have no argument on this issue.

The subject of African business and commerce, of course, covers a very vast field of the Government and in order to make it easy for the Members of this House to appreciate the enormity of this problem, I think what I shall do is to categorize the various factors that influence commerce and see which of those should come under my Ministry and which of those cannot come under my Ministry and see which is the best way to co-ordinate all of them. The Mover of the

Motion has made a very good case that there have been difficulties and some degree of confusion; particularly to the small businessman himself who may not understand the intricacies of Government. The first one is the question of land or the plot on which the shops are built; the second is the question of the standards of building, whether shops and so on; the third one is the question of the issuing of licences to traders; and the fourth one is the one I love to talk about most, the question of loans. So there are four categories which I would like to analyse for the House and the present position of Ministerial consideration.

Hon. Members are aware, no doubt, that the question of land—that is the question of plots and so on—comes under my colleague, the Minister for Local Government and Lands, and I hope that he shall have the opportunity to say a few words; therefore if I make my speech brief it is because of the fact that the time taken by the Mover was so long yesterday that he did not give Government enough time to reply.

Now there is, of course, a division of responsibility over the administration of Crown land as opposed to African land and Government is examining the possibility of putting all land matters under a single Ministry. I shall leave to my colleague, the Minister for Local Government and Lands, and the Chief Commissioner any specific matters affecting land policy and affecting the introduction of more suitable forms of leases for these two persons to reply. In this connexion I must remind the House of what was said on the 6th May by the Minister for Local Government and Lands and I want to emphasize this, that while it will be a wrong thing to put plots and lands under the Minister for Commerce and Industry, nevertheless I think a good case must be made now which is that I regard it myself as a matter of supreme importance for the Ministry concerned—and they agree with me on this one, to issue as rapidly as possible leases to African traders which would be of value as security in negotiating loans from commercial and other credit institutions. That is a matter of urgency. For too long we have had people—one case I know in Nairobi where he has five stone houses and he cannot use any of them as security to get a loan because of the plot on which they are built has a lease which is not negotiable in commercial and credit institutions. I hope the Minister for Local Government, my colleague, when he stands will tell us how far he has reached in solving this rather urgent problem.

The second division which I raised concerned the erection of buildings for commercial purposes and the planning of markets in trading centres and by-laws which are necessary for public health

[The Minister for Commerce and Industry] purposes and various local authority by-laws which individual local authorities have introduced or may have introduced in various parts of the country.

Now, Sir, I am not a medical doctor, although some people may have mistaken me for one, and therefore I will not be most eager myself to have matters dealing with public health in shops and so on under my Ministry. Furthermore, the only point I would like to make is this, that in the first place we must recognize the necessity for variation of standards in various parts of the country. While stating what is proper as a building in Government Road, it may not be the type of standard—that we must insist on in Dagoretti, or may not be the type of building that we insist on in Dondor, which is in Central Nyanza. There must be that recognition in the first place that there should be diversity and there is diversity between the major urban areas as well as the rural areas. I think that a shop in Meru does not have to look exactly like the one in Thika. On the other hand, the standards which a local authority may consider necessary in a local market definitely may not be applicable in the case of a place like Nairobi.

The necessity, I think, for these different by-laws is best recognized by permitting the local authority to make such by-laws as it considers most suitable for the state of development in the particular area. Now, the Minister for Local Government is going to explain the relationship between his Ministry and the powers of the local authorities. But one thing I will say is this. The Mover made a case—and I am sure there is a case—whereby it is necessary for the Central Government to keep an eye on the exercise of these powers by local authorities to make sure that no by-law stifles development in commerce and industry. To me the Central Government do have a duty to keep an eye on local authorities to make sure that they do not exercise their power in such a way as to hinder the very policies that the Central Government wishes to put forward. My Ministry is concerned with expanding opportunities to all worthy businessmen and to this end I will try to keep under review all laws that affect commercial and business activities. When these laws are by-laws made by local authorities, I shall consult with my colleague, the Minister for Local Government and Lands. We must be sure that no laws—whether Central Government Ordinances or local authority by-laws—defeat our main policy of providing maximum opportunities for African trade and for other small businesses in the country.

The third category—for time is running short and I can still hear several people complaining

to the hon. Mover for taking all the time and not giving me enough time to reply to him, and I know that my colleagues, the Minister for Health and the Minister for Local Government, who were also under fire yesterday, must be allowed a few minutes to say their points. . . .

Mr. Odunga: Hear! Hear!

The Minister for Commerce and Industry (Dr. Kioko): I am glad that the—shall I say—hon. Member for Central Nyanza also wants to speak! The third category in the breakdown in the sphere of businesses is the question of licensing. There are two aspects in licensing, the first being general traders' licensing on a Colony-wide basis in which the Department of Inland Revenue is interested from the point of view of the amount of money they receive by giving the licence. Then there is the other group where the district local authorities also give a licence. One of the principle objects of this Ordinance must be regarded as revenue rates. The second form of licensing by local authorities is often concerned with the particular occupation of the applicant. These matters vary from one local authority to another and the by-laws are generally designed to cover the particular circumstances applicable to each individual local authority. One of them is to ensure that there is orderly development of all various trades and occupations in any particular trading centre or market. Up to now the discretion as to whether a particular applicant will be allowed to carry on a particular trade at a particular place at present rests with the local authority and the Central Government has no power at present to interfere with its discretion. I shall examine, in the future, with my colleague, the Minister for Local Government, to see whether some form of advisory committee or some sort of appeal procedure could be desirable in order to assure again that the refusal to grant a licence does not curtail the proper economic development. This matter, I think, should again be taken note of by the Mover; that what we may have is that it will not so much be for the Central Government to undertake the power of issuing licences to every part of the country. What would be perhaps desirable—what we shall examine—is the possibility or the desirability of some form of appeal procedure to the Central Government, or some sort of advisory committee, in order to see that the refusal to grant a licence does not necessarily curtail proper economic development. These matters are now under the exploratory stage and we shall be able to come to a decision as to which would be the best procedure and to look into this matter.

I wish, however, to reiterate that my Ministry will concern itself with all instances where laws themselves conflict with the declared policy of the Central Government.

[The Minister for Commerce and Industry]

Now we come to the last one which deals particularly with the assistance that my Ministry gives to African traders. Again I would like to inform the Member for Mombasa Area—who always makes a point and then disappears from the House, Mr. Speaker, and never, never gets the reply so he makes the point again the following day—that the size of loans so far given to African traders has been, on the whole, relatively small. This was because the amount of money available to my Ministry, most of which came from the International Co-operation Administration, was so small that of necessity the traders were given small loans. However, I do not think it is inappropriate to say that from the African industrialists' scheme which I announced here about four or five months ago which is administered by the Industrial Development Corporation, one African has just received a loan of £1,000 to carry on his work with a small factory making soap in the Mombasa area. So we have been aware of the difficulties that arise when somebody wants a large loan. But, as I say, it would have been wonderful for the Member for the Mombasa Area to know that at least while he complains about the procedures regarding loans the Industrial Development Corporation—which is within the purview of my Ministry—has just issued a loan of £1,000 to an African industrialist in Mombasa. However, I will look into the procedure that the Member for Mombasa Area complains about. I do not think at present that it takes nine months or more to get the reply from the Loans Committee as to whether or not the loan application is successful. I do not think it is necessary, but I will look into it.

I may also say that in addition to the loans which have been going on, there have been areas which had been left out prior to my taking over this Ministry for various reasons, and already we have now created special loans committees for those areas, one in Nairobi, one in Mombasa, and we are planning six more in various parts of the Rift Valley, i.e. Trans Nazia, Uasin Gishu, Eldoret, Kitale, Naivasha and so on. In addition to that we do hope that we can utilize more and more the African trade officers whom we have in the various provinces.

Now, having dealt generally with that point of view, I would like to say this, that I will not allow any situation—and I am sure my colleague will not allow any situation—which might appear to be a battle between the various Ministers for the various branches of Government. Once a policy is declared—a policy statement carrying a certain line of action—then it is the duty of all of us to see that that policy goes forward and any existing hindrances are removed in order that there does

not appear to be a conflict between two sides. This being the case, I would like to inform the Mover that when changes appear to be necessary, those changes will be carried out. One of them that I know he meant to mention and somehow failed to mention was the difficulty concerning the Transport Licensing Board. He had given me advance notice of this complaint with regard to the licensing of buses because he felt buses should also come under the Ministry of Commerce and Industry.

Well, I am glad to inform him that my colleague, the hon. Chief Secretary, has authorized me to say that when the final allocations of subjects and portfolios are made early next year Government will give consideration to transferring the whole subject of transport licensing to my Ministry. It seems as if I am going to be a most overworked Minister.

Now the hon. Member is aware that a committee is now examining the whole authority of the Transport Licensing Ordinance and the final report will be made available very shortly. What we must realize regarding this whole complex subject, Mr. Speaker, is that we must rely sometimes on local organizations. As trades and industry throughout the Colony is at different stages of development, so many of the executive officers are the ones upon whom development of the African business and commerce must depend. As I have said before, I am convinced that it is right and proper to seek co-ordination and consultation among the various groups. It is for that reason, Mr. Speaker, and not for the reason that I do not want to be a Minister of the Government—I do not want to be the "Jack of all trades", including public health and the standards of shop-building and so on, and also controlling the local authorities. It is for that reason, Mr. Speaker, that I am sorry I cannot accept all the words in this very friendly Motion, and with the permission of the Mover, and your permission, Mr. Speaker, I would like to make an amendment to it. I do not want to turn it down. On the other hand, I cannot accept that all these items listed in it should come under my Ministry, because some of them very properly cannot be under my Ministry, and therefore, Mr. Speaker, I would like to say that the words from "is concerned at the lack of co-ordinated efforts", that the words after that phrase should go—all of them—and instead put it that "the Council calls on the Government to ensure that there is the maximum consultation and co-ordination between the various Ministries concerned with matters affecting African business and commerce".

Mr. Speaker, I beg to move the amendment.

Dr. Adajal Mr. Speaker, Sir, I must say I do not think I can support the original Motion, but I can the amended Motion. Sir, when I say this I would like to make it clear that I have genuine sympathy with the several points made by the hon. Mover of the original Motion. I understand fully his plea for more active steps to encourage African trade. Sir, I am convinced that the future of this country lies in African hands, and unless the African takes a full part in all the fields of activity in this country this country can never be fully developed, and here trade and commerce are no exception. Africans by far form the largest proportion of the population, and it requires just a very elementary knowledge of mathematics to appreciate this fact. My quarrel with the hon. Mover of the original Motion is, when he pleads for the relaxation of public health laws or to their administration. He describes the existing ones as too harsh and too idealistic. I would like to tell him that is not so. They are the minimum if the present standard of public health is to be maintained. I say this with particular reference to the hawking of food, particularly cooked food. When he complains against *uji*, tea, bread, etc., not being allowed to be hawked, and when he suggests that merely because someone has to eat dust-soiled, fly-infected or unclean food the dangers of dust, fly infection and other dangers in the hawking of cooked food should be disregarded, I say he is playing with fire. Let it be clearly understood, Mr. Speaker, and let there be no mistake here, that the ingestion of infected, unclean food is a real danger to health and even to life. Fly-borne diseases were some of the real killers in the early days. Perusal of early reports of the Medical Department provide ample proof of that. These diseases took a very heavy toll of life and a heavier toll of health, and I must say that infection of the gastro-intestinal tract had a large share in that.

Sir, the Mover of the original Motion has charged the Public Health Department of the Nairobi City Council with being partisan and discriminatory. I would like to say at once, and with full conviction, that so far as the public health is concerned, so far as the administration of public health laws is concerned, the Public Health Department of Nairobi City Council is colour blind and race blind. I have been more than once a member of the body, and I can say from personal experience that this is so. Asians frequently complained about the strictness of this department, but I would say to the Asian community that it is due to the insufficient appreciation of the needs of the public health that they complain.

Sir, may I say here, with your permission, what great progress has been made by the Public

Health Department of the Nairobi City Council. This can be judged by examining the figures of infant mortality, and may I quote, Sir, a few. The infant mortality rate in 1940 was 187 per 1,000 live births. In 1945 it was 86; in 1950, 97; in 1955—and here the figures are very striking—59; in 1959, 58. May I add, Sir, that in olden days the mortality was 400 per 1,000. Now when I say this, Sir, I am no favourite with the Council or even the Public Health Department. Some of you might remember my quarrel on the question of two certificates for cremation at the Council's crematorium.

Great labour and sacrifice have gone into the building up of the public health to its present standards, and Africans have played no small part in it. After a period of education the community co-operated fully and admirably, and this point has been made in several reports of the Medical Department, and who does not know the great help that has been rendered, and is being rendered, by the African district councils in putting up health centres and other requirements of the public health and medical services. Therefore, I would say, ask for anything, loans, more loans, shops, assisted shops, shops in Government Road, anywhere in Nairobi or elsewhere, but for God's sake do not ask for the relaxation of public health laws or their administration. To do so will be risking the life of the people, and that will in the long run retard the country. Unhealthy people are not suitable material to develop a country, and in support of this point may I recommend to hon. Members—to Members—the Medical Department's report for the years 1920, 1921, 1922 and 1923 written by Dr. J. L. Gilks—a man with vision, who along with Dr. A. R. Paterson laid the true foundations of public health in this country.

Mr. Speaker, Sir, I beg to support the amendment.

Question proposed.

The Speaker (Mr. Stade): I see that the time is near when I should call on the Mover to reply. Perhaps some Member might like to move a modification of the Council's previous decision on this particular debate that it should only be allowed two hours.

EXTENSION OF TIME FOR MOTION

The Acting Chief Secretary (Mr. Griffith-Jones):—Mr. Speaker, with your permission, I should like to move the suspension of Standing Orders to enable the House to continue with this debate until 10.20 a.m. which, I think, is an extension of about one-quarter of an hour. I think that that would be desirable in order to allow some of my colleagues concerned in these affairs to speak in the debate and possibly one other Member who I see is only half sitting down.

[The Acting Chief Secretary]

I would allow an extension of a few very short minutes in order to allow Members time to make their points.

Mr. Odunga: Mr. Speaker, I just want to comment on the suggestion made from the Government side. I do not think it should be extended only for the Government Members to speak; it should be for everybody.

The Acting Chief Secretary (Mr. Griffith-Jones): As time is rapidly running out, Sir, I did suggest, Sir, that the main purpose of it would be to allow the two Ministers, who have not yet spoken, to speak.

The Temporary Minister for Legal Affairs (Mr. Conroy) seconded.

The Speaker (Mr. Stade): I think this is a modification of a previous decision of Council to allow only two hours for these Private Members' Motions, rather than suspension of Standing Orders. However that may be, I will propose the question to extend the time to 10.20 a.m.

Question proposed.

The question was put and carried.

AFRICAN BUSINESS AND MINISTERIAL REORGANIZATION

Debate resumed.

The Minister for Health and Welfare (Mr. Muimi): Mr. Speaker, Sir, I want to be as short as possible.

In the first place, Mr. Speaker, I listened to the Mover of the Motion very carefully and, whereas I thought, he himself, as a qualified health assistant, would speak as a medical man, he instead, Sir, talked like a layman.

The Motion as I see it—and much of what he said—centres on two points only, namely the high standard of building for trading purposes established in African markets and towns in both the rural and urban areas; and the second one is the one that I am very much concerned with at the moment, namely the hawking of foodstuffs; and when I say foodstuffs I mean cooked foodstuffs. My Ministry has nothing to do with many of the other things that the Mover of the Motion blamed my Ministry for.

Mr. Speaker, the building standards which apply to shops in towns, in markets, and in trading centres, are laid down in local authority by-laws; and this has been made very clear. The local authorities are empowered by Ordinances passed by this House to make such by-laws, and once they make by-laws to establish a certain standard of building for a certain market then I am sure, Mr. Speaker, it is none of the business of my Ministry to interfere with the decisions made by

local authorities. If I may be short on this point, I have served on the African District Council in my district for the last 15 years and it was at the request of the African District Council in my district that certain standards were maintained in certain markets, and, in that district, trading centres and markets are categorized into three groups, the A group, the B group, and the C group. The standards approved by the local authorities in that district on the recommendation of my Ministry must be maintained. Now, the reason which led to the local authority in my district taking this decision was as a result of the great demand from ex-service men in 1945 or 1946 who came back to the reserves with a lot of money in their pockets; they demanded shops and they demanded decent shops. In this regard, Mr. Deputy Speaker, I think it is not right and proper to blame my Ministry or to blame the officers of my Ministry that they are in anyway responsible for discouraging African business by setting standards which the Africans cannot maintain.

Mr. Speaker, to conclude on this I just want to say that it is absolutely incorrect to say that my Ministry gazettes any form of standard of building in any trading centre or market in order to favour any section of the community of this country.

I must say, as the Minister for Commerce pointed out, that the standard of building required in places like Nairobi do not apply in our areas, and I can only refer him to the kind of trading premises I have seen in his own province during my tour of duty. They differ from place to place, and likewise I think in Nairobi it is exactly the same.

In order not to take more time of the House, Sir, I would like to deal with the last point which I believe concerns my Ministry and that is the hawking of foodstuffs. I must say right from the outset that I was surprised that snuff was included among the articles hawked. My Ministry is entirely concerned with the health of the people. If you use snuff as much as you like, and you are harmed, it is none of my business; but my Ministry, as the Mover of the Motion knows very well, is concerned with the health of the people. When the question of hawking cooked foodstuffs was brought to this House—I believe it was some time in April—I did point out that the concern of my Ministry was the gravity of the health of the people. The Mover of the Motion knows all too well that cooked food exposed to the air is very easily contaminated with infectious diseases. Well, I might just say this, Mr. Speaker; my information is that about 10 per cent of people who die in our hospitals die from intestinal diseases, in other words they die from diseases contracted through food. Well, he said in the course of his speech

[The Minister for Health and Welfare] that he had had no report at all of any epidemic in Nairobi. Now, the other day the Minister for Commerce said this to us, and I think we ought to take this caution: "We must not wait until there is an epidemic and then start taking action". I think the Mover of the Motion knows only too well that prevention is better than cure.

Mr. Mboya: Interjection.

The Minister for Health and Welfare (Mr. Mumbi): Well, I can only refer the Mover of the Motion to just before the end of the last war when certain families were wiped out by plague in certain areas of this country and if it were not for the efforts of the health and medical people, I am sure we would not, some of us, be sitting in this House. I must say this, no responsible government will shun its responsibility over the health of the people. I feel very strongly whether it be the present Government or the coming Government—the African Government—the highest standards of health must be maintained. Otherwise, when we speak of expanding our educational facilities I can only remind the Mover of the Motion that you cannot have a healthy mind in an unhealthy body and if our people in this country are not healthy then the education that you want, the expansion in business that you want and many other things I think would be of no use if it is no use giving education to an unhealthy body.

I beg to oppose.

Mr. Alexander: Mr. Speaker, in moving this amendment the Government have denied that this Colony, Kenya, of ours is one integrated economic unit. They have in this amendment acknowledged that they are partial to one section of our people. I believe in showing this discrimination that the Government are failing in their duty and their responsibility to all the peoples of Kenya and if it were any other Government but this one, Sir, they would have collapsed over this Motion by now.

The Minister for Commerce and Industry (Dr. Kioko): The Motion deals with African businessmen. If the hon. Member wishes to deal with these other matters that is another Motion.

Mr. Alexander: Yes, Mr. Speaker, I wish to move an amendment to the amendment by deleting the word "African" in the second line of the substantive Motion, so that the Government, Sir, will look to all business in Kenya as a responsibility and that the Minister himself will regard all business as his affair. Because we are one integrated economic unit and if the business of one section of the community is improved, naturally the business of all sections of the community will improve. Mr.

Speaker, unfortunately there will not be time to move any further amendment, but it is a pity that Government have deprived this Motion—the substantive Motion—of much of its vitality. I entirely agree with the Mover that we are all concerned at the lack of co-ordinated effort. Of course we are; in moving the amendment Government have now deprived the Motion of that part of it and I think it is a great pity. From what the Mover said, and in what others said, it is quite clear that we should all be concerned, Government included, at this lack of co-ordination. I just want to deal with one particular aspect that I do not think has been dealt with in this debate and that is, Sir, over the whole question of land policy, land approvals and land allocations.

Now the Land Department of our Government is doing a very fine job of work in the face of very great odds. They are attempting to be a co-ordinating body, they have done it extraordinarily well, but they find themselves—does the hon. Minister opposite think he is in a pub with that action? They have done a wonderful job of work in trying to co-ordinate, but we know that they are being frustrated by the difficulties in other departments in local authorities and I would ask the Minister for Local Government and Lands to give this particular aspect his earnest attention.

Mr. Speaker, Sir, I beg to move the amendment to the amendment.

The Speaker (Mr. Slade): It seems that the amendment now proposed is an amendment of the original Motion, in relation to the word "Africans" which appears also at the start of the Motion and which the present amendment would not affect, so I will treat it as a separate amendment. It is, subject to being seconded, that the word "African" be left out wherever it appears.

Mrs. Hughes seconded.

The Speaker (Mr. Slade): I will take the amendment first. I will propose the question which is that the word "African" be left out where it appears in the Motion.

Question proposed.

Mr. Odunga: Mr. Speaker, Sir, I thank you for giving this time.

The Minister for Local Government and Lands (Mr. Havelock): On a point of order, Mr. Speaker, is the hon. Member going to confine himself to this particular amendment?

The Speaker (Mr. Slade): As the question now stands he should confine himself to the particular amendment, but due to the shortage of time and

[The Speaker] the fact that the matter is not conveniently separable I shall apply Standing Order 62 so that any Member may speak on any matter relevant to the Motion.

Mr. Odunga: Thank you very much, Mr. Speaker, I will say briefly, Mr. Speaker, that many Members who have spoken here have taken a lot of time and they have missed the very gist of the whole Motion. The Motion talks mainly on the co-ordination of treating the African business as a real business as we treat other business. At the present moment the African business is treated as a special department of some sort which is dealt with by the Administration, but not by the experts who are supposed to be really within the business of this country or planning the business in this country. I can remember very well, Mr. Speaker, that we definitely have objected and that is why we have stopped the Ministry of African Affairs which was separating the Africans as a department of the Government, just as we have game wardens and so on. So I think that the time has now come that we should not get rid of this Ministry in name but not in duties and must have the duties still going on under a commissioner who is in the Chief Secretary's department. But I should say the time has now come when the African businessman, just as any other businessman, should all be treated equally and their cases and their facts should just go direct to the appropriate Ministry and that is the Ministry for Commerce and Industry, and not otherwise and there and then all the co-ordination will be uniform, not actually—I am inclined to agree with my hon. friend for the first time in his saying that part time has come that there should not be any part of an African business or a European or Asian in business, they are all business; they may be in various forms or in various stages of development, but they are business and they should be treated the same. An African does not want a district officer or a district commissioner who does not understand anything at all about business—and I am talking from experience, gentlemen, as a man who has been in African business for a long time and I know the problems and the difficulties of African business. When an hon. gentleman from the other side who opposed this I do not know from what authority he was opposing it because he is not even a Minister, he is not anything, I do not know what part he is playing in African business for him to oppose it and say that he would like it to be confined to where it is at the present moment, he should have talked to me or asked me to tell him more about the African business because I have been in African business for 15 years. He knows only the tobacco industry and does not know of

African business and, therefore, to talk of something which you are ignorant about will not actually give you the gist of the trouble or the difficulties which we experience. I have always found it difficult to explain my balance-sheet to the district commissioner who probably has no business knowledge of any kind, I believe simply because he is there he is supposed to know all. He will try actually to put himself into something which he does not know and which he does not understand at all.

The Speaker (Mr. Slade): You must bring your speech to a close now in order to allow the Mover to reply.

Mr. Odunga: Thank you very much, Mr. Speaker, I will respect your order, I have not got much time to go on although I would have liked to speak very, very strongly on this Motion. I hope that we shall bring it again next time.

With these few remarks I beg to support.

The Speaker (Mr. Slade): Before calling on the Mover to reply, I will deal with the amendments. I will first put the question that the Motion be amended by leaving out the word "African" where it appears, that is to say in formal language that the words proposed to be left out be left out of the Motion.

Question that the words proposed to be left out be left out put and negatived.

I will put the second amendment which is in two parts: hon. Members will remember that the first part was that all words following the words "urban areas" in the third line should be left out of the Motion.

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

The second part of the Motion I put now is that there be substituted for the words to be left out the words "Calls on the Government to ensure that the maximum consultation and co-ordination between the various business concerns in matters affecting African business and commerce".

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

Mr. Mboya: Mr. Speaker, in the first place I would like to apologize to the House for taking too long yesterday. I apparently overlooked the fact that time was limited and talked far too long. However, I did have what I considered to be a very strong case to put before the House and I am glad to note that the Minister for Commerce and Industry in his statement to the House this morning practically acknowledged all the points that I had put forward. I regret that the Government has not seen fit to accept the Motion in its entirety because all it seeks to do is to bring out a state of affairs that all of us must be aware

[Mr. Mboya] is totally unsatisfactory. In the present situation something has to be done and done drastically and urgently if we are to eliminate the present confusion and lack of co-ordination. The Minister for Health, when he spoke, made a speech on a totally different subject so far as I was concerned, he was trying a statement to us to justify the need for health regulations and legislation. The fact is that nobody questions the need for health regulations or legislation, the point that was made and which I still emphasize is that this country cannot afford the luxury of trying to live up to its means. This country is in an area which in popular language might be referred to as the "underdeveloped" part of the world and it is no use, however "intelligent" or inclined to think about health some of the people in the opposite benches may be, it is no use for them to think that we can import here or live here on a 100 per cent standard that prevails elsewhere. One of the speeches on the Government side seconding the amendment moved by Government was trying to give a lecture on what he considers should be the health standards of this country. The point I made and which I still make is that if a person is earning Sh. 60 you cannot introduce measures which required him to live on Sh. 300. That is a fact, there is no point in coming here and trying to argue vagueness and on some standard that our people cannot afford on account of their relative incomes. That is the point we are trying to make. Let there be regulations, let them be based on the need progressively to improve upon their standards, as, in fact, is the case when we consider the wages and salaries of our workers they are progressively moving towards a higher standard of life. That is the point that we are trying to make here, it is not that we do not appreciate the need for prevention which is better than cure, we appreciate that there is need for prevention, but I say it to the Minister for Health, if he can produce some real defence in the case of the African mechanics who have been operating in an area for ten years and who have been told to shut shop within two weeks on account of the decision by the medical officer of health that this presented an ugly picture of this city. That is not the sort of thing which can be defended at all and that is the sort of thing I am trying to bring up.

Lastly, Mr. Speaker, to a large extent I am in agreement with my friend the Member for Nairobi West, especially when he stressed the point that the Government's amendment fails to recognize the importance of the need for co-ordination, it says that there will be consultation and co-ordination, that is not what we want. We want something more than that, something that will meet the situation more effectively. My only disagreement with the Member for Nairobi West

is when he sentimentally, in my view, tries to suggest that such a word as "African business" should not be referred to. But the fact of our situation is that in the present set-up there is such a thing as African business. There is such a thing as a policy to stimulate African business. There is such a thing as the need for Africans to be helped and African business to be expanded, accelerated to catch up with the other communities. We cannot afford to ignore that position.

Mr. Speaker, Sir, I do not know whether it is in order to oppose this amendment but I would like to submit that Government take immediate appropriate and urgent action.

The question was put and carried.

MOTION

SOUTH AFRICAN EMIGRATION OFFICE

Mr. Mboya: Mr. Speaker, Sir, with the permission of the Speaker, I beg to move this Motion in its amended form as follows:—

THAT this Council draws the attention of the Government to a statement appearing in the *East African Standard* issue of 5th May and to a radio broadcast by the Kenya Broadcasting Service of the previous evening, to the effect that an office to attract and encourage European farmers and businessmen to leave Kenya with a view to settling in South Africa was to have been opened in Nairobi on 1st June.

The Council draws the attention of the Government to the racial policies of the Union Government and to the fears, suspicion and friction that any expressed support for such policies might cause among the peoples of Kenya.

In its original form, Mr. Speaker, I intended at the time to draw attention to what I considered to be a matter of public importance and a matter of urgent importance, in fact, because at that time various statements were being made simultaneously here and elsewhere, especially following on the shootings at Sharpeville in South Africa. It was at that time, at that very time, that the Union Government announced that they would like to stimulate immigration into South Africa from other areas of the world with the purpose in mind of trying to strengthen and entrench the position of the white people in the Union with a view to promoting their policy of *apartheid* and completely stifling any form of improvement of the stages of Africans in that and other non-whites with a view to ensuring the permanent subordination of the non-whites to the whites and denying them permanently their basic human and democratic rights.

The purpose of moving this Motion is twofold. The first is to draw attention to this and by so

[Mr. Mboya] doing publicly state opposition *vis-à-vis* South Africa. The second is to warn those in this country who might be thinking in that manner that there is no place for them in this country and that it is in fact dangerous for anyone in this country to be going around the streets, the Press and the radio talking about the possibility of some group or persons within Kenya who think like the South Africans. South Africa is well known for one thing and one thing only, and that is its treatment of the non-whites. The *apartheid* policy has become well known as the trade mark of the Union of South Africa and it is clearly known that the Union of South Africa is not only impervious to world opinion in this matter; is not only impervious to the efforts of the United Nations in this matter; but is determined even to go further despite the warnings that it has received at the United Nations, despite the expressions of the world on these matters, despite the Sharpeville riots and shootings. The Government has enlarged even now on producing measures that will lead further to even greater control and suppression of the non-whites in that country.

It will be recalled that at the time of the Sharpeville shootings there was general condemnation of this incident throughout the world and even in the Commonwealth. Our neighbours in Tanganyika saw fit in the legislature to publicly condemn that incident. We in Kenya apparently did not do anything, did not express ourselves. I understand that we are not yet an independent State, because I can assure this House that if we were an independent State and we, the African people, had—as indeed we are going to have—a genuine and effective say in the government of this country we would not stop at saying it is bad to practice racial discrimination but we would go much further. We would feel it our duty, moral and otherwise, to support materially and otherwise our people in South Africa in their struggle against the nationalist Government, against *apartheid*, and so on. It is for this reason that at the time referred to, this Government through this House and our people through this House must have the opportunity to express for themselves their disgust at what happened at Sharpeville and their general and total condemnation of the conditions that exist in South Africa. I still feel that even after the lapse of a few months that we should make our position very clear as well as South Africa is concerned. Although this Motion as amended does not include some of the things that I thought it should have included at the time, it would be a mild expression of our position *vis-à-vis* South Africa.

Now, I consider that it is necessary to make our position clear to enable the South African Government to know that they cannot look to us for support or even for sympathy in their present barbaric and blind attitude to the non-whites. It is also necessary that we make our position very clear to those elements—especially the European settlers in this country—who might be looking to the south for an example of what society should be. There is no room for them here for when—and I hope it will be very soon—we have any real say in the government of this country such attitudes and ideas will not be tolerated by our Government and our people.

There is no need to try and enumerate what happens in South Africa. We are all too aware of the harsh system and its effects; of the segregated residential areas and their effects; of the Bantu Education Act and its effect in so far as aims at the indoctrination of the people of South Africa to accept a certain philosophy that is inhuman, that betrays all concepts of democracy and decency, that is betraying the United Nations Charter and the Declaration of Human Rights, and so on. We are all too aware of the recent actions by the South African Government, even to the extent of interfering with the right of religious ministers to express their convictions freely and to speak out for the things they believe in, the things they preach. We are all too aware of what has happened in South Africa to any person who dare challenge the Government. We are all too aware of the manipulation by the South African Government of so-called democratic systems; to promote, entrench and facilitate the continuation of *apartheid*. We are all too aware, Sir, of the fact that trade unions and the workers are not allowed the freedom to organize, to express themselves, or even to negotiate freely for the improvement of the conditions of workers in that area. The African and other non-white workers are not even described, not even acknowledged, within the laws of that country. In the context of their definition of a "worker", they are excluded from that definition with the consequence that they cannot form trade unions that would be recognized by law. These and many other things are going on in South Africa. These are the things which we in this country cannot accept; things which we in this country will not tolerate. And it is for this reason, Sir, that we find it necessary to express our position as completely as possible in not only defending our rights in the future but also in ensuring that South Africa and any other elements in this country who might think like them clearly understand our position.

I beg to move.

Mr. Nazareth seconded.

Question proposed.

The Acting Chief Secretary (Mr. Griffith-Jones): Mr. Speaker, Sir, the Government cannot, of course, associate itself with much of what the hon. Mover has said. It is not the function of the Government of this country, today at any rate, to concern itself with the internal affairs of the Union of South Africa. Nevertheless, there is in this Motion, if it is taken in the sense in which I propose to explain it from the Government point of view, nothing, I think, which is either derogatory to South Africa and which indeed which this Government cannot conscientiously associate itself with.

Now, the first leg of this Motion refers to an attempt which was made or projected by an individual to tempt certain talents from this country to South Africa. I think I had hoped perhaps that my hon. friend the Mover would have mentioned the need of this country for those talents, because I think it would have been particularly significant that as a responsible leader of his people he should have been concerned—as I firmly believe he is concerned—at any attempt to attract talents and skills from this country, be they European, African or Asian, which this country needs and could ill afford to lose. In fact and in the event, that attempt proved abortive. But I wish to make it quite plain that according to all the information available to this Government it was wholly an individual and private enterprise with which the Government of the Union of South Africa had no part or concern. The gentleman was, as I understand it, interested primarily in qualified technicians. He was also, according to the Press report, interested in attracting schoolboys or young men from this country—Europeans—to pursue the opportunities for careers in South Africa. Not only has he declared intention to open an office and to stimulate immigration of these talents and skills from this country to South Africa developed, but in fact as I understand it so far as we are aware not one single person has left this country for South Africa in response to this scheme.

[Mr. Speaker (Mr. Slade) left the Chair]

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

Again, so far as I know, this scheme is now dead. We have no means of proving one way or the other that no or very few persons have left this country for South Africa in response to this scheme, because United Kingdom citizens of European extraction do not require visas to

travel to South Africa. For that reason also it will be apparent to the House that the Commissioner for South Africa in this country has nothing and has had nothing whatsoever to do with this wholly private and individual scheme.

Of course, this country—and I believe the hon. Mover and this House collectively—would deprecate any scheme which sought to denude this country of talents and skills which it needs and which it cannot afford to lose. I feel that that would be the unanimous attitude of all responsible opinion in this country.

Now, the second part of the Motion refers to the racial policies of the Union Government and the consequences that might ensue in this country if such policies were to find, I think the Motion says, "expressed support" in this country. Now it does not need me, Mr. Deputy Speaker, to remind the House of the policies of this Government. It is not for me to judge one way or the other in my official capacity, neither is it for this Government to judge one way or the other, the policies of another Commonwealth Government. Suffice it to say, that those policies are not our policies; and it is clearly and demonstrably visible to all that our policies are not in any way linked with what is called, I understand, *apartheid*. Our policies are well known. They are directed to the common approach by persons of all races and all colours and all creeds towards building a nation in this country and towards making a common endeavour for the benefit of the prosperity, happiness and well-being of this country and of all its peoples. Therefore, I do concede that at this stage, and in the light of our development and of the policies which we have proclaimed and which we are following and with the road on which we have set our feet, to attempt to introduce or advocate a policy of *apartheid* in this country would, in the terms of the Motion, cause fears, suspicion and friction among the peoples of Kenya.

For these reasons then, and with these careful qualifications, without associating myself or the Government necessarily with all the opinions and views which have been expressed by the hon. Mover, this Government is prepared to accept this Motion. I therefore beg, Mr. Deputy Speaker, to support.

Mr. Blundell: Mr. Deputy Speaker, the hon. Mover of this Motion made some statements which I think are not in tune with the thinking of the great majority of the European farmers of this country. I had not intended—like an hon. Member of this Council many years ago, Dr. Rana—to intervene in this debate, but in view of the remarks which the hon. Member made in moving the Motion I feel I should like

[Mr. Blundell]

I do go on record with some views on the matter. I do not think for one moment that there is any significant proportion of the European community of this country which is looking to South Africa with the idea that the policies which are carried out in that country can be the policies of this country. The great majority of the European farmers in this country are looking here. They are trying with some bewilderment to adjust themselves to the changing scene of Africa. And it is to this country that they are looking in the hope that they can continue to make a contribution and support it in the rather difficult transitional times which are coming upon it.

Many of them consider the problems can be solved here. There would be more support for that view if they had more encouragement sometimes from speeches to think that such problems could be solved here. I do not think for one moment, Mr. Deputy Speaker, that the great majority of European farmers feel that the policies of South Africa are applicable here. There are varying views about those policies, but of one thing I am sure. Every country has got to sort out its own issues, and certainly we, in this country, have got to do so, and I would unhesitatingly record that all but a tiny fraction of the European farming community are well aware that if they are to continue to make a major contribution to the well being of this country they must do so within the terms of what is possible and practical in this country, and nobody imagines that we could impose policies from other countries on our own conditions.

Lastly, Sir, may I say this. The hon. Mover I know will forgive me, but sometimes he talks about the European settler as if he was a remote and sinister bogey. Well, he is not so remote. There are many of them round him in this Council. There are many of them who have been born here before he, himself, became a twinkle in his father's eye. And I would like to suggest to him that most of us are very much in love with Kenya and wish to continue our homes here, and I would like to suggest that in the future this country will realize that everyone of capacity, whatever his colour or outlook, is an asset, and I would like to think that in the few years coming that African leaders will realize that they have a two-fold task and everybody else has in this country. It is not only to earn the confidence of their own community. It is, if Kenya is to reach the flowering which is available to it, to earn the confidence of all communities, and that cannot be done if we have in our minds that sections of other communities are, as I have said, remote and sinister bogies.

Apart from that, Mr. Deputy Speaker, I feel with the hon. Member opposite that I can associate myself with the Motion provided that I can also associate myself with the remarks which he himself has made.

Mr. Alexander: Mr. Deputy Speaker, Sir, talking to this Motion I am only concerned with the best interests of Kenya as to what is happening in other parts of the world, and I do not intend, and I doubt whether it is really appropriate for it to have been attached or associated. I do not intend to refer to it and I do not know whether it is appropriate for it to have been associated to this particular Motion. It refers to the encouragement for European farmers and businessmen to leave Kenya. Before I deal with that, Mr. Deputy Speaker, may I say that I think it is a pity, and I am sure when I point it out to the hon. Member who has just spoken, that he confined his remarks only to European farmers. I can assure him, Sir, and I know he knows this, and all hon. Members, that his remarks about Europeans who are accepting the challenge of the new Kenya applies equally to businessmen.

Now, Sir, I think in trying to approach this objectively it is useful, as it deals purely with European farmers and businessmen; briefly to analyse what is the political division in this country, and how it affects this particular Motion. The division, Sir, in the European community is between those who think, and think genuinely and honestly, and who I believe are in the minority, that they will do the best by continuing an exclusively European attitude, and those who believe that they will do the best by working actively and openly and positively with all their fellow men.

Now, Sir, this division is showing itself quite clearly in a way that concerns this Motion. It is between those who are staying and those who are planning to go. I believe, Sir, as the hon. and Specially Elected Member, Mr. Blundell, has said, that the latter category are few, but we must deal with it, and in this effort of somebody from South Africa trying to deal with those people, I believe, Sir, they have done a service to this Colony—a service in the sense that it is best for Kenya that those who want to go should go quickly, because, Sir, in remaining here, they are part of, or they become part of, a disease that can spread alarmingly—a disease of doubt, of despair, of gloom and of doom. And, Sir, those people are best out of Kenya as soon as they can go, and it is a great pity that this Motion has singled out South Africa because there are other countries who are trying to attract these people. For instance, Australia has had quite an energetic publicity campaign in recent weeks to attract such people to Australia, and I say, Sir, fair enough, because as far as I am concerned I want those people to go just as

[Mr. Alexander]

quickly as it is possible for them to do so. I know that some have got plans that take time to materialize, and all I would ask of them, Sir, is that they make the task of us who are remaining here much easier for us to help them on their way with the greatest comfort and the greatest ease.

The biggest damage, Sir, to Kenya at this moment, and has been for a long time, is the people who talk about going and never go. Those people, Sir, are real damaging elements in our midst, and if anybody from South Africa can help us, Sir, then I am with them, and I am prepared to encourage them.

Mr. Hassan: I associate myself with most of what the Chief Minister and Mr. Blundell said on this issue, but I am afraid I do not like to associate myself with what my friend who has just sat down said about people going to South Africa.

Sir, this statement has appeared at a time when we were going to have a revolutionary change in this country, and it was as an attack on what we are doing here, that this statement was given. I have no intention to quote as an authority to condemn what is happening in other parts of the world, but if South Africa is right to condemn what is happening in Kenya I cannot understand why the people of Kenya should not condemn what is happening there. We hate Communist domination in this country, and we condemn those countries where there is Communist domination. We have no apartheid in this country and we would not like to have it introduced here, and naturally we condemn those who have introduced it in their own countries. I personally feel, Sir, that any attempt made in this country to encourage people to leave this country to go to South Africa would be the greatest disservice to Kenya, and we should condemn any such person who is encouraging this sort of movement. I personally feel the Mover of the Motion put it very clearly in this House, the feeling of the African community and others who are being ill-treated by the neighbouring territories, and I strongly support the Motion.

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

[Mr. Speaker (Mr. Slade) resumed the Chair]

Mr. Ngome: Mr. Speaker, Sir, I am not against or in favour of this Motion. I would like to express my own feelings, Sir, about South Africa. People talk of South Africa. I have never been to South Africa, Sir, but I have worked with South African soldiers in this country, and I must say

that South Africans are good soldiers and they have defended this country twice, in 1914 and 1939, and they have shed their blood in this country until we won the peace, and there must be South Africans somewhere in this country, but we have not got the South African policy in this country, and if we are to provoke the farmers of this country with regard to South African policy or what is going on in South Africa in the past and today, I do not think we shall build up a good nation for this country. We cannot be alone in this country. We have Germans, I believe, we have Italians, we have South Africans, we have Britons in this country, we have Africans and Asians, Chinese and everybody; but we have not got any policy from outside. We have our own Government policy in Kenya. I do not think it is fair to say that White settlers should not be encouraged to stay in this country. I should share with the hon. Member for Nairobi West when he says those who want to go they can go themselves, but there should be no hard and fast rule that these people should be sent off. If I want to go and stay in South Africa, then I can go. Nobody can force me to go there, but I must remind this House, as I have said before, that when we had the War we had a lot of help from South Africa. I have worked with the South African soldiers here and in Tanganyika, and they are good soldiers, and they defended this country, and those who remember I think will be sorry to hear that they are being and have been attacked from time to time.

We had a lot of help from India, a lot of help from South Africa and a lot of help from Britain to defend this country when it was in trouble, and I must say, and it is a fact, that if any trouble takes place in Kenya today the first help will come from South Africa, and people should remember this. The next will be from India, and all of us in Kenya will have to share to defend this country. Now if we are to stay here and threaten South Africa or India or anybody—the Chinese—the Japanese—we are provoking the particular nation, and when trouble comes they will be doubtful whether to join and try to put this country in order. When we talk about South Africa we must also talk about Russia. Why do we not talk about Russia? Why do we not talk about Germany and why do we not talk about the Congo? Apart from South Africa, Mr. Speaker, there must be some Africans here who are worse than South Africans. There may be other people here worse than South Africans. For instance, the Mau Mau people were a lot worse than the people in South Africa, and they are the people of this country. If you want to create trouble you do not forget what is going on in South Africa. I must remind the House about the hymn which says

[Mr. Ngome]

"Onward, Christian soldiers". We must go forward to build up Kenya. We should not try to think what policy is in South Africa—what policy is in Germany—what policy is in Russia. We see in the newspapers what is going on in other countries. Just a few days ago, Mr. Speaker, I heard about Mr. Lumumba's policy or the policy of Lumumba, when some people were barricaded in their homes without bread and all sorts of things like that. That is not South African—that is African—and why do we think that the sort of thing which is happening in the Congo will not come here at all and destroy Kenya. We should unite together and forget what is going on outside Kenya and work together for the good of Kenya, and that is how we could be happy and have good unity and we could have good relations in the country economically, socially and in other ways, but if we stand here, Mr. Speaker, and talk too much about the policy of South Africa which might be repeated here or that the Government of Kenya should issue a policy or some sort of instructions to boycott South African goods—we will not get a united Kenya. The Minister for Commerce and Industry the other day in this building said he signed a document, or rather agreed to boycott South African goods, and one day he was travelling from London to Kenya via South Africa, and when he arrived in South Africa there was no machine to bring him here and he had a meeting here, and the only machine that could bring him here was one of South African Airways, and when he went there to get transport he was told, "Well, there is some sort of a resolution passed by you to boycott South African goods, but the only machine to take you to Nairobi is one of South African Airways", and he said he was sorry about that, and he had to fly to Nairobi by South African Airways, and this was a position of humility, Mr. Speaker.

We talk about something—but we do not know what is going to happen in the future—or what has happened in the past, Mr. Speaker, I am sorry to say, before the hon. Members were born in this country—because if I talk about 1914 I believe my friend, the Member for Nairobi West was not born at all—but I was here with the South African soldiers. I was here with German and Italian soldiers, and I was here with French soldiers, and I was here with Indian soldiers, and we worked together for the good of this country, and we defended this country and we helped to defend it for ever. We must work together, and I do not believe, Mr. Speaker, South Africa has a policy which, if it comes to this country, will destroy Kenya. Let the South African policy remain there. Let us work together never mind what is going to happen tomorrow. If we work

together it is all right. There is nothing to destroy this country by touching the policy of foreign countries, but all this talk about if it comes here we shall be in trouble, these are provoking speeches, Mr. Speaker, which I resent, and I must say Europeans in this country and Asians in this country, do not be disturbed by the big words which will never break the bones. The Africans say, "Maji ya moto alichami nyumba", the hot water cannot set the house on fire. This is all talking—this is sweet talk. Let us hear the talk and forget it.

I am not supporting the Motion, Mr. Speaker.

Mr. Cooke: Mr. Speaker, I too fought in the first World War out here and, in addition, I fought with South African troops for whom I have the greatest admiration, and despite anything I may say or think, I would not join in any witch-hunt of the South African people who have very admirable qualities and who are amongst the greatest and best citizens in our Empire and in our Commonwealth.

Now, although I entirely agree with the Mover in his condemnation of the South African policy—and indeed I was one of those who condemned the South African policy long before it was the fashion in this country to condemn it because there was at one time a good deal of sympathy with the South African apartheid outlook which from the start I condemned—I do think that he is being a bit illogical. Although I agree with what my hon. friend the Member for Nairobi West said, Sir, if these people want to go, let them go. Surely rather than close an office we should encourage offices to be opened so that the people who do want to go, and who are fellow-travellers with the South African policy, can go. Is it not much better to give them an opportunity to leave this country rather than put any obstacles in their way? I do not personally think that many people will want to leave this country to go to South Africa, but I should do nothing whatsoever to discourage them from going. There I entirely agree with the Member for Nairobi West who said that if these people want to go they should be allowed to go now and that they should not be allowed to do any damage to this country by being unfriendly, or in any other way. While I agree entirely with my hon. friend Mr. Mboya's condemnation of the South African policy I would have preferred a forthright Motion moving and expressing what we think of what is going on in South Africa rather than that we should request this office to be closed. However, Sir, I believe that it has been closed now so that no damage has been done.

Mr. Mboya: Mr. Speaker, Sir, I am quite surprised at some of the remarks made during

[Mr. Mboya] this debate. I said earlier and I still feel that the Motion is as mild as it can be and that we would be quite justified in moving a much more controversial Motion than what we have before the House today.

A few points have arisen from the statements made by a number of colleagues on this side of the House and on the Government side.

Firstly there was the hon. Specially Elected Member, Mr. Ngome, who referred to the 1914 World War and his comradeship with South African troops, French troops, and so on. I do not deny him the memory of those days: this is his privilege. I do not deny that there are good South Africans: this is a fact. I have met many; I have helped work with many, and I intend to see that if ever we have an accepted voice in the Government of this country we will assist those good South Africans to make South Africa good. But if perhaps my friend has become very rustic and forgets that we have moved from 1914 to 1960, and very soon to 1961, it is not my fault that he is unable to change with the times and to move with them, and to appreciate the forces operating in our modern world and in our present relations.

Surely the Specially Elected Member, Mr. Ngome, when he recalls to mind the war of 1914 and the war of 1939 must ask himself what these wars were all about. My understanding is that Mr. Ngome and others were fighting to defend something; he says to defend Kenya—but to defend Kenya from what? It was, if I have got it right, to defend freedom, to defend human rights, to ensure that there is decency. The question is, is it not a mockery of this whole operation, of the fact that millions of people lost their lives, and even good South Africans lost their lives, and fought with Mr. Ngome side by side, only to go back to South Africa and find that the very same things they were defending are not upheld in South Africa. Does Mr. Ngome say that we should be careless about this situation, that we should not worry about it? Does he say that Kenya can be considered an island which would not be affected by policies that exist outside our borders and boundaries. Did we start the 1914 war in Kenya? Did we start the 1939 war in Kenya? Did our people not die in those wars? Was this as a result of our policies or other people's policies. Therefore, Sir, let us not kid ourselves that South African policy is something we can isolate and put into a watertight compartment which will have no effect or influence over our own conditions.

The people who suffer in South Africa, are they not human beings? Are some of them not Africans like ourselves? Do we just say that be-

cause we in Kenya do not have the same conditions it does not matter what happens to them? This is a careless, reckless, attitude which cannot be permitted. That is why I say that perhaps my friend is rustic in his thoughts and ideas. We might have to help him polish them up a little bit.

Mr. Ngome: Mr. Speaker: on a point of order, I would ask the hon. Member to withdraw those words which he has passed against me, because he has used some remarks which—

The Speaker (Mr. Slade): I am not aware of any words used by Mr. Mboya which are contrary to Standing Rules. He has been critical but he has kept his remarks within bounds.

Mr. Mboya: I thank you for your ruling, Mr. Speaker, and I assure the hon. Member that whatever I have said I have meant, and I will be quite prepared to repeat it.

Mr. Speaker, I want to suggest very humbly to the hon. Member, and to any others who might think like him, that they are totally misled if they think that we in Kenya can afford to ignore what is happening in Africa, or, for that matter, when we become independent that we can ignore what goes on in the rest of the world. These matters are of real interest to us; however remote they may be sometimes from our immediate surroundings they are important and they are of real interest; they are bound to affect and influence our own thinking and in fact our own development.

I am completely in disagreement with the Members in question, and others, who might think that we can adopt an isolationist policy and that we can afford to ignore what happens in South Africa and in other countries. The hon. Member tried to justify his attitude by saying: "Oh yes, but what about conditions in this and other countries. What about some of the incidents in our own country?" Now, Sir, our position on all these matters is quite clear. The policy that myself, my colleagues, and I am sure many others in this country, want to have is a policy that will help develop in this country a society and a Government that respects certain basic principles and standards; there can be no question about it. Not only do we intend to see that this is done but also we intend to bring our influence to bear on other people to ensure that those conditions prevail in their areas because we believe that as long as human rights and basic democratic standards are abused in other countries there is a real danger to our own position that those influences, those negative influences, may find their way into our own community. There is always that inter-

[Mr. Mboya] reaction of ideas and activities that one cannot afford to ignore, and it is for this reason that I completely decline to accept the position taken by my hon. friend the Specially Elected Member.

Now, Sir, let me come to the hon. Specially Elected Member, Mr. Blundell. I think he made a useful contribution.

Mr. Blundell: Thank you!

Mr. Mboya: I think he made a useful contribution when he said that there were Europeans who believed essentially in the same things that we believe in and who wanted to see in Kenya a society and relationships exactly the same as those which I and my friends believe in. Unfortunately, Sir, in the present confused state of affairs in European politics it becomes very difficult sometimes to know who is speaking for which group; and I hope that the sentiments that he expresses here represent what the Europeans really believe in. I hope that his ideas and the position he has taken will be reflected generally in European politics.

I do not know which group the Member for Nairobi West is in. I do not know whether he is in the United Kenya Party or the New Kenya Group, or whether he is in the Coalition, because it is very difficult to follow these things. But if they seem to believe in the same thing I hope they will influence their various groups to adopt those things.

There is just one little remark which the hon. Member made and which I would like to draw attention to because I think it exposes a weakness in that position which he and others would like to take. He said something like "We are very much in love with Kenya and want to stay", or words to that effect. Now, Sir, what worries me immediately is whether this love which they have for Kenya might not die. You know, love is something that can die. A man might marry a woman because they are very much in love; when they fall out of love they may divorce each other, and the fear that some of us have is that some people may fall out of love with Kenya, especially when things begin to go in a direction that they do not particularly desire. Perhaps this is the basic difference between us. You see, we do not have to be in love with Kenya to stay here because, whether we are in love or out of love, we just have to stay here, full stop. But when my friend says that they are very much in love with Kenya, and therefore will stay, I immediately ask myself: "Is this not the weakness in the thinking of some Europeans?" They should stop thinking in terms of people being in love; they should begin to think in terms of "This is my country: love or

not love, this is my country". It is then that the true identification between us will become real and our relationships become cemented by something that is not going to die tomorrow because things have changed. So long as this relationship is based on this theory of being in love with Kenya there will always be a weakness in that chain that links us together. I hope that these observations will help both Mr. Blundell, and those who are in his Group, and also my hon. friend, the Member for Nairobi West, and those who are in his group, to realize that we desire something bigger than just being in love with Kenya. This thing must be something that can endure; at the time when that love is dead this must be based on recognition that Kenya is the only country that anyone can look forward to.

Now, Sir, the Acting Chief Secretary in his statement in the first place accepted this Motion. It is apparent that we accept the same Motion but seem to differ as to why we do it. Of course, Sir, I am aware of the need to retain skills in this country. I am aware of the need to have those people who contribute to this country's well-being in this country. But I would put this, in the particular concept of this Motion, as being of secondary importance. I put first my belief that we have a moral duty in the question of a situation in which human rights are abused in any country and by any person. If this happens in Russia, if it happens in America, if it happens in Britain, we have a moral duty to make known our position, not just because those people are making some economic or financial contribution to us or helping us to survive, but because essentially any person who believes in this country, or in the United Nations' just this country, or in the United Nations, when they accept some standards, those standards, when they are abused by any person, are a great threat to our own standards and to our own position. I put this as the most important aspect that we must consider, not just our little self-interests but the bigger and broader things. Kenya, like any other country, must be interested in world peace because without it our own efforts to make Kenya a greater country and a bigger country cannot succeed. World peace is affected by the conditions that exist from country to country, and by the attitudes that prevail in various countries. Negative attitudes, belligerent and deliberate abuse of certain standards, constitute a threat to that world peace; and that is what South Africa is at the moment. It is a sore in the international situation. It may not be the most important question just now because there is a Cold War, but it is bound to become a very important question as the balance of power changes in the United Nations; it is changing, and it has changed in the last few weeks or months so

[Mr. Mboya]

rapidly that already the question of South Africa is coming to the forefront. Not only that, this Government—the present Government—is not, of course, our Government—is an agent of the British Government, but the British Government has accepted certain standards, is committed to certain standards. It is a member of the United Nations, it must respect its Charter and the Declaration of Human Rights. I therefore believe that the British Government and all its agents must make their position perfectly clear as to where they stand when that Charter and the Declaration of Human Rights is in any way abused by any country. I am not saying that we go down to South Africa and dictate to them what to do, but I am saying that we have the moral responsibility to influence the South African situation and I want to go even further, that we in Africa have been colonized for a long time, we are committed not only to free ourselves but to help our friends also free themselves, to restore the dignity of our people throughout the continent and not only in Kenya.

We are therefore committed collectively and individually when we are independent to take such steps as we deem fit to help fellow Africans in other parts of this continent. If a white South African considers that he is an African then, of course, we will help him and in this case we would have to help that white South African who says he is a South African from his present reckless attitude from the dangers to himself of his own policy, from the dangers to South Africa of the present South African policy, and therefore I would like to plead with the Acting Chief Secretary that when he speaks on this Motion he should not limit himself to merely thinking of the possible effects to us if some of the skills are removed from this country. That is there, just put there is something bigger in this than yes, that mere removing of 1,500 people from this country. We can do without them if it came to that and if it were to decide between our moral duty and our temporary economics or social advantages.

That is the position that I would like to see take, otherwise it will be a plain hypocritical all. This is the international situation and also our general commitment to freedom and human rights. I have said before in this House and I still say that when we become independent this country must take up a position in the South African situation, a position that will be in line with that taken by our friends all over Africa, economic sanctions against South Africa, Nairobi report not to be used by South African airlines or even closing down the Commissioner's office in Nairobi. I do not like to see that office; it represents those policies, brutal, primitive, bar-

baric policies of the Union Government. It is the symbol of those policies and those policies as far as I am concerned mean today, as we stand here and sit in this House, millions of our people, fellow human beings to be even broader, are denied certain basic rights, are tortured in camps, are treated worse than slaves in their own country. That is the situation which we are as much interested in as the South Africans themselves.

Mr. Speaker, the only reason I decided to agree to amending this Motion to this mild form is at least to be able to give the Government the opportunity to express itself positively. I feel the Government has not taken that opportunity fully and I do not see why this Government should be afraid to say that it is definitely, positively, opposed to the present South African régime. There may be a question of diplomacy, but diplomacy can be very expensive at times and in this particular case, when it is quite evident that another Government or people are in their actions betraying everything that we stand for, we need not be diplomatic. South Africa wants to be told this in no uncertain terms that we can neither accommodate nor sympathize with her policy and this is the only way I think that we can rescue her from self-destruction.

I beg to move.

The question was put and carried.

CONSIDERATION OF BILLS

REPORTS AND THIRD READINGS

The Statute Law (Repeal) Bill

The Temporary Minister for Legal Affairs (Mr. Conroy): Mr. Speaker, Sir, I beg to report that this Bill was amended by a Committee of the whole Council yesterday, those amendments have been circulated to hon. Members in the Votes and Proceedings today and the Bill was reported to Council yesterday with those amendments.

I therefore beg to move that Council doth agree with the Committee in the said report.

The Acting Chief Secretary (Mr. Griffith-Jones) seconded.

Question proposed.

The question was put and carried.

The Temporary Minister for Legal Affairs (Mr. Conroy): Sir, I beg to move that the Statute Law (Repeal) Bill be now read a Third Time.

The Acting Chief Secretary (Mr. Griffith-Jones) seconded.

Question proposed.

The question was put and carried.

The Bill was accordingly read the Third Time and passed.

The Housing (Amendment) Bill

The Minister without Portfolio (Mr. Madan): Mr. Speaker, Sir, this Bill was reported yesterday with amendment and I beg to move that the Council doth agree with the Committee in the said report.

The Temporary Minister for Legal Affairs (Mr. Conroy) seconded.

Question proposed.

The question was put and carried.

The Minister without Portfolio (Mr. Madan): Sir, I beg to move that the Housing (Amendment) Bill be now read a Third Time.

The Temporary Minister for Legal Affairs (Mr. Conroy) seconded.

Question proposed.

The question was put and carried.

The Bill was accordingly read the Third Time and passed.

The Law of Contract Bill

The Temporary Minister for Legal Affairs (Mr. Conroy): Mr. Speaker, Sir, this Bill was reported yesterday with amendment and I beg to move that the Council doth agree with the Committee in the said report.

The question was put and carried.

The Temporary Minister for Legal Affairs (Mr. Conroy): Sir, I beg to move that the Law of Contract Bill be now read a Third Time.

The Minister without Portfolio (Mr. Madan) seconded.

Question proposed.

The question was put and carried.

The Bill was accordingly read the Third Time and passed.

MINISTERIAL STATEMENT

WITHDRAWAL OF PASSPORTS

The Acting Chief Secretary (Mr. Griffith-Jones): Mr. Speaker, Sir, with your permission I wish to make a statement, which I think is a statement which should be made to this House and therefore made before this House adjourns for the next two weeks, on the subject of the withdrawal of passports.

The Government has hitherto by constant vigilance been able to prevent the incursion of significant communist influence in this country. It is, however, deeply concerned at the number of visits to communist countries which have recently

been made by persons from Kenya, and the extent to which Kenya students, many of them without academic qualifications to fit them for advanced studies, are being diverted to educational institutions in communist countries. These developments constitute a major threat and danger to the security of this country in the years to come. Future Governments would, if this drift towards communist associations is not checked, be faced with comparatively large numbers of students returning to this country after some years of communist indoctrination and training in communist techniques of subversion.

Passports, though issued to individuals, remain the property of the Crown, and this Government considers that it would be falling in its duty to its successors of the future if it were to facilitate travel under British passports to countries whose declared intentions are to extend communist influence as widely as possible, and, indeed, throughout the world.

ADJOURNMENT

The Speaker (Mr. Slade) That brings us to the end of the business on the Order Paper. I now adjourn Council until 2.15 p.m. on Tuesday, 15th November, 1960.

The House rose at thirty-five minutes past Eleven o'clock.

Tuesday, 15th November, 1960

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

(Mr. Speaker: Mr. Jansen de la Camp)

PLEASIES

COMMUNICATIONS FROM THE CHAIR

STATE OF GOVERNMENT PAPERS

The Speaker (Mr. Nkomo): Hon. Members, it is with the greatest regret that I have to inform you of the death of a member of the Council...

We in the Council have come to learn how to value each other, regardless of political differences. For our common work, and I know that none of our Members will wish to pay a last tribute to the Council as a man of great courage and high personal honesty and honourable, always loyal to his own ideals, gentle in his strength, and in every respect a very gallant officer and gentleman.

I would ask you, hon. Members, to stand with me for a few moments in silence to remember him.

Members stood for a minute in silence.

ADMINISTRATION OF OATH

The Oath of Allegiance was administered to the following Member:—

Edward Piro Rely.

PAPERS LAID

The following Papers were laid on the Table:— Annual Report Transport Licensing Board, 1959.

Statistical Abstract, 1960

By the Acting Chief Secretary (Mr. Griffith-Jones)

The Paper Control (Sugar) (Amendment) Order, 1960

The Paper Control (Alair and Malindi) (No. 2) (Amendment) (No. 2) Order, 1960

By the Minister for Finance and Development (Mr. Mackenzie)

Report of the Quinquennial Advisory Commission, 1960 on Higher Education in East Africa

By the Temporary Minister for Education (Mr. Miller)

Kenya Government Fax Fossil: Income and Expenditure Accounts for year ended 30th June, 1960.

The Marketing of African Produce (Central Province Collection of Letter Levy) Regulations, 1960.

The Grading of Wheat for Local Produce (Amendment) Rules, 1960.

By the Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKevitt)

European Hospital Fund Authority Annual Report, 1959

By the Minister for Labour, Social Security and Adult Education (Mr. Njoroge) on behalf of the Minister for Health and Welfare (Mr. Mwangi)

Local Government Loans Authority Annual Report, 1959

By the Minister for Local Government and Lands (Mr. Horrocks)

The Kwale Forest Rules, 1960

By the Minister for Tourism, Game Forests and Fisheries (Mr. Guinness)

NOTICE OF MOTION

TRANSFER OF POWERS (FARMAL HUSBANDRY)

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKevitt): Mr. Speaker, Sir, I beg to give notice of the following Motion:—

That this Council approves the Order and its Transfer of Powers (FARMAL HUSBANDRY) (No. 2) and (No. 3) Orders, 1960.

ORAL ANSWERS TO QUESTIONS

QUESTION No. 25

Mr. Commissioner Edward Williams (Nairobi North) asked the Acting Chief Secretary what the Chief Secretary knows the cost of Mrs. M. Roper, M.B.E., and those of her many associates who claimed a pension after nearly 24 years' service?

The Acting Chief Secretary (Mr. Griffith-Jones): Mrs. M. Roper, to whom the question refers, did not reside as an employee of the Kenya Government but as an employee of the East Africa High Commission. In these circumstances her cost does not come within the jurisdiction of the Kenya Government.

Mr. Alexander: Mr. Speaker, Sir, asking out of that reply does the Government feel an obligation to its officers who have been employed in Government establishments in Kenya?

The Acting Chief Secretary (Mr. Griffith-Jones): It certainly discharges its obligations.

Sir Charles Markham: Mr. Speaker, in view of the fact that the High Commission is helped by the Kenya Government will the Chief Secretary not intervene in this matter on behalf of the lady concerned?

The Acting Chief Secretary (Mr. Griffith-Jones): The hon. Member's representations can well be addressed to the High Commission.

Sir Charles Markham: Why not you?

Mr. Blundell: Could not the Government of Kenya in view of its association with the High Commission, interest itself on behalf of a Kenya citizen for whom it must accept responsibility?

The Acting Chief Secretary (Mr. Griffith-Jones): That is an entirely specious question, Mr. Speaker—

An hon. Member: Question! Question! Question!

An hon. Member: Withdraw!

The Speaker (Mr. Slade): Order!

The Acting Chief Secretary (Mr. Griffith-Jones): The answer is that the Government looks after its own interests and its own employees and accepts no responsibility for the employment of others otherwise than in regard to the prescription of conditions of employment under the law.

Sir Charles Markham: Do I understand from that that the Government does not recognize the East Africa High Commission.

Mr. Alexander: Briefly, Sir, if Government, as according to the reply from the Acting Chief Secretary, considers itself not responsible for mitigating the circumstances of Kenya citizens in the employment of the High Commission, how does it expect the voice of Kenya to reach the High Commission effectively?

The Acting Chief Secretary (Mr. Griffith-Jones): Through postal services or direct.

An hon. Member: Or the telephone.

Mr. Blundell: Mr. Speaker, does not the hon. Member accept that the Kenya Government has a rightful interest in the working of the High Commission, and the Kenya Government is entitled to express views to the High Commission.

An hon. Member: Hear, hear!

Mr. Blundell: Surely the hon. Member cannot wash his hands of the High Commission just because it is convenient at this particular moment.

The Acting Chief Secretary (Mr. Griffith-Jones): Mr. Speaker, Sir, the Kenya Government has no mandate or warrant for interfering in the details of the terms and conditions of service and the personnel management of the High Commission in regard to its employees.

QUESTION No. 143

Mr. Mallo asked the Minister for Internal Security and Defence whether the Government would allow the hon. Member for Nyanza North and relatives of Elijah Masinde to visit him?

The Temporary Minister for Internal Security and Defence (Mr. Ellerton): Mr. Speaker, Sir, I beg to reply. If applications for such visits are made, these will be considered on their merits and in the light of circumstances prevailing at the time.

Mr. Odiga: Mr. Speaker, Sir, will the Minister explain further and a bit more definitely and precisely?

An hon. Member: Speak up!

Mr. Odiga: What does he mean by saying it will be considered?

The Temporary Minister for Internal Security and Defence (Mr. Ellerton): Mr. Speaker, Sir, I can only repeat what I said, that these applications, if they are made, will be considered on their merits, and in the light of the circumstances prevailing at the time when the applications are made.

Mr. Odiga: Mr. Speaker, Sir, such replies are unsatisfactory.

Hon. Members: Speech, Speech!

Mr. Odiga: And we would like the Government to satisfy us over these things.

Mr. ole Tipla: Mr. Speaker, Sir, does the Minister imply that the hon. Member for Nyanza North has never approached his Ministry on the question of allowing him to visit Elijah Masinde?

The Temporary Minister for Internal Security and Defence (Mr. Ellerton): Mr. Speaker, Sir, I did not imply anything of the kind.

BILLS

FIRST READINGS

The Rules of Court Bill

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

The Public Collections Bill

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

Tuesday, 15th November, 1960

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

(Mr. Speaker (Mr. Slade) in the Chair)

PRAYERS

COMMUNICATION FROM THE CHAIR

DEATH OF GROUP CAPT. BRIGGS

The Speaker (Mr. Slade): Hon. Members, it is with the deepest regret that I have to inform you of an event which only came to my notice within the last hour, that is the death in London of our colleague Group Capt. Briggs.

We in this Council have come to learn how to value each other, regardless of political differences, for our intrinsic worth, and I know that now all hon. Members will wish to pay a last tribute in this Council to a man of great courage and high principle, honest and honourable, always loyal to his own ideals, gentle in his strength, and in every respect a very gallant officer and gentleman.

I would ask you now, hon. Members, to stand with me for a few moments in silence to remember him.

Members stood for a minute in silence.

ADMINISTRATION OF OATH

The Oath of Allegiance was administered to the following Member:—

Edward Pim Rigby.

PAPERS LAID

The following Papers were laid on the Table:—
Annual Report Transport Licensing Board, 1959.

Statistical Abstract, 1960.

(By the Acting Chief Secretary (Mr. Griffith-Jones))

The Price Control (Sugar) (Amendment) Order, 1960.

The Price Control (Maize and Maize meal) (No. 2) (Amendment) (No. 2) Order, 1960.

(By the Minister for Finance and Development (Mr. MacKenzie))

Report of the Quinquennial Advisory Committee, 1960, on Higher Education in East Africa.

(By the Temporary Minister for Education (Mr. Miller))

Kenya Government Flax Fund: Income and Expenditure Account for year ended 30th June, 1960.

The Marketing of African Produce (Central Province Collection of Coffee Levy) Regulations, 1960.

The Grading of Wheat for Local Purchase (Amendment) Rules, 1960.

(By the Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie))

European Hospital Fund Authority Annual Report, 1959.

(By the Minister for Labour, Social Security and Adult Education (Mr. Ngala) on behalf of the Minister for Health and Welfare (Mr. Mutimili))

Local Government Loans Authority Annual Report, 1959.

(By the Minister for Local Government and Lands (Mr. Havelock))

The Kwale Forest Rules, 1960.

(By the Minister for Tourism, Game, Forests and Fisheries (Mr. Crosskill))

NOTICE OF MOTION

TRANSFER OF POWERS (ANIMAL HUSBANDRY)

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): Mr. Speaker, Sir, I beg to give notice of the following Motion:—

THAT this Council approves the Orders cited as Transfer of Powers (Animal Husbandry) (No. 2) and (No. 3) Orders, 1960.

ORAL ANSWERS TO QUESTIONS

QUESTION No. 145

Air Commodore Howard-Williams (Nairobi North) asked the Acting Chief Secretary will the Chief Secretary review the case of Mrs. M. Bates, M.B.E., and those of her many associates, who claimed a pension after nearly 14 years' service?

The Acting Chief Secretary (Mr. Griffith-Jones): Mrs. M. Bates, to whom the Question refers, did not retire as an employee of the Kenya Government but as an employee of the East Africa High Commission. In these circumstances her case does not come within the jurisdiction of the Kenya Government.

Mr. Alexander: Mr. Speaker, Sir, arising out of that reply does not the Government feel an obligation to its citizens who have been employed in Government consistently in Kenya?

The Acting Chief Secretary (Mr. Griffith-Jones): It certainly discharges its obligations.

Sir Charles Markham: Mr. Speaker, in view of the fact that the High Commission is hoped by the Kenya Government will the Chief Secretary not intervene in this matter on behalf of the lady concerned?

The Acting Chief Secretary (Mr. Griffith-Jones): The hon. Member's representations can well be addressed to the High Commission.

Sir Charles Markham: Why not you?

Mr. Blundell: Could not the Government of Kenya in view of its association with the High Commission, interest itself on behalf of a Kenya citizen for whom it must accept responsibility?

The Acting Chief Secretary (Mr. Griffith-Jones): That is an entirely specious question, Mr. Speaker—

An hon. Member: Question! Question! Question!

An hon. Member: Withdraw!

The Speaker (Mr. Slade): Order!

The Acting Chief Secretary (Mr. Griffith-Jones): The answer is that the Government looks after its own interests and its own employees and accepts no responsibility for the employment of others otherwise than in regard to the prescription of conditions of employment under the law.

Sir Charles Markham: Do I understand from that that the Government does not recognize the East Africa High Commission.

Mr. Alexander: Briefly, Sir, if Government, as according to the reply from the Acting Chief Secretary, considers itself not responsible for mitigating the circumstances of Kenya citizens in the employment of the High Commission, how does it expect the voice of Kenya to reach the High Commission effectively?

The Acting Chief Secretary (Mr. Griffith-Jones): Through postal services or direct.

An hon. Member: Or the telephone.

Mr. Blundell: Mr. Speaker, does not the hon. Member accept that the Kenya Government has a rightful interest in the working of the High Commission, and the Kenya Government is entitled to express views to the High Commission.

An hon. Member: Hear, hear!

Mr. Blundell: Surely the hon. Member cannot wash his hands of the High Commission just because it is convenient at this particular moment.

The Acting Chief Secretary (Mr. Griffith-Jones): Mr. Speaker, Sir, the Kenya Government has no mandate or warrant for interfering in the details of the terms and conditions of service and the personnel management of the High Commission in regard to its employees.

QUESTION No. 148

Mr. Muliro asked the Minister for Internal Security and Defence whether the Government would allow the hon. Member for Nyanza North and relatives of Elijah Masinde to visit him?

The Temporary Minister for Internal Security and Defence (Mr. Ellerton): Mr. Speaker, Sir, I beg to reply. If applications for such visits are made, these will be considered on their merits and in the light of circumstances prevailing at the time.

Mr. Odunga: Mr. Speaker, Sir, will the Minister explain further and a bit more definitely and precisely?

An hon. Member: Speak up!

Mr. Odunga: What does he mean by saying it will be considered?

The Temporary Minister for Internal Security and Defence (Mr. Ellerton): Mr. Speaker, Sir, I can only repeat what I said, that these applications, if they are made, will be considered on their merits, and in the light of the circumstances prevailing at the time when the applications are made.

Mr. Odunga: Mr. Speaker, Sir, such replies are unsatisfactory.

Hon. Members: Speech, Speech!

Mr. Odunga: And we would like the Government to satisfy us over these things.

Mr. ole Tiplat: Mr. Speaker, Sir, does the Minister imply that the hon. Member for Nyanza North has never approached his Ministry on the question of allowing him to visit Elijah Masinde?

The Temporary Minister for Internal Security and Defence (Mr. Ellerton): Mr. Speaker, Sir, I did not imply anything of the kind.

BILLS

FIRST READINGS

The Rules of Court Bill

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

The Public Collections Bill

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

The Penal Code (Amendment) Bill

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

The Vasey Pension Bill

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

The Agriculture (Amendment) Bill

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

The Insurance Companies Bill

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

COMMITTEE OF WAYS AND MEANS

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

IN THE COMMITTEE

[J. J. M. Nyagah, Esq., in the Chair]

MOTION**EXEMPTION FROM INCOME TAX: WELLCOME TRUST EMPLOYEES**

The Minister for Finance and Development (Mr. MacKenzie): Mr. Chairman, Sir, I beg to move that this Council approves the exemption from tax for the year 1960 and succeeding years of the income received by virtue of their employment in Kenya by non-residents of East Africa employed by the Wellcome Trust on research work.

Sir, section 12 (2) of the East African Income Tax (Management) Act provides that the Governor may, with the approval to be signified by the Legislative Council and by order published in the Gazette, provide that the income or class of income accrued in, derived from, or received in a territory shall be exempt from tax to the extent specified in the order.

As the House is aware, Sir, exemption from tax on income has been granted in Kenya to officers of the International Co-operation Administration and to American citizens employed by the United States of America Department of Agriculture. The Wellcome Trust has now represented that it should be granted similar treatment. The Wellcome Trust, Sir, is an international charitable organization which devotes its funds to the support of scientific, medical, biological and other researches in all

parts of the world. Kenya has so far benefited from the Trust to the extent of some £200,000 which has been expended on the building of a laboratory at Kabete for research into foot-and-mouth disease and East Coast fever, a modern up-to-date library at the Medical Research Laboratory in Nairobi as well as research projects in medicine. All expenses connected with such researches are entirely met by the Wellcome Trust from funds derived from outside Kenya and these expenses include salaries, purchases of scientific equipment, pensions, travelling expenses, and they involve the Kenya Government in no expense whatsoever.

I would, Sir, like to take this opportunity of expressing formally the thanks of the Government, and I am sure of the Committee and of the people of Kenya generally, to the Wellcome Trust for the very generous way in which they have assisted us in these matters.

I think, Sir, in view of this, that the House will agree with me that it is now appropriate that we should place the activities of the Trust on a formal basis and I should like to tell the House that an agreement is in preparation between the Trustees and the Government similar to agreements which have been made with other countries in which the Trust operates. One of the points in the agreement—but, as I say, I am sure the House will agree with me that in view of the benefits we receive it is a reasonable one—is that it is proposed to exempt overseas scientific personnel of the Trust working in Kenya, and whose salaries and other emoluments are paid from outside the Colony, actually from London, that these should be exempted from income tax, personal tax and hospital tax.

Sir, I beg to move.

Question proposed.

The question was put and carried.

The Minister for Finance and Development (Mr. MacKenzie): Mr. Chairman, I beg to move that the Committee do report to Council its consideration of the Resolution on the Order Paper and its approval thereof without amendment.

The question was put and carried.

The House resumed.

[Mr. Speaker (Mr. Slade) in the Chair]

REPORT

Mr. Nyagah: Mr. Speaker, Sir, I am directed to report that the Committee of Ways and Means has approved a Resolution in the terms of the Motion on the Order Paper without amendment.

The Minister for Finance and Development (Mr. MacKenzie): Mr. Speaker, Sir, I beg to

[The Minister for Finance and Development] move that the Council doth agree with the Committee in the said Report.

The Acting Chief Secretary (Mr. Griffith-Jones) seconded.

Question proposed.

The question was put and carried.

MOTION**SALARY SCALE OF ALL POLICE RANKS**

Mr. Commodore Howard-Williams: Mr. Speaker, Sir, this Motion has had several vicissitudes in its short life. The only thing is that no one on the Government side has yet said whether they are going to raise the pay of the police or not and by how much.

Despite the eminently sound arguments developed by those who supported me on the last occasion, during the debate I began on 27th October, an abortion was ably procured by my friend the Member for Mombasa but as it stands at present no one except my friends and myself seem to be doing anything about getting more pay for the police.

There is need, Sir, to change the policy under which the pay of the police is no longer tied to the pay of the Customs Department and the Prisons Service. There is need to raise the pay and or the allowances of the police to make it a worthwhile service, and there is need, Sir, to provide them with command pay; and those are issues which surely matter. There is one proviso I must make: it is that I feel certain that the Commissioner of Police is ably doing his best behind the scenes to point the argument. It so happens that Mr. Culling and I live next door to each other, but I ask the House to accept that I have not seen him on this issue and that in fact, like good neighbours, we hardly ever see each other. Therefore I come to the House with completely clean hands. After the last debate, by accident, I happened to run into a couple of top 'coppers' at a cocktail party. They told me not only that the police were in their opinion thoroughly in control of the situation in Nairobi but they gave credit to the Africans for a great measure of that control. Those words, Mr. Speaker, augur well for the future.

I therefore, Sir, wish again formally to propose the Motion.

Mr. Cooke: Mr. Speaker, in seconding this Motion I think I would be right in saying that there is no measure in this country with which there would be so much agreement as on the necessity of preserving law and order in Kenya. Now, I feel very strongly it is essential if law and order are to be preserved that we must

have an efficient and loyal police force. We have seen what has happened in the Congo during recent months where there is a vacuum left in the change of government, and although people may say that that sort of thing cannot happen in Kenya—and I do not think myself that it is likely to happen—still we must make assurance doubly sure and there is no way, as I have said, of making it surer than by having a loyal and contented police force.

I myself in the past have been a critic of the police because at times I have thought that their discipline was not so good as it should have been, and I think the best friend of the policeman is the man who will sometimes criticize him and keep him up to the mark. But I think I read in the paper the other day that even Mr. Culling himself, the Commissioner of Police, is rather perturbed or at any rate he said he wished that the calibre of the police could be improved. It may be argued as far as police salaries are concerned, Sir, that they are out of proportion to other salaries in this country. That might be the line taken by my hon. friend the Minister for Finance, but I think it must be remembered that a man must be paid according to his responsibility, and the responsibilities of the police, especially in this transitional period, are infinitely more than, for instance, the responsibilities of a man—and I am not saying this in any disparaging terms—working in the Statistical Department of this country. He has not got anything like the responsibilities that are thrown on the police every day, and especially on the more junior policemen like the Inspectorate who are serving alone, possibly in distant parts of this country.

Now, I am very much fortified in what I have been trying to say by what Mr. Butler said in the House of Commons the other day. Mr. Butler, of course, is the Home Secretary. He put it very strongly when he said: "By far the most important thing we can do for law and order is to see we have a strong, more highly recruited and better paid police force." I think this coming from a man like Mr. Butler—whom everyone would regard as one of the most prominent statesmen in England—will ensure that I have said enough when I say that it is absolutely necessary that we should improve the pay and prospects of the Police Force.

For that reason I very strongly second the Motion.

Question proposed.

Mr. Hassan (East Electoral Area): Mr. Speaker, Sir, I have frequently had the honour of hearing on the floor of this Council a good many questions and Motions by my hon. friend, the Mover of this Motion. They have always been very

[Mr. Hassan]

amusing and pleasing to us all, although I have not always supported them or had the same opinion as the Mover of the Motions in question in the past. This Motion that he has moved I very wholeheartedly support. There is no doubt, Sir, that among the police rank and file in this country are some bad fellows, but their number is negligible. The overwhelming majority of the police personnel are persons who have done extraordinarily good work in this country. We feel great pride in having such a police force in Kenya. The law and order they have kept from the time that they dealt with *Mau Mau* to this day has been the most spectacular in any part of the world. I feel, Sir, that this is the time, that this is the one force, the one department in Kenya the members of which need to be paid according to dignity and honour, so that they can maintain the law and order so badly needed in this country when we are going to have a revolutionary change in the present Government.

I have great pleasure in supporting this Motion.

Mr. Blandell: Mr. Speaker, I only want to say a few words in support of the Motion. I think most of the really operative thoughts have already been given to Council by previous speakers. Allied with pay is the necessity of bettering the housing conditions of the police, and I would think that the Government are well aware of that. I would only urge in deciding the priorities in the Development Programme that that is not lost sight of.

Secondly, I want to endorse what was said by the hon. Member for the Coast about the increasing responsibilities which will and are falling on the police. That will be particularly brought home to Members of this Council if they read some of the Bills which are about to come before us over the preservation of public order or the control of public meetings and of that sort, where considerable executive responsibility can, in certain circumstances, fall on a policeman.

Lastly, Sir, I wanted to speak before hon. Members opposite because I cannot help but suspect that whoever replies will inform us that there is already in being a Salaries Commission which will, of course, investigate this matter and in due course make such wise recommendations as it thinks fit to the Government and to this Council. In anticipation of this delaying action by hon. Members opposite, I wanted to hear from whoever does speak for the Government that proper representations in regard to the police have been made to the Salaries Commission; and that, of course, if the Government is not satisfied with the findings of the Salaries Commission they will indeed review the situation in the light of the Motion.

Mrs. Shaw: Mr. Speaker, I should like to support this Motion in the strongest possible terms. I think the wording of the Motion speaks for itself where it says, Sir, "that they may receive pay commensurate with their dignity and duty". The police are on active service most of the time. They have very often to carry out their duties under the most difficult circumstances and very often—in fact too often, alas—without the co-operation of many of the citizens of this country. They have to act quickly, think quickly, and yet preserve a complete sense of responsibility. They must be above bribery and therefore they should have pay which is not only commensurate with their duty and responsibility but which puts temptation out of their reach.

All ranks, I think, show this initiative in acting and thinking quickly in the police and I should like to pay special tribute to the sergeant at Langata Police Post when the other night a call came through to say that just behind where I live a pride of 14 lions were attacking a farmer's cattle. That sergeant showed the greatest initiative. He dialled 999 and two 999 cars came from opposite directions and within five minutes were on the spot. There were two European officers there as well as *askaris*. He then radioed the Game Park Warden. I think that showed great initiative, and he handled the situation, which you must admit was an unusual one, in a very excellent manner.

I give this Motion the strongest support I can.

The Temporary Minister for Internal Security and Defence (Mr. Ellerton): Mr. Speaker, Sir, in the form in which this Motion by the hon. and gallant Member for Nairobi North has become both a starter and a runner, it is acceptable to the Government.

Mr. Speaker, I am grateful for the well deserved tributes which have been paid to the police force and I would take this opportunity of adding my own. I am constantly reminded in my daily work of the force's efficiency, its integrity, its impartiality and its devotion to duty. Police work, Mr. Speaker, is always important, often exacting, and sometimes dangerous. In recent years this work has undoubtedly increased both in intensity and in complexity. Not only do the police have to deal with law-breakers who are developing all the time a higher standard of law-breaking; but for the police there can be no eight-hour day or 54-day week. The whole 24 hours have to be covered for seven days a week. Even brief moments of recreation are liable to interruption, as I saw for myself last week-end when I was engaged in a sporting contest with the Kenya Police. Private social engagements are often disrupted at short notice, or at no notice at all.

[The Temporary Minister for Internal Security and Defence]

In spite of all this, Mr. Speaker, the morale of the police remains high and the force responds loyally to the many new demands which are constantly being made upon it. The Commissioner, his officers and all ranks of the force indeed deserve well of the Colony.

As the Police Commission pointed out in 1954, Mr. Speaker, in theory the principle to be applied to police salary scales is simple enough and does not differ from that applicable to any other branch of the public service. The scales of pay should be sufficient to attract the right quality of recruit in sufficient numbers and to retain them in the force in a state of reasonable contentment. The hon. and gallant Member for Nairobi North is, of course, quite wrong when he states that police terms of service are tied to those of the Customs Service and of the Prisons Service. That is not so. The practical application of the principle which I have enunciated, however, must import an element of comparison with other Government salary scales, although in the case of the police force it must also be borne in mind—and it is borne in mind—that the standards of character and physique needed in the police service I have said, Mr. Speaker, of any rank has exacting duties to perform. These duties demand standards of character and integrity which cannot be relaxed. The Government recognizes that if a police officer is always on the verge of financial embarrassment, both the integrity and reputation of the force will assuredly suffer. Nor, Mr. Speaker, as the hon. Specially Elected Member opposite pointed out, is pay the only consideration. We must have regard to other conditions of service, in particular to housing, and this is recognized in my Ministry's Development Plan for the next three years, which gives absolute priority to housing in the two uniformed services for which I am at present responsible.

Now, Mr. Speaker, I will not disappoint the hon. Specially Elected Member sitting opposite me, and I will say that the Council will be aware that the rates of pay and terms of service of all Government servants, including, of course, the police force, is a subject which is at present under consideration. I can tell him, however, that the Commissioner of Police and I have personally discussed with the Commission which is examining these matters the position of the police force. I think it would be quite improper for me to say any more than this at the present time, and for the same reason I hope that I will be excused by the hon. and gallant Member for Nairobi North for not commenting on the particular proposals which he put forward when he spoke in the

earlier debate and which he referred to briefly today. I must say, Mr. Speaker, that whatever recommendations may be made by the Salaries Commission in this respect will clearly have to be considered by the Government in the light of our financial circumstances and resources, and it would be quite unrealistic not to recognize this. I do give the Council an assurance, however, that to the best of its financial ability, police terms of service will reflect the duties and responsibilities which the force is called upon to assume today and which it assumes so conspicuously well.

Mr. Speaker, I beg to support.

Mr. Odiga: Mr. Speaker, Sir, I rise to support the Motion and also to pay a little tribute to the present Minister for Defence, a man whom I have happened to know for very many years back. Our approach to life at that time agreed very well indeed, and even today I am not ashamed to say that his approach to this particular problem has also pleased me.

I will only say a few words, Mr. Speaker. As far as the police force in Kenya is concerned, I must remind the hon. gentleman that it is something which must be taken very, very seriously indeed because—as one of my colleagues from this side has just rightly mentioned—if we are not careful, what happened in the Congo could easily happen in this country. I am not so optimistic as he is because I know that the terms in the police force in the Congo were much better than they are in Kenya. The police in the Congo at that time—and I have been in the Congo three times—were very honourable people really in the way they treated people they experienced in this country. Therefore, if somebody is thinking that what happened in the Congo cannot happen here, I would say that he is deceiving himself. The adjustment of the police pay in this country is very much overdue. It is in arrears and the sooner we do something quickly to raise it the better. We should not compare the police with the other civil servants or some other professions, because the police have got great responsibility and their work leads them into real temptations.

There can easily be corruption if something is not done; and they must be considered specially. I quite agree with the Minister when he says that we must always be very careful in selecting the right type of people to fill these posts because it is a post which carries great responsibility and which is really honourable, and a man who handles it must be a man who is human in his nature, and a man who can actually feel for the other people as he would like the other people to feel for him.

[Mr. Odings]

I thought that the Minister did not really take this Motion as I took it in that he was concentrating on police officers and the other ranks of police, but I thought that here the word "ranks" included the constables, which means the whole police force right up from the constables will be considered. I would like to expand a little bit more, Mr. Speaker, on this to say we should not be content with the salary scales and so on in relating to such, but we must also treat all the police equally, whether they be Europeans, whether they are Indians or whether they are Africans. Let them have the same uniform. I have never seen a difference of uniform in Great Britain or in other countries. This difference in treatment will always bring discontent.

With these few remarks, Mr. Speaker, I beg to support the Motion.

Mr. ole Tipli: Mr. Speaker, Sir, I rise to support the Motion, because we are all delighted to hear from the Government that it accepts a Motion of this importance, because whatever we feel, or whatever our intentions are, we cannot afford to slacken our efforts in promoting the police force in this country. It is good for the preservation of law and order, and we must maintain the highest efficiency possible.

Now, Mr. Speaker, I think we have all seen a great improvement in the efficiency of our police force from a few years ago up to now, and I think we are all very, very grateful. Now while we should do all possible to maintain that standard of efficiency and improve it even higher than it is today, I think it is of the utmost importance that the police force should really be encouraged. Their terms and conditions of service should be second to none if we are to have the right people to man the police force of this country.

Now it all goes together with the sort of training we give to our would-be policemen, and I am glad that the Kiganjo school is doing a very good job, but all the same, I am not very, very happy personally when it comes to the higher ranks of the police force, to find that the number of superintendents we have, especially Africans, are very, very few, and I am just wondering whether it is not high time the Government "pulled up its socks" a bit and sent a few of our capable young officers with adequate education abroad to get training and then serve this country better when they come back.

Now the other thing also, Mr. Speaker, is that as far as other ranks are concerned, I should have thought that we should be a bit selective in recruiting police recruits. I know it is very, very difficult to tell who would be a suitable police-

man, but all the same we should be a bit selective in trying to encourage at least those who are more educated to join the police force. By doing so I think even their training at Kiganjo would be made easier than it is today.

Now, the other thing, Mr. Speaker, is the posting of the police officers, because I know there are quite a number of outposts in remote parts of the country, and the officers and other ranks stationed in these outposts are charged with really an impossible task of trying to control a very large area, and I should have thought that such personnel should at least get an allowance because they live under very difficult conditions. They have not got access to day-to-day shopping facilities, and I think their case should really be considered.

Now while we all join hands in this Council in thanking the forces of law and order in this country I think we should not at any moment slacken our efforts. We know that you cannot expect a human being to be 100 per cent right, but we should not slacken our efforts at all in trying to improve it further, and also in trying to get rid of those men in the police force who have proved that they are not capable of the honourable task which they are charged to perform. If I may amplify here, I think I have seen quite a number, or a few, cases recently, especially on the main roads, when one drives along the road and there is a queue of cars in front of his car, and as soon as the policeman on the road sees a black face, he stops him, whereas the other cars in front of him driven by Europeans and Asians just a few yards away are allowed to go. When he is stopped he is simply asked for a driving licence. If it is a question of a driving licence, why are others exempted from this check? This sort of discrimination is sometimes what annoys us, and although the policemen are not all like that there are a few who think that it is only the African who can be at fault.

With these few words, Mr. Speaker, I beg to support.

Sir Charles Markham: Mr. Speaker, could I first of all apologize to the Mover of this Motion and to the Temporary Minister for Defence for being absent when it was introduced, but owing to the tragic news, Sir, which was mentioned, I had to take certain steps personally.

Sir, this Motion, which was a subject, I think I am right in saying, Sir, of your first point of order, when it was ruled out of order. It is a pleasant surprise to find that both sides of the Council are supporting it. I, Sir, have quite a knowledge of the police, both from the criminal side and from being a member of the Police Reserve. I am glad to say, Sir, in case there is

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some chance of this being misrepresented during the coming election, that my knowledge of the criminal side, Sir, is quite a long time ago.

The Acting Chief Secretary (Mr. Griffith-Jones): More than six months ago?

Sir Charles Markham: Sir, the Acting Chief Secretary says "More than six months ago?" If he does not know, Sir, he should do. Certainly his rate of pay will not be considered this afternoon.

Now, Sir, the first time, I think, in the history of this Council since the hon. Member for Central Nyanza joined us, I find myself in agreement with him, and whether that is a sign of the future, or alternatively something radically peculiar, I do not know. It might almost be a case of changing times, but nevertheless, Sir, his speech was, in my opinion, a speech which nobody could disagree with; particularly, Sir, when he talked about the question of the Congo situation as regards the police force. Now I did, Sir, the other day receive a report which was circulated in Great Britain, which to try and summarize a very lengthy report, gave as one of the reasons for the breakdown of the administration of the newly formed Congo Republic was the fact that the army and the police were a non-effective body in so far as law and order was concerned, but a very effective body in so far as personal looting was concerned. Now that is a thing we have got to avoid in this country, and that is one of the reasons why I support my hon. and gallant friend who moved this Motion.

Mr. Speaker, over the years we have had various Ministers in this House in charge of the Police and Prisons Votes, who have introduced their Estimates every year and we have generally been given a rather schoolmasterish lecture from the other side of this Council as to what the police and prisons were doing. Now this Motion only concerns the police, Sir, and therefore I must limit my remarks to that subject this afternoon, but to my personal knowledge African Member after African Member has asked in this Council for some Government statement regarding the promotion of the indigenous people into the gazetted ranks of the police, and if I may use by name, Mr. Speaker, because I cannot find any other description which will fit the parliamentary language, Mr. Cusack would always tell us in somewhat pompous tones how it was not possible for that to happen. Now I believe, Mr. Speaker, that the time has come when the Commissioner, in collaboration with the Commissioner, should take active steps to implement, if possible, the Motion which has been accepted by the Government side, but even more important to

take active steps to assist people of the subordinate ranks to undertake responsibility. I do not think we want in Kenya, Sir, a situation where a lowly paid corporal of the army then becomes a commander-in-chief. I happened, Sir, to be in the happy position during the war, for a short time, of being a corporal. I thought I was quite capable of being commander-in-chief, but unfortunately three million other soldiers did not agree with me. The result, Sir, was that I eventually moved up very slowly to the lowest officer rank possible in the British Army, as they say, of subaltern, where I had no responsibility but a certain amount of expense. But I do believe it would have been fatal in all the circumstances to have a situation where there is no African or somebody who is a Kenyan, if I may use the Member for Nairobi West's expression, in a position, not at the top, but somebody who is of the officer class, as opposed to the subordinate rank, or the other ranks as we know it in the army. That is why, Sir, when you read the terms of this Motion you must view with some alarm the present Government policy. Now we know there is an examination going on of the salaries of civil servants, and we know, Sir, the disappointment that they have not had an interim award.

But there is one aspect, Sir, which has been raised in this Council on so many occasions and which has now become almost sordid repetition, and that is this question of inducement pay. I would have thought that to get your best class of inspector, regardless of race, your local person does start off with advantage, which normally requires about a year or a year and a half to instil into somebody who is known as an expatriate. But, Sir, the rates of pay for all your inspectors are so low that quite frankly he is better off in some instances as a garage mechanic maintaining motor cars for the civil servants; I would suggest, Sir, that that is not meant to be any sort of silly crack at the Civil Service, but I think that the sense of proportion is now radically wrong. We have had instances only the other day which have proved my remark: these people are holding a position of great faith and trust, and if that trust does break then the country breaks with it. I would have thought that the Government, once again, could make the exception they made during the Lidbury Report on the police and make quite certain that your police officer, your junior police officer, who after all is the person who does all the actual field work and who takes the real responsibility, is given pay and allowances which allow him to exist and live without any danger of looking over his shoulder for another job. They have always said, Sir, that the people who fought the war—just to go back to the war for a moment—were the lowest paid and the

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safer you got away from the fighting was the higher pay you got. I believe that is equally true of security forces all over the world. I have every intention, if I can, Sir, of getting the highest paid job as far away from danger as I can if a war breaks out. Unfortunately, Sir, I reckon again that 3,000,000 others will have the same idea as myself so we will have to queue up for that one. But to come down to the police, Sir, I do believe, and I do know that the Commissioner has this in his mind, that the present pay of your inspectors, and, working down from there, Sir, your sergeants, your corporals, is not really realistic on today's salary scales which are paid in commerce or for equivalent responsibility. We can be told, Sir, and I do not know whether the Minister for Finance, who is back again in this country once more, will intervene and tell us that we cannot afford it; but I have always believed that one of the errors made by colonial governments—and this does not necessarily apply to Kenya—is that they asked for quantity rather than quality. I would rather see a happy and contented police force than I would see a mass of what might well be called a kind of semi-military organization.

Now, Sir, the hon. and gracious lady for Nyanza mentioned in her speech and I think back to the time when I made my maiden speech in this Council, Sir, about five and a half years ago, when I referred at that particular time to a sort of para-military organization, and I was promptly hauled over the coals by the Minister for Defence at that time, Mr. Cusack. As, Sir, he is not here now, I can explain what I meant without any question of offence. What I have always believed is this: you either have a police force or an army, but do not try to make your army a police force and do not try to make your police force an army. I believe that in Kenya that error has taken place, not because of policy or because of circumstances, and the Emergency proved that. As this Motion has been accepted by the Government, Sir, I would like to see it implemented. I can give one example which perhaps might be of interest to the House, and that is the fact that the pay of a constable who has gone through the training school at Kiganjo, and is then posted to his first station, is less per month, and probably inferior housing too, than the average person who works as a servant in a house. I can be told, Mr. Speaker, that the country cannot afford anything better but in view of the support given to this Motion by all speakers on this side of the Council, of all races, I would have thought that the country could say, "We cannot afford not to have the situation where your police force is of such quality and of such loyalty." Then there is no danger at all of cost being considered which was

an aspect mentioned by my hon. and gracious friend the hon. Member for Nyanza.

"We could have a Motion which could be moved by somebody in the new Council, I hope, concerning the King's African Rifles, but that does not concern the Motion today; but there has been a habit, Mr. Speaker, over the years, of a presumption, through financial difficulties, of loyalty, and presuming that because they are civil servants they must accept your conditions of service or get out. That was a perfectly fair argument when recruitment was easy, but now we are going to require more and more to call upon the services of local people for our security forces, and I believe that people will say that they are going into a job as a career. "Please I must not be penalized by going into that job."

Now, my final point, Mr. Speaker—and I apologize to the House for having kept them so long—is one thing on which I would appeal, as I believe this will be the last time probably in this Council that the police will be discussed under their own item on the Order Paper. It is the question of the abuse of the police which seems to appear regularly in every court case in Kenya involving the evidence of a police officer and defending counsel, and the fact that still, despite the eloquent speeches made by my hon. friends with whom I agree entirely, the police are not the friends, or appear not to be the friends, of the population. Sir, I have said this in this Council now for four or five years, almost every year, but I wish there was some method whereby the person breaking the law and who the police try to apprehend would be apprehended by the public and handed over to the police. At the moment in Kenya it appears, particularly in parts of Nairobi, and in a particularly infamous area which I call the Macfakos bus stop, that the police's opportunity here of assisting the public in the maintenance of order is remote without almost a riot squad going in. You have the atmosphere where 90 per cent of the population is against the police. Now, Sir, it may be very popular with the Solicitor-General in Ireland where everybody is against the authority. It is no good the Solicitor-General shaking his head, Sir, but they have always thrived on and loved it, the Irish, as one of their national pastimes, exactly the same as winning the Grand National in England is the other one; but I think in Kenya it is too dangerous to have that situation where the police are always in the wrong. I would urge upon my African friends, most of whom will be competing in this coming election, that unless they can get the population to support the police then, Sir, you can hardly ask the police to support the population. I would also, Sir, before I sit down, make one final plea on this issue. When we

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come down to the fact that any time a police officer gives evidence in a court, and I can only quote from Press reports as opposed to the other cases which may not even get printed, that police officer is virtually accused every time by defending counsel, or this appears to be the case at any rate, or by the accused if he defends himself, of committing perjury. Nothing must be more unpleasant for your police officer, regardless of his rank, who comes in to do his duty, to enforce the law which, after all, is the Law of Kenya and passed by this Council, to find that every time he is really the guilty party and the brutal citizen, or the hired assassin of a brutal State. I hope, therefore, Sir, that we can get rid of that one.

In conclusion, Mr. Speaker, I have spoken at length—and once again I apologize—but all of us are proud of our police force; all of us want to see a contented police force. There are methods outside actual cash which can solve it. I believe that Mr. Catling, who took over at a time when the police force was divided amongst itself owing to a policy of the previous Commissioner which did not satisfy the Government at the time, has had a most difficult job. He has, I believe, in his force some of the finest material of any colony or even of any self-governing territory. Sir, give those people the chance; give your Africans a chance to move up the scale; give your Africans the chance to know that they are in a force whose motto, which we know so well today, *Salus Populi*, does mean that and does not mean a uniform just to keep the African down.

Public relations, Mr. Speaker, are a problem far beyond the scope of this Council this afternoon, but they have got one valuable function, to explain the police force themselves, their functions, their difficulties, and I believe, Sir, from both sides of the Council today, if we knew some of the personal difficulties, some of the personal financial problems which are resultant from the salary scales in operation today, this Council, Sir, would not move a Motion such as has been moved by the hon. and gallant Member; it would instruct the Government, and Sir, the Members of the Government behind the front bench would accept it, too.

Sir, I am grateful to Government for accepting this Motion and I pray that they will take action quickly because I believe this is of fundamental importance.

Mr. Kirpal Singh Sagoo (Nominated Member): Mr. Speaker, Sir, the Motion, as worded, refers to all ranks in the police. I do take it, Sir, that it is not confined to all ranks in the regular police force. There is another police force and that is the Kenya Police Reserve, which is doing a wonderful job of work and, in fact, is filling in a vital

gap in maintaining the law and order and security in this country. I would like to seek an assurance, Sir, that this fine body of men and women who, apart from doing their duty in the ordinary station of life, come in and put up voluntary work in the evenings and in the late hours of the night so that our homes and properties and our lives may be safe. I do feel, Sir, that, in calling for a revision of the salary scales of the police force, the Reserve will not be forgotten.

I beg to support, Sir.

Mr. Muliro: Mr. Speaker, Sir, I also join the list of hon. Members who have thanked the hon. Member for Nairobi North for having moved this Motion in the Council.

In this Council, Mr. Speaker, African Members have from time to time insisted that the Government must pay improved salaries to the police force, because that is the only condition whereby the best brains could ever be attracted to the police. We have said that whatever complaints the public might have about the police may be mainly due to the fact that the people recruited to the police force have not got high education and simply because the salaries are so poor that they do not attract the best brains among the Africans. Also we have had complaints that there have been instances where people have gone and complained that some police are being bribed, although there is not much ground on this issue, but all the same one cannot argue much against it. Corruption in the police force has been there mainly due to the fact that the police force has been underpaid.

Now, Mr. Speaker, on this issue of the police force, the housing should also be considered along with the salaries when the Government comes to improve the salaries, because, as far as the African police force is concerned its members are very poorly housed; they live in small tents which are very hot during the day, and in fact when a person has got a family the house is not at all comfortable. One policeman in my constituency asked me to go to his house; I was very disappointed in this, but I am pleased that the Minister for Defence will take this opportunity to review the whole situation and the conditions affecting the police force.

The point which I wanted to raise, Mr. Speaker—and I am now avoiding repetition—is the question of Africans being commissioned officers in the police force. When we were in London recently we saw the Colonial Secretary about Africans being commissioned officers in very large numbers both in the police force and in the army. I regard this as very, very important. Many Africans must be promoted, and if a better salary is given to them, as the Government has already agreed to do, then more Africans will be attracted;

promotion for these Africans is very, very important because the only main source of local power is the African in this country, and unless we get more Africans in the police force in responsible positions then even our future, which we look to as being bright, might not be so bright. However, if we start right now I think that future will be guaranteed.

With these few words, Mr. Speaker, I beg to support.

Mr. Nyagah: Mr. Speaker, I also rise before the House.

Often we have criticized the police force, but our criticism has been answered by the police by showing considerable improvement in the standards of behaviour to the public. One cannot help but admire the police when one sees them in very difficult circumstances such as one sees at large gatherings at public meetings. Sometimes the police force men are provoked, but of late instead of answering the provocation with provocation they have shown great wisdom and tolerance.

Mr. Speaker, Sir, I am glad that the Government has accepted this Motion as it stands because this is an appropriate time to remind the Chief Secretary and the Chief Commissioner that we are not only talking about the Kenya Police here, but we are also talking about the Tribal Police. They should not be forgotten. In the whole of the salary review the question of organization into various categories and ranks for this very efficient body of police, which is not often noticed by people who do not live in the so-called African areas, is very necessary. On Sunday, Sir, I happened to have attended a Remembrance ceremony somewhere in the country, and I saw members of the Tribal Police Force in a parade alongside with their brothers of the Kenya Police Force. There was virtually no difference in the standard; and it is for that reason that I say they should also be considered in this wholesale salaries review.

Mr. Speaker, Sir, the police force of three years ago is virtually going out. The people have changed; the public is also being more and more aware of good relations with the police; the public is co-operating more and more with the police and the police are also co-operating with the people. They should be rewarded for this improvement by having better houses, and I am aware that already in some places, especially at some posts started during the Emergency, something is being done in this direction and in some areas a better type of police housing is to be seen.

I must also congratulate the ordinary policeman, especially where you find a couple of unarmed policemen on their beat, walking sometimes a distance of three to four miles, answering the questions from the public and just making the people realize the necessity of keeping law and order.

I do most sincerely, Sir, thank the hon. Member for moving this Motion and initiating this debate, for it is at this very time that our Kenya police and tribal police must be considered and given due consideration commensurate with dignity and their duty.

I support the Motion.

Col. Cowie (Director of the Royal National Parks): Mr. Speaker, unlike previous speakers, what I have to say will be brief and not designed to be of interest to my constituents!

Sir, just before Christmas a short time ago I was walking up Regent Street in London when I saw a little girl in tears. She was obviously lost. Very soon an enormous policeman walked up towards her and her first expression was one of relief. The policeman then took her by the hand and marched her off, and I saw these two going down the street. The little girl was smiling and obviously the policeman was going to take care of her and find out where she lived. It is a sentimental little story, I admit, but it symbolizes in my mind what a police force means. If we in this country can get to the stage where we respect and admire the police force then that police force can be useful. As long as members of the public go on castigating the police and go on obstructing African policemen in their duty, go on trying to make out that they are incompetent, then they have no chance of being any better. There are of course black sheep in any family and I believe those who do not uphold the standards and pride of the force should be dealt with ruthlessly not only by their superiors but by the public. Therefore, Sir, I have pleasure in supporting with sincerity any move that might improve the standing and pride of the police force in Kenya, and I join those who pay tribute to its Commissioner, Mr. Catling.

The Minister for Finance and Development (Mr. MacKenzie): Mr. Speaker, Sir, my hon. friend the Minister for Defence has already informed the House that the Government can accept this Motion, and indeed, Sir, this is one of the occasions on which the Government can also say that a great deal of the work must already have been done because in fact the Salaries Commission has been at work for some considerable period.

There is one point that arises out of this debate which occurs to me and that is that I have no

doubt that the Salaries Commission members will read the report of this debate in the Press, and I think that we can also ensure that they are furnished with copies of the HANSARD so that they can see exactly what hon. Members of this House have had to say on this particular subject. That, Sir, I think, will satisfy all hon. Members that their views will be fully seen by the Commission.

Now, Sir, certain hon. Members have said that they do not think we should merely compare the police with other civil servants and that we should deal with them separately. I think that my hon. friend the Minister for Defence has answered that point but I would like to add, too, that it has of course always been the view of the Government that the salaries of the different types of public officer should always be dealt with separately and that it is not possible satisfactorily to deal with them by some overall yardstick such as the cost of living or anything of that kind (although that always is one of the factors that has to be taken into consideration) but that such questions as the standard of education required, the state of recruitment, the market value of the type of man one wants, are probably the most important of all factors to be taken into consideration and I am quite sure that these points will have been brought to the notice of the Salaries Commission by my hon. friend the Minister and by the Commissioner of Police when they saw them; but they will have brought home the important differences between policemen and other types of civil servants, and that will be taken into consideration when the recommendations of the Salaries Commission are reached.

There was of course one point that was made by the hon. Member for Ukamba and that was that improved terms of service will cost money, and he said that he thought that we ought probably in many cases to pay greater attention to quality and less to quantity if the amount of money was limited. Well, as all hon. Members know, the amount of money that can be raised from the taxpayer has got its limits and that sort of thing will have to be borne in mind. Of course, another thing that will have to be borne in mind, and which is indeed borne in mind every year when the Budget and the Estimates are under consideration, is the weight of expenditure as between the various different services of the Government, and I think that it is really a question of priorities; it is one that is always with us; and I can assure the House that we shall not allow the question of priorities to fall away.

I think, Sir, that the Minister for Defence has already dealt with the question of housing that has been raised by various hon. Members. I can

assure the House that this is a matter which the Government has always considered to be of the very greatest importance, that the police force should be housed as well as possible and as quickly as possible. It may appear on occasions that the progress being made is not as quick, as one would wish. I think the only answer one can give to that is that the same applies to so many other things. As we all know perfectly well, our needs in this country are almost limitless and unfortunately our resources are extremely limited. But within those limitations I can assure the House that the Government has been doing its best to ensure that police are given very, very high priority.

There were a number of other points that have been raised. The hon. Member for Central Nyanza said that he hoped that in dealing with this matter the Salaries Commission and the Government would start with the constables upwards and not merely deal with the higher ranks of the police. Well, Sir, I can of course give him a complete assurance on that point, that the Commission will cover the whole of the police service and that naturally the constables will be given full consideration. He also mentioned, Sir, that he hoped that all police would be treated equally and this was in particular related to the question of uniforms. There, Sir, I would like to give the hon. Member an assurance that here—as in all other countries—the uniform is based on the rank of the policeman and certainly not on any racial or any other basis. I think the hon. gentleman would agree with me that in other countries one does find differences in uniform based on differences in rank. That is the only significance, I can assure him, of any differences between uniforms of different ranks of policemen here.

Mr. Odindi: On a point of explanation, Mr. Speaker, may I know whether there are non-Africans serving as constables in the police force?

The Minister for Finance and Development (Mr. MacKenzie): I am afraid I should need notice of that question but offhand I do not think that there are any European constables in the force at the moment. Be that as it may, I can give a full assurance that on this question of uniforms there is no racial significance in it, and where one does find ranks in which there are members of all races I think the hon. Member will find that all the officers of that particular rank wear exactly the same type of uniform.

Sir, the hon. Member for Central Rift mentioned training and he said that he hoped that the brighter young officers would be sent abroad for training so that they could be brought ahead more quickly and I can give him an assurance that that is in fact being done at the present time. Selected

[The Minister for Finance and Development] police officers are sent abroad for training and that is a thing which will continue in the future. As regards the question of selectivity in recruitment and getting in more educated men, that of course is also a point which has been the policy of the Government for a considerable time and in order to improve the training I would like to inform the House that the course at Kiganjo has recently been increased in length from six months to nine months, i.e., by 50 per cent, and it will, of course, lead to a more highly trained body of men coming on to the beat.

As regards allowances in certain areas, which was another point that the hon. Members raised, I think most Members are probably aware of the fact that, at any rate in the Northern Province, there are special allowances for officers stationed there. As regards the rest of the Colony, it is always difficult to say where special allowances should be given and where they should not be given and it is often impossible to grant them in other places. But there is definitely this assistance given in the Northern Province.

Now, Sir, the hon. Member for Ukamba also spoke about the promotion of local people and said that he considered it was important to assist members of the subordinate ranks in taking greater responsibility. I can assure the House, Sir, that there again this is the policy of the Government and that we are anxious to see people promoted from the ranks when there are suitable people for such promotion. That is the policy of the Government throughout the whole of its services and it is one which has been pursued and which will be more and more pursued as one gets more people joining in the lower ranks with the educational qualities which suit them for further promotion. I think, Sir, that one of the main reasons why we are so anxious to get educated people into the various branches of the service, and this certainly includes the police, is that it is only in that way that one can bring on more and more people into the higher ranks. Certainly the whole policy of the Government is towards localization.

Now, Sir, there were one or two other points which have been made. My hon. friend, Mr. Kirpal Singh, said that he hoped that any new rates of pay that were introduced for the regular police would also apply to the police reserve. I am informed, Sir, that the position there is that the rates of pay of the police reserve are generally based on those of the regular force; and therefore any adjustments made in respect of the regular force will be passed on in the proper proportions to the police reserve.

The hon. Member for Northern Nyanza spoke of the need for having large numbers of African

commissioned officers and there, Sir, again, as I have said, the answer is that it is the policy of the Government to bring local people into the higher ranks of the Civil Service as fast as they can and naturally that applies to the African people who are in the majority. The question is that it does require training and, of course, it does require that there should be a sufficient field of people with the qualities that are needed to bring them up into those ranks. But I think that given those difficulties, and I am sure all Members of the House will appreciate that there are problems that have to be overcome, but within the limitations that there are, the Government certainly is fully aware of the importance of this particular question and is, in fact, pursuing it vigorously, not only in so far as the police are concerned but in so far as the rest of the service is concerned.

Finally, Sir, the hon. Member for Nyeri and Embu mentioned the tribal police and from this side of the House I would like to thank him for the tribute that was paid to the tribal police. We are all fully aware of the excellent work which they do and of their great importance in maintaining law and order in the Colony. I was also very glad, Sir, to hear his remark about the greater degree of co-operation between both the regular and the tribal police and the rest of the population. That is, of course, what we have all been aiming at and what we are all hoping for, and I am very glad to have the hon. Member's confirmation that that in fact is taking place. I can give him a full assurance that in the work of the Salaries Commission the tribal police will be considered just as well as all other members of the Service.

Sir, I think that this has been a useful debate and it has also been very pleasant in that a feature of it has been that it has been such a harmonious one. Sir, it gives me great pleasure to support.

Air Commodore Howard-Williams: Mr. Speaker, Sir, first of all I would like to say how grateful I am for the support from both sides of the House that I have received for this Motion. I am not altogether used to it, but it is all the more gratefully received.

The point I omitted to make at the beginning, in order to underline the whole issue, was the very fine behaviour of a small number of police at Ngong the other day whereby they undoubtedly saved a very much more serious situation developing. The interesting feature of that, Sir, was unquestionably the co-operation of the people concerned, the tribesmen concerned. One saw photographs of policemen taking care of some chaps who obviously did not want to be taken care of at all; and it was, I thought, a very good example of what the police can do and in point

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of fact do. I think, Sir, the points have been very well made by my hon. friends, rather than by me, and that there is not a very great deal for me to say; but if I may, very briefly, I will go through the points that have been made.

First of all the hon. Member for the Coast made the important point that responsibilities are getting greater every day for the police and I think that was well worth a note. The Member for Nyanza again pointed to the fact that it was an active service sometimes—and this must be said—without the co-operation of the community. That is regrettable; but I feel sure that training will put that right. The Minister for Defence courteously accepted the Motion and I was very grateful for that. I was very pleased, Sir, to hear him say that the police were not tied to other services for their pay and allowances. I wish to apologize to the House for referring to that fact. I got the information somewhere or other, but I am very pleased indeed that they are considered on their merits.

The Member for Nyanza Central was really very constructive. I felt, in his support and I would like to thank him for it.

Mr. Odunga: Thank you!

Air Commodore Howard-Williams: The Member for Central Rift made, I thought, an important point, Sir, which was well worth underlining, and that was that we should send abroad more of our local police to be trained. The hon. Minister for Finance has said that that is going to be done and I would like to accept that. The Member for Ukamba for the first time, Sir, at least in this debate—as he said—agreed with the Member for Nyanza Central. He drew an effective lesson from the Congo which I thought was important and said—and I would like to underline this, if I may—that we should take active steps to implement this Motion. I would not like this Motion just to stand as a bunch of words and then go down to the sea. I do not think that would be good enough.

The hon. Nominated Member, Mr. Cowie, said he went up Regent Street and gave us a fearful description of a little girl; but he did make an important point which was that we should do everything possible to improve the pride we have in our police force. I find them a very well dressed, well disciplined body of men; and anything we can do to help improve their pride the better. I feel, Sir, that the best way to do that is to increase their pay.

I have practically come to the end of what I have to say, Sir, except that there is need for some urgency about this. I want to see something done if possible. Many months have gone

by while the Civil Service pay is being considered, and I am hoping—perhaps a pious hope—that something will be done before Christmas. That should be a target date so that we can give our policemen a handsome Christmas present in the way of a jolly good rise in their pay.

Finally, Sir, I accept the courteous words of the Minister for Defence and note that the Government agree the Motion. I accept the fact that the whole question of Civil Service pay is under review. If this Motion does not lead to a White Paper, Sir, that is eminently satisfactory to all civil servants generally and to the police in particular; I shall then come and see you, Sir, with another and sterner Motion.

I beg to move.

The question was put and carried.

MOTION

JUSTICE IN AFRICAN COURTS

Mr. Odunga: Mr. Speaker, Sir, I beg to move:

THAT in view of the highly unsatisfactory practices employed in the administration of justice in the African courts by interested staff of the Department of Administration, where there are threats to respect for justice; this Council notes with great concern the continuity of these practices and therefore urges the Government to appoint a commission of enquiry into the administration of justice in the African courts with a view to placing the said courts in the hands of the appropriate Department—the Judiciary.

Mr. Speaker, I move this Motion with the clear mind that I am only trying to help the Government to get rid of one of the most serious grievances which destroy their co-operation with the ordinary men of the country. I know many of them are not aware of—and maybe those who are aware are probably very ignorant of—the African feelings on this.

Before 1930, if I remember well, the Government was in difficulty in trying to meet the African customary laws and put them into effect. If I remember correctly, at that time it was left entirely in the hands of the chiefs who were administering justice to the people. Also, if I remember correctly, the people became a little bit bored and dissatisfied with some of the chiefs' conduct because they could not administer justice correctly. I remember at one time people complaining that when you had a case against one of the relatives of the chiefs you were always the loser.

As such, I think by 1930 things had come to a head and some other means of administering the African customary laws had to be invented. In 1930 the African tribunals were instituted with

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the idea of administering justice with the African customary laws and traditions. That went on for some time. Well, those tribunal elders were at that time appointed by the provincial commissioner on the recommendation of the African district councils.

Well, later—I do not understand what really happened—slowly but surely—the Government began to remove these tribunal elders from the jurisdiction of the African district councils into the Administration, until at the present moment they are completely and entirely in the hands of the Administration.

Now, Mr. Speaker, the method of appointment at the present moment of some of these elders is something which is rather worrying, because the appointment is made on recommendations made by members of the Administration and, finally, the appointment is made by the provincial commissioner who, in turn, has the power of terminating the services of any elder at any time, if he feels that his services are not required. Further still, the district officer has also got the power of suspending any elder from his services if he feels that the services of that person displeases him.

Now, according to history, the present African courts were instituted for the first time in 1951 and that is when the present Ordinance governing the appointment of court elders and officials began, in the manner which I have just described. Mr. Speaker, if you will consider the way in which an elder who is supposed to administer justice is appointed, that will leave you with no doubt that he is not free to decide what he wants. He must look to his master, the district officer or the district commissioner or the provincial commissioner, for his fair judgment. He must consult these people before he actually passes any judgment.

Now, Mr. Speaker, I would go a little bit further and tell you exactly what is happening in the African courts at the present moment. The justice administered in these courts falls anyone who has actually got some fair idea of justice, anyone who would like to see real justice displayed properly in the country. We do believe that the Administration is using these courts to effect any Government policy indirectly in the country. And I will give you examples for that.

At the present moment it is the policy of the Government to encourage land consolidation amongst the Africans and they say—quite rightly—that it is voluntary. It is done voluntarily and there is no force at all about it. But what happens in practice is not the same. You will find that one of the district officers, being an interested party, finds a person who probably has not got enough

land—probably he has none at all—but because he accepts the Government policy of consolidation goes to somebody's land and begins fencing, simply because that land is in proximity to his land and simply because the other person has probably not seen eye to eye with consolidation. Well, you will find that quite rightly when this man comes to report his case to the district officer or somebody like that, generally, in many cases—and we have got many, many reports from people which are coming in to us of this particular complaint—naturally that man stands a good chance of actually not winning his case at all. He stands very little chance and at the present moment many people are wasting a lot of money in such disputes, simply because the district officer is an interested party in land consolidation and, seeing that there is a person who is out to consolidate, he naturally goes all out to support this man. You will find also that the court elders who are actually directly under the district officer—will always support the man who in the opinion of justice should not in any way have a right to that particular land.

Now, Mr. Speaker, with such behaviour it means that the thing that is considered most important is only the policy of the Government, because the Government is out to carry out its policy. It is forgetting one very important thing—to be fair, to play fair and to administer justice to a man properly. I can well say, Mr. Speaker, that there are general complaints at the present moment in the country in this particular respect.

Now, I can give a better example, Mr. Speaker. The Government also uses these courts to punish some people whose political convictions or political feelings they do not agree with. I can tell you of one recent example, where a person went to a chief's *baraza*. The district commissioner was probably trying to express his own political feelings and this man thought that he was wrong and he stood up and refuted what he was saying. Well, the district commissioner was quite fed up and the next morning this man found his house surrounded by the tribal police and he was brought out of the house. He was taken right behind his own house and there they said that they found a bottle of nubian gin. The man was arrested, yet this man is a man who has never tasted any drink of any kind. He said, "But I do not usually drink!" He was taken to the court. Of course, you can tell what happened. When the man went to the court he protested and said, "I would request that this court do not try me because it is the district officer who has actually arrested me. As such I would like my case to be transferred to the magistrate's court". That alone was taken as contempt of court and

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he was sentenced to three months' imprisonment. That man went in and later on when he came out he was to be tried for having nubian gin. He is now serving a sentence of six months in connexion with nubian gin after serving for three months for the other case.

Now, Mr. Speaker, these are just a few examples which I am giving but they are so numerous and so many. Some of them I know personally and have personal experience of myself. At the present moment, even in the chiefs' *barazas* and elsewhere men who are regarded as big-headed do suffer injustices. I can give one example of a person in the chief's *baraza*. He had some people to go and decide his land case and land dispute. When they came back to the *baraza* the chief gave the verdict of the elders and the man said, "I do not agree with the verdict of the *baraza*", and the chief told him, "Sit down, you are always big-headed and you do not listen". He said, "No, but I do not agree with what has been done, and therefore I would like to go further". That alone was enough to get this man to the court, and this man had to be fined Sh. 100 for being big-headed in the chief's *baraza*. And so, Mr. Speaker, it is always the case when a case is between you and the administration you always know you are going to be punished. There is never justice today in these courts. When saying that I do not mean that there are not very few exceptions. I know one of the court elders in my country who is very popular for his play of justice, but that man, when one day he decided on a case against the Government, he lost his job. He lost it as a result of deciding against the Government; and he was the best president of the court which we had in the country, and even today people are still talking very highly of him.

Now, Mr. Speaker, I am not actually saying this because I am after criticizing the Government, as some people would like to say, but I tell you I am quite honest and quite sincere. I only want to help the Government to know definitely some of the sources of grievances amongst the ordinary man. Maybe somebody like myself, I can resist, but the ordinary man who cannot afford to resist, he may drop the matter there and grieves for the injustices which are done to him; and you cannot expect such a man to cooperate with the Government in any way. If he finds later on an excuse to give the Government a headache then he will generally go for it, because of this treatment which you people are probably aware of, but because you have probably not that same human feeling which I feel all the leaders in the country should have although some may think of them that they are very small and very minor.

Now one might say, Mr. Speaker, that all these people have access to appeal, but where are you going to appeal? You are going to appeal to the district officer; and he is the man who is interested in the case. What sort of appeal are you going to make? If you go to appeal there is only one conclusion, and at the same time you are not even allowed to employ an advocate to defend yourself even before the magistrate. A district officer is a first class magistrate and even there you are not allowed to defend yourself by an advocate, because in the African courts you cannot defend yourself with an advocate, and so the police cases when they get a case where they want to punish someone very severely they try to avoid the resident magistrate's court and go to the African courts where they know the district officer will give an order for that man and say what is to be done. So in many of the police cases now, especially those dealing with beer parties or nubian gin, they do not take them to the magistrate's court as they used to do.

Now when the time comes, these courts generally, after the district officers, they go direct to the provincial commissioner for leave to appeal to the Court of Appeal, and the Court of Appeal is far too remote. It does not meet probably for some time and this man who is now serving his sentence, if he makes an appeal to the Court of Appeal, he may have finished his sentence before the Court of Appeal has even thought of meeting, and in many cases the provincial commissioner will also stay with the case for some time, then would refer the case back to the district officer, to listen to it again if he feels there is a point of law where it should be less. I can tell you what happened by referring back. In the Report—I will read it to you, Mr. Speaker. This is the Report of the African Affairs Department Annual Report, 1957, and this is what they said about the Court of Appeal: In all cases if there was the slightest ground for believing that the applicant might have a reasonable cause of complaint, the matter was referred to the district officer concerned or another district officer for the area. In only one case during the year after such a hearing did both district officers give a judgment. Only in one case in the whole year. It is surprising that in the whole year only one case differed. And this Report—the Annual Report written by the Ministry of African Affairs some time back.

Now without going very far—because I have to move this Motion—I will probably in reply say some more—but now I will only recommend and request the Government that the time has come when these courts, instead of putting them in the hands of the administration, they should be put directly under the resident magistrate with the provision for the Supreme Court to supervise

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all the judgments made in these courts. I think the time has come for this country when we must unify all the Judiciary into one system and not actually put Africans in one department—just as we have the Department of Game and other departments. It is time we put it that if other people need justice the African courts need the same justice. One may argue, what about the African customary law, but what is happening at the present moment in criminal offences in the African courts is not African customary law. African customary law would still be decided in the manner in which they used to decide it, and in actual fact they, the Government, are not interested in all the civil cases in the country. If they are civil cases they look with an eye which actually is not so keen to see that it is done. They leave it for the elders and all those people to deal with, but when it comes to criminal offences, the matters which probably they are interested in because it affects their duties in the field, then you find that they take it very seriously. Or if they find that some people, or someone, displeases their eye, then you find such people suffer a great deal. I can tell you that recently I was talking to somebody in the country—just an ordinary man—I generally go right into their homes—and while talking I said to that man, "Why don't you settle and live in the country here?" He said, "Kenya is not the place to live in, because when you live in the reserves you are not safe because the chief, the headman, the district officer, all these people can actually impose anything on you and arrest you and take you to the African court, and you are fined very heavily, and if you cannot pay you are imprisoned for nothing. Therefore, it is not safe, and I would rather live somewhere in Tanganyika or in Uganda amongst the bananas rather than stay in this country."

Now, Mr. Speaker, with these few remarks I am requesting the Government also to consider as to whether it is not time that when these cases are heard the people should be given the option to get an expert to help them and defend them, and defend them properly, so they are satisfied they have got the justice which they require.

Now with these few remarks and explanation, Mr. Speaker, I beg to move.

Mr. Travadi: Mr. Speaker, I rise to support the Motion moved by the hon. Mover, and in doing so I would like to say a few words which I hope will be of much use to the Legal Department, who are concerned in the case. One of the fundamental principles of British justice is that there should be a separation of the Judiciary from the Executive. If that is so, and Kenya is now on the threshold of achieving self-rule, it is but natural that this unholy alliance should cease and the African tri-

bunals should be taken under the umbrella of the Judiciary, so that much of the material that has been given by the previous speaker regarding the highly unsatisfactory practices employed in the administration of justice in the African courts by interested staff of the Department of the Administration would disappear.

If I remember rightly, I was in the Attorney-General's Office for 29 years, and it was Mr. Phillips, the Crown Counsel, who thoroughly went into this question of African tribunals and he prepared a big report and submitted it to the Government, and I think I have a copy at home somewhere; that gives a lot of material, and I hope the Government will take hold of this book and apply certain principles which are very rudimentary so far as this particular administration of justice is concerned.

Mr. Speaker, the independence of the Judiciary should be maintained in this country, I should say, at any rate, and all interference from the Administration should be put a stop to, and the sooner the better, but that can only be done, and I now, being a party, declare my interest here, that I am an advocate, but according to section 29 of the African Courts Ordinance—I have it here—it prohibits advocates from having an audience before the African courts, with the exception of the courts of review appointed under section 4, and in the cases of review under section 43, if I remember them by heart, because I had the honour to act in a couple of the cases when the district commissioner drew my attention to them, and I was asked not only not to appear but not to act, i.e. even to write a letter, and I had in due obedience to that order to give up the cases. I therefore, Sir, and with due respect, feel that, if any committee of enquiry is appointed, or the Government considers taking over the African tribunals, with the exception of the Native Custom and Law Section, if the Government is favourably considering this, I would submit that this particular section be not retained. The advocates are supposed to be the defenders of the civil rights of the citizen, and should be definitely allowed to have audience, so that all these malpractices could be put a stop to, or at least the advocates would draw the attention of the higher judicial officers, whoever they may be, and bring such nonsense to an end.

I therefore beg to second the Motion.

Question proposed.

The Temporary Minister for Legal Affairs (Mr. Conroy): Sir, it will probably come as a surprise to the hon. Mover and also to the hon and learned Second, that Government accepts a good deal of what they say: I am merely referring to the last two lines of the Motion; I am not referring to the allegations of malpractices. I am

[The Temporary Minister for Legal Affairs.] referring to the placing in the words of the hon. and learned Second, "these courts under the umbrella of the Judiciary", which I think is the really important part of this Motion.

Sir, we have not thought of this just since the hon. Member has been giving his various notices of this Motion. Indeed, as long ago as October of last year I was having very detailed discussions with the learned Chief Justice and with the officers of the Administration responsible for African courts to see how we could meet this problem, and we had virtually cleared our minds when the Chief Justice, Mr. Wainwright, and myself went to London to the conference under the chairmanship of Lord Denning last Christmas on the future of law in Africa, and there we also discussed the problem of African courts, and we learned how people in other parts of Africa had attempted to solve the same problems—some possibly with greater, and some possibly with less, success than ourselves. We came back with fairly clearly formulated views on this matter, and very recently we went to the Council of Ministers, and we have had authority to draft the Bill, which I hope will come to this Council—not to this Council, but its successor—early in the life of its successor, which will place the African courts under the umbrella of the Judiciary.

Now, Sir, it seemed to us when we were approaching this problem there were two lines of development for African courts. The first was, keep the African courts just as a tribunal to deal with civil African customary matters. That seemed to us to be a dead end. That is not the way to bring justice down to the ordinary man in the street where it is easy for him to get justice, and it is cheap for him to get justice, and we thought that the second avenue of development was the right one, which is to develop your African courts so that they can deal with more and more matters, both civil and criminal, and thus bring justice within easy reach of the man in the street.

Having decided that, we then came to this problem of the parallel system of courts which we have at the moment. That is to say, we have the African courts, and we have the normal judicial system, and they are parallel and they never meet, and it seemed to us that the way to solve the problem was to make them meet by way of appeal. Therefore, what the Government proposes to do is to amalgamate, to integrate, the two systems progressively, and I fear that I shall have to trespass for a moment on the patience of hon. Members to describe to them what the present system is in order to show what advance we think the proposed system is going to be.

Our present system is that an appeal lies from an African court to an African court of appeal, but there are not available always African courts of appeal, and the appeal then lies from your African court of appeal. If there is one, to your district officer, or if there is not an African court of appeal, straight from your African court to your district officer. Then, from the district officer, with the certificate of the Provincial Commissioner, an appeal lies to the court of review.

Now we think that the first step should be to bring your judicial system in by way of appeal. You could not, you see, say, "We will have professional magistrates to deal with African customary law" because they do not know what it is. You must have your African court elders dealing with your African customary law, and we thought that the way to control them, if control is the right word to use of judicial officers, is by way of appeal to ensure that no injustice has been committed, and we thought therefore that appeals should in future lie from African courts to a first class or second class magistrate. That is to say, to a person who is answerable to the law, answerable to the Judiciary, and not answerable to the Government. It may well be that in many cases the first or second class magistrate will be a member of the Administration, but it is vital for hon. Members to remember that even though he is a member of the Administration if he is sitting as a first or second class magistrate he comes under the control of the Supreme Court, and we therefore hope that that will meet some of the points which have been made by hon. Members.

We thought then that the next step in the ladder of appeal should lie from the first or second class magistrate through two dividing channels. The first should be in respect of criminal appeals where the offence has been against the written law, that is to say a breach of an Ordinance or by-law, and in that case we thought that an appeal should lie from the first or second class magistrate direct to the Supreme Court, and it would be tried just like an ordinary Supreme Court appeal from a subordinate court. But we could not, of course, do that in respect of those few criminal offences against African customary law because the Supreme Court would have no book of law to which it could go; it would have no fund of knowledge from which it could draw. Nor, indeed, could you have an appeal to the Supreme Court on civil appeals which would involve African customary law. Things like bride prices and all the other problems which confront the ordinary African villager are a closed book to the ordinary lawyer, and so we thought that the second avenue of appeal should be from the first or second class magistrate in civil cases, and in criminal cases where unwritten

[The Temporary Minister for Legal Affairs] African customary law has been broken should lie to a reconstituted Court of Review, and the Court of Review should be presided over by a Supreme Court judge. The Court of Review should consist of the following people: the Supreme Court judge, who would always preside, the Chief Commissioner, the Provincial African Courts officer, and two Africans selected from a panel of six appointed by the Chief Justice. Now there you have, we thought, a well-balanced body. The quorum of this tribunal, this Court of Review, should be three people. You must have your judge, you must have at least one African out of six Africans, and you must have either the Chief Commissioner or the Provincial African Courts officer.

We also thought that the powers of revision which now exist, and are invested in the district officer, should continue but should be given to a first or second class magistrate with an appeal to the Supreme Court or to the Court of Review, as the case may be.

Now, Sir, there is a further matter, which I think is very important, and it may be just a little bit outside the exact four walls of this Motion, but I may be forgiven for mentioning it. The conference on the future of law in Africa was presided over by the greatest living English common lawyer, that is to say, Lord Denning. He recently came out to Kenya, to East Africa and West Africa, to help us with advice on legal education for our people in Kenya. That was not only legal education to produce people like me and the hon. and learned Secondor of this Motion—it was also legal education to educate African court officers and African court members because it seemed to us that that was a very important thing to do. Sir, the Paper was laid today, earlier this afternoon, which deals with the proposals for an East African university, and we hope within the framework of that, that we will be able to have a Faculty of Law in East Africa in which a degree in law could be obtained by graduates. It seemed to us that that would be an excellent thing for African court elders and for African court clerks, registrars, whatever they are called.

In addition—I have expressed this view in this Council before—I should like to see a move towards a professional African magistracy. That is to say, a qualified lawyer, who would sit rather like a stipendiary magistrate sits in England in place of justices of the peace. I think that would be a great step forward, but we have got to get the qualified men who want to do that kind of work rather than taking their chance in the golden fields of private practice.

Now this brings me on to the second point made by the hon. and learned Secondor of this Motion, and that is the question of admission of advocates to African courts. Sir, there are pros and cons to this problem.

The pros have been put by the hon. and learned Member opposite. The cons, Sir, speak for themselves. In Nigeria, where the people are very nearly as litigious as they are in Ireland, it is said that if you buy a piece of land you buy a lawsuit. Sir, nearly every advocate, I understand, in Nigeria gets one trip a year to London to the Privy Council. We do not want that here. We do not want to provide a splendid living for advocates at the expense of their clients.

Sir, I think probably the solution to this problem, like most solutions, is about the middle between the pros and the cons and I put it to hon. Members for their consideration. It is that when we have a court presided over by a qualified president, where we have a court with a qualified registrar or clerk, then we shall be in a position to allow advocates to appear before the court. Sir, when I think back to the brash young man I was 25 years ago and how I used to go round the country earning handsome fees of a guinea a time appearing in magistrates' courts before unsuspecting justices of the peace and how I use to try to lead them by the nose, it is quite horrifying. I hope that as advocates become older and more responsible they do not do it but it has been known to happen and I will say no more than that.

Now, Sir, those are our plans. Our policy is to bring the African Courts in the hon. Member's expression "under the umbrella of the judiciary". Sir, I cannot accept the first part of the hon. Member's Motion in which he talks about highly unsatisfactory practices, threats, etc., grave concern by the country. Sir, I cannot accept that.

Now, Sir, in accordance with Standing Orders, I have given notice of an amendment which I now propose to move to this Motion which I hope will alter it to a form which I hope can be accepted by the hon. Mover and Secondor and it is this: "That the Motion be amended by leaving out all words after the word 'That' and by substituting the following words for the words so left out: 'This Council welcomes the Government's policy to integrate the African Courts with the judiciary'. Sir, I hope the hon. Mover will find it difficult to vote against that one. I hope all Members will appreciate that I have used the word 'welcomes' rather than the word 'notes'."

Mr. Wainwright: I beg to second. Mr. Deputy Speaker, I think it will come as no surprise to

[Mr. Wainwright]

this House that I also fail to support the first part of the hon. Mover's Motion. Nevertheless in many ways I am gratified that he should have brought this Motion, in two ways, opposing each other. In the first way, Mr. Deputy Speaker, I am gratified that he had to ask an Asian to second the Motion who must know a thousandth part as much as all the other African Members about the Courts. But I am mainly gratified because the Administration is used to kicks, complaints and criticisms and if all the criticisms are in one direction it naturally worries us, we must be doing something wrong. But when the criticisms are equally on both sides then we feel that we must be taking a reasonably unbiased and neutral course. We had a good example of that type in the last fortnight when we had a Motion in this House objecting to the Administration as being too tough with certain tribes in respect of stock theft and immediately afterwards I had to defend myself before the Kenya National Farmers Union for not being tough enough. But of all the complaints that we get in respect of the Courts, the vast majority of them are that we are not interfering enough with the African Courts. And it is very seldom that we get complaints of this kind on the other side that we are interfering too much. So it is nice to get the balance a little bit redressed today.

I might perhaps, Mr. Deputy Speaker, quote some words by Mr. Speaker 18 months ago in this House, in May, 1959, when he said "I was rather surprised to hear complaints on the one hand that administrative officers are interfering too much with the judgment of these courts and from other Members, equally vociferous, that we are not interfering enough with the judgment of these courts". Nevertheless, Mr. Deputy Speaker, I am bound to resent the allegation of the hon. Mover that just because the Administration, through the Provincial Commissioner, hire and fire the members of the African courts, that *ipso facto* they are bound to interfere with the administration of justice by those courts. I can only imagine that perhaps that is what would happen if it was the hon. Mover himself who had the hiring and firing of the African court elders.

The hon. and learned Member for Legal Affairs has explained the action that we now propose gradually to integrate the courts with the Supreme Court, and the other courts of the Colony. I would like just to mention here that the initiative in all respects, I think, over this long-term policy of Government which started some time ago has been with the Administration and it has not, as might be thought, started from some other part of the Government machine because of complaints that they have not been well run.

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

[Mr. Speaker (Mr. Slade) took the Chair]

Mr. Speaker, it is not all that easy to integrate the courts, some mention of it has been made this afternoon. It has always been the problem to try to marry together elders who have knowledge of African custom, who have the prestige, experience, reputation for justice and fair dealing with modern educated knowledge of modern law and statutory law which the courts have now to administer in increasing quantities. It is for this reason, that we have not been able to go as fast as one would like to integrate the two court systems because complete integration cannot really be effected until, as the Minister for Legal Affairs said, you have the courts quite similar and advocates can appear before them and the members of the courts themselves have the legal training. Nevertheless, we are getting on as fast as we can with raising the standards of the elders and of their staff. This year we have already appointed a full-time training officer. The African Courts Officer this year has already himself held ten courses, five for court staff and five for supervisory staff in the form of district officers and district assistants. Next year there are going to be 17 courses run by the Training Officer, another 20 courses run by the newly appointed Provincial African Courts Officers and another ten by the African Courts Officer for district officers and district assistants. We are doing our utmost with the funds we can be allotted to raise the standards of the courts.

Another difficulty is the one which has already been mentioned, the lack of knowledge by the Supreme Court of African custom. The Administration itself has not got as much knowledge as it would like to have and as it ought to have in hearing appeals, but at least it has the opportunity of learning a great deal more about the individual customs of a particular area than the Supreme Court has and, I would also point out that that gap in knowledge of customary law will widen and not lessen because from now on we shall be rapidly increasing the number of African district officers who will therefore have a greater knowledge than they have ever had before of native custom, whereas the Supreme Court will not be filled with Africans at as quick a pace as the Administration.

Now, Mr. Speaker, I am particularly grateful to the hon. Mover, the Member for Central Nyanza, for raising this Motion so that I can pay a tribute to these African courts. There are no less than 133 of them with all their staffs and they do a magnificent job of work, a magnificent job

[Mr. Walwright]

of work. They are not people to seek the limelight and they do not often get into it but, nevertheless, quietly they are doing a very fine job of work indeed. Last year they heard no less than 171,000 cases. All the other courts of the Colony put together, including all the district officers and district commissioners acting as magistrates, only heard 179,000 cases, so that the African courts of this Colony heard just about half of all the cases of the Colony, unheard, unsung, but extremely efficiently. How efficiently can be seen, notwithstanding what the hon. Mover has said, by the very small number of appeals. There were amongst those 171,000 cases only 5,400 appeals; that Mr. Speaker, was only three per cent. The largest number of those by far, 6 per cent. come from Nyanza where, in certain districts, litigation is a popular form of sport, rather like football in other parts. In all the rest of the Colony only 2 per cent was the maximum number of appeals and in the Rift Valley the percentage of appeals was only a ½ per cent. A very fine record indeed.

I must also mention here, Mr. Speaker, that I know the African Appeal Court, Central Nyanza, well, personally. I feel that they will resent very greatly indeed the remarks made by the hon. Mover that they are going to be bullied or cajoled by the district commissioner or a district officer to convict a man when he is innocent, or to sentence a man to imprisonment when he is innocent. Those elders would never do anything of the kind.

Mr. Speaker, I am not going to go into great detail concerning the individual cases that the hon. Mover brought up, but it was clear to us when he first put the Motion forward as long ago as June, having not appeared three times when the Motion has come up, that the case which needed him into putting down this Motion was the criminal case to which he referred. Unfortunately, his facts and mine seem to be slightly different. The gentleman concerned had been appointed by the political party to which the hon. Mover adheres as a curious thing called "an Uharu chief" and I think perhaps anticipating how a "Uharu chief" appointed by a political party might behave, he had indulged in this noxious fluid called nubian gin. He was very properly taken before the local court, where, Mr. Speaker, he behaved in the most disgraceful manner; he objected to being tried before that court for no reason at all. He was extremely insulting to the elders and I am glad to say without any pressure from the Administration the elders, very properly, were not intimidated by the title, "Uharu chief" and sentenced him to two months for contempt of court. They also felt that anyone might think that if they also heard the

case for nubian gin they might be thought to be biased and so they transferred the case to the Appeal Court in Kisumu, where, Mr. Speaker, as I have already said, the court would in no circumstances be bullied by the Administration to give an unjust decision. Before that court he was sentenced for the possession of the nubian gin to a further term of imprisonment and the sentence for contempt of court against which he appealed was dismissed. The gentleman appealed no further.

Mr. Speaker, the hon. Mover also talked something about voluntary land consolidation. I am afraid I found it too difficult for me completely to follow. Nevertheless, I think I ought to mention that the hon. Mover himself has been well known for some time in Central Nyanza for quietly having his own land consolidated but going round trying to prevent anybody else from doing the same, and I have a letter on my files only two days old from a number of his own constituents complaining bitterly of his efforts to stop them consolidating their land.

Mr. Speaker, I have no more to say, I support the amendment and I look forward to the time when the courts have, in fact, been integrated with the Supreme Court.

Question proposed.

The Speaker (Mr. Slade): Having regard to Standing Order 62. I am of the opinion that the matter of this amendment is not conveniently severable from the matter of the Motion and, therefore, I direct that the debate on the amendment may include debate on the matter of the Motion. Hon. Members will know that in those circumstances a Member who speaks to the amendment may not speak again. A Member who has already spoken may only speak to a new matter arising out of the amendment.

Mr. Travadi (Mr. Speaker, on a new matter entirely, the Mover of the amendment at the very start took strong objection to an Asian Member of this honourable House seconding the Motion moved by an African Member, the Member for Nyanza. May I ask a ruling, Sir, whether the Member of this House, an Asian, has a right to support the Motion moved by any hon. Member?

Mr. Walwright: Mr. Speaker, may I say that I did not object in any way to an Asian seconding the Motion.

Mr. Mwachura (Specially Elected Member): Mr. Speaker, Sir, I am not supposed to accept but I probably welcome the proposals that Government has in mind. While I welcome that I remember too my hon. friend the Minister for Legal Affairs, in replying to a Motion of mine here, suggested that there is no such thing as a small piece of legislation. The implication being that any legis-

[Mr. Mwachura]

lation takes quite a long time to go through the mill and, in fact, in reply to that one I think the one that was supposed to be drafted will not be drafted for the next three years.

Now this is my claim in this particular respect, I agree entirely with the original aim of the Government in bringing about what they call the African courts. That is that there were certain things that the Africans did that the Europeans did not know anything about. That worked out very well and of course it has been said that the Administration or the officers of the Administration were in a much better position to know a little bit about these curious customs of the people. But what I think is most unfair is asking these courts to deal with what my learned friend called the written law. That has nothing to do with the customs and, if I remember rightly, was it last year, yes, last year during the Budget, when the then Minister for African Affairs gave us figures of the revenue collected in the way of fines from these African courts and he did say that they brought in more than all the other courts put together. There must be something funny. I do not mind the number of cases they tried, those are what were presented. But in these courts I find they have 179,000 cases, why should the revenue accruing from the African courts in the way of fines be much more than all the others put together?

Now the next thing is, if these gentlemen are going to try the written law and the criminal law, it should be possible in such cases where the offence is criminal, against the written law, then those learned in law should be allowed to defend. If they are not going to be allowed to defend I cannot fancy the prospects of this law coming in within the next 12 months, even the Bill itself and if that is going to be the case the Government should take action now and say that in criminal offences committed against written law, the Penal Code or whatever it is, these accused should be allowed to be defended, or better still, these cases should be taken direct, especially in those places where it is possible, direct before a first-class magistrate or a resident magistrate's court. This is really a big, deep problem and a strong feeling exists amongst Africans, especially in a place like Nairobi where during the Emergency they had so much power given to them, for example, on the question of whether one was found outside at 9 o'clock or was found out at 12 o'clock midnight, has quite a lot to be said whether one was or was not out at 12 o'clock at night. There are cases where also there could be evidence to prove that the accused is not necessarily guilty but those are technicalities that can only be gone through in a resident magistrate's court.

Mr. Speaker, while I welcome the change, I put in a plea that in the interim between now and then, there should be some direction now that the courts are not particularly busy as they were during the Emergency and that there are now a few more magistrates than at that time. Criminal cases should at least be transferred to the resident magistrates. My friend the Minister for Legal Affairs did try to prove why it was not fair to allow advocates to appear in these tribunals and he cited cases in Nigeria where the learned members of his profession were flying off to the Privy Council at the expense of the poor African who buys the land as well as buying litigation. I agree, when it comes to matters of land it is a question of custom, it is a question of inheritance, it is a question of other things which may be purely local but not general throughout Kenya. But when it comes to other matters, I cannot see why the objection to an advocate appearing if they have to try these criminal cases. If it is a question of finding the most convenient way of expeditiously dealing with criminal cases, that is why the police find it easier to go to an African court as opposed to a resident magistrate's court, because in the resident magistrate's court there are all sorts of things required, evidence to be proved and proved with no doubt at all. It is difficult for such to be in the African courts. Therefore while I welcome this I make this plea that in the meanwhile while the Bill is being drafted and to be presented to the successor of this Council, there should be instructions from the Government, that as far as is possible criminal cases should go to the first class or resident magistrate, and if this is done, when the time comes for the change, the Africans will have appreciated the fact that although these things happened during the time of the Emergency and during different times when changes have taken place, it was not the intention of Government not to give what is just; and seen to be just, that the Government is making an effort in the meanwhile to change it over completely and make as far as possible the whole court system to come under one umbrella with of course the variations which the Minister for Legal Affairs did give the House. With this submission, Mr. Speaker, I beg to support.

Mr. Hemmings (Nominated Member): One point, Mr. Speaker, which was made by the last speaker on the other side. The figures of revenue for last year which are the last figures we have, the African courts brought in revenue of £328,000 approximately; the Judicial Department courts brought in revenue of £414,000 which is considerably more than the African courts.

Mr. Mwachura: I think it was the previous Minister giving figures for 1958.

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

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

Mr. Odunga: Mr. Speaker, Sir, I should say that although I am a little bit reluctant, I would accept the amendment because I thought that the main issue here was that we wanted the courts to be under the Judiciary. Other things as explained by me were just some of the reasons which are a justification for doing so; and as the Minister has found it convenient, and I am glad that not only today, but probably they were also worried about it and doing something about it before as I have learned today.

I would only comment on some of the few remarks which they made which I am afraid I could not find myself in line with. First of all, let me deal with the speech of the Minister for Legal Affairs, the Solicitor-General.

The Temporary Minister for Legal Affairs (Mr. Conroy): If the hon. Member called me the Solicitor-General always it would solve matters.

Mr. Odunga: I am very sorry, Mr. Speaker, to the hon. Member: If I have been a little bit out of the way he will excuse me.

The Temporary Minister for Legal Affairs (Mr. Conroy): I was trying to help the hon. Member by suggesting if he called me by my substantive title always it would not matter what acting job I was doing.

Mr. Odunga: Thank you very much, I understand. Yes, Sir, in his speech he made a concrete suggestion by telling us that there would be an integration of the full system, that is the system which deals with the civil cases—or he puts it in that way—to keep the African customary law separate and deal with it in the tribunal and end there. And at the same time he also talked of the criminal offences which might not have been in the statute books: and in trying to put the two systems to work together, he explained to us that the criminal offences not in the law books would very well be dealt with by a constituted court of review, and he told us the composition of that court. Well, while he was speaking, I was just trying to cast my mind and find out those sort of criminal offences which would really be out of the law books, because, as I say, in the country if it is something to do with the liquor, it must actually have been in the law books; and if it is something of some assault or some other thing which might happen in the African areas, well I think that such things must be in the law books, and I have actually failed really to find those criminal offences which could be peculiarly said to belong only to the African areas and which could appropriately be dealt with by a recon-

stituted Court of Review. I failed completely to find out that, Mr. Speaker, and I do not know whether later on probably he might be able to explain, but on the whole I am convinced that the time has come that criminal offences are criminal offences whether they are committed by Africans or whether they are committed by Europeans or by any other race. They are all triable in the same channel and the same law which applies in other areas, also applying in the African areas. It is only in the civil cases where I tend to believe or to agree with him because we have got some cases like the land disputes which more or less might only be characteristic to the Africans themselves and not to other communities. We have also got our customary laws of some kind. For example, the marriage laws and so forth which are only characteristic to the Africans themselves. That is where I could accept his suggestion. But these civil cases should go to the first class magistrate, and I remember that even formerly they used to go to the first class magistrate: and I remember one day I had one of them where I had to be represented before a first class magistrate who was the district commissioner. If there would be an access for an advocate to defend me, or any other man, when he goes before the first class magistrate, then I would accept it and I would think that it would not be a bad idea at all, because after that the man might feel that he had actually met his justice.

I also welcome his suggestion that there is consideration to allowing some African lawyers, if I heard him correctly, to defend the Africans in these courts. I do feel that the time has come, because what is worrying us is the knowledge of the African customary law, and I am sure that the Africans themselves will understand. They will understand and they will know what complications there are, and they would help those people who get their justice in those courts.

His warning also I would welcome because there are pros and cons, as he said, in all these matters. Well, I think that if we take the pros and the cons you will find that in this peculiar case the defendant would feel a little bit satisfied after he had been defended properly by a man he can trust to have stood for him to argue his case for him.

Now Mr. Speaker, let me turn to some comments made by the Chief Commissioner. I quite agree with him when he tried to criticize my speech in generalization. I do agree that there are some of them who are really very genuine and who have got really good reputations for justice. And, as such, I was not speaking for such people because I know in every society

[Mr. Odunga]

or among the people there must be exceptions among us, but I was talking of the general trend of affairs as we see it at the present moment. I also welcome his idea about raising the standard of elders, but one wonders why he should just be keen in raising the standard of elders at the present moment. We feel we have got Africans qualified enough. I think we have got more than enough Africans who are efficient enough, who can just manhandle these courts and do a useful job of work in those places. I do not think that it is time now that we should just go and pick up somebody who probably may not understand what is happening in the African customary laws of the country. It is time we got the right type of African and if he is keen at all to get there, I am sure we would get the right type of Africans at the present moment to be the elders in those tribunals and to try the cases in a more efficient manner.

Well, his argument that the Supreme Court has no knowledge of African customary law. I think that here he is trying to give the Administration far too much by saying that it is only when somebody gets out of the Judiciary and gets into the Administration then he is a different man. He conveys to us that when one is in Administration this knowledge of the African customary law is there and when he is in the Judiciary he loses it. I think they are the same people and just as an administrative officer can learn the African customary law, I am sure that also that another man in the Judiciary can also equally learn that thing, because they are all people of the same category. I do not actually understand him when he says that he is trying to make it that it is only the Administration which actually is competent and which is able to learn the African customary law, which I do not agree with. I think that if this is left in the hands of the Judiciary, the magistrates will just be conversant with the African customary law together with those elders who are working with the Judiciary just as the Administration learns it: where he can learn it they will get used to it. Otherwise I know what he was actually driving at, probably he wants to keep a hand of the Administration in the Judiciary, which is quite wrong.

The courts should be in the hands of the people who have actually no dealings with any man or woman with grudges. The administrator, because of his position of day-to-day dealings with these people, he may find at one time that he cannot be impartial as a judicial man whose job is only to sit and listen to all those cases and then also to uphold his own prestige in his profession also.

He also argues that half of the cases heard in a year in this country are from the African courts and that the fact that there were no appeals means that he actually can gratify himself on the fact that those judgements were efficient. Well, this is what amazes me, because he must understand that it is only because these Africans do not want to appeal. He knows that perfectly well and I can even give you a personal example which I dealt with. I had a case against somebody in which I knew that injustice was being done against me. But since we had had some disagreement on the same matter with the district officer, I did not bother to appeal because I knew I was wasting money for nothing. Everything would just go according to what he had actually said. And that is why many Africans leave their cases like that. They believe that by going on paying more money you just waste your money and waste your time. You will not actually win your case, because what is decided in the lower court will just be rubber-stamped in the higher court. In actual fact, although he argues that these people do not actually consult together, he must be told that they do.

Now, there are two points which I must just correct. The Chief Commissioner made an allegation—and this is how they generally get the wrong information about this—about somebody who is "chief of *uhuru*" whom he knew about, and whose case he knew of. Well, I quite agree this man was "chief of *uhuru*", but if they knew that he was brewing the nuban gin, why did they wait until there was a dispute with the district commissioner in the *baraza* in order to go against him the following morning? In actual fact, that man is generally known as a man who does not take any drink. He is a teetotaler completely, and he is a very good Christian. He is not a man who would actually indulge in this drink, and I am surprised to hear that this man was taken to be a drunkard, or a man who was brewing nuban gin. It is surprising! They get altogether the wrong information about these things!

Now, his other allegation which must also be corrected is that he has got the belief that I oppose land consolidation. I think that anybody who is with me in this House knows perfectly well that that is not my view. I think also his information is quite misleading—quite misleading. He says that I consolidated my land and I go on persuading people not to do so. My land—if I consolidated it—was done in 1945 before land consolidation was ever here or ever dreamed of. Then who forced me to do it? I did it only on my own decision and wish. If that is the case, he should understand that I do not argue at all here that land consolidation should not be done. I quite

[Mr. Odiga]

agree that they should carry on with that policy, by the education of the people to appreciate the necessity for land consolidation and letting the people do it; but not by misusing the law and justice to force the people to do it indirectly. If the Government actually wanted to force people to do this land consolidation, they had got all the powers to do so. But if they had decided that it was something that should only be done by education and understanding, then there is no need to go about it in an indirect way by punishing them and by forcing them indirectly. That was my argument.

Now, with these few remarks, Mr. Speaker, I would thank the Government for "welcoming" a policy to put these courts into the Judiciary. It is something which should not be delayed. It is something which must be implemented immediately. If we actually do this, we will have removed one of the greatest grievances that are causing great disturbance to the ordinary man in this country.

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

The question was put and carried.

ADJOURNMENT

The Speaker (Mr. Slade): That concludes the business for today and I therefore adjourn Council until tomorrow, Wednesday, 16th November, at 2.15 p.m.

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

Wednesday, 16th November, 1960

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

[Mr. Speaker (Mr. Slade) in the Chair]

PRAYERS

NOTICES OF MOTIONS

DEPORTATION OF ELIJAH OMOLO AGAR TO LAMU

Mr. Maliro: Mr. Speaker, Sir, I beg to give notice of the following Motion:—

THAT this Council being aware that the State of Emergency has been ended, deplores the deportation of Elijah Omolo Agar to Lamu Island, and calls upon the Governor to release him.

AFRICANIZATION OF CIVIL SERVICE

Mr. ole Tips: Mr. Speaker, Sir, I beg to give notice of the following Motion:—

THAT this Council being aware of the fact that Kenya is becoming independent speedily, urges the Government to accelerate Africanization of the Civil Service.

PIPING WATER FROM LAKES VICTORIA AND RUDOLPH

Air Commodore Howard-Williams: Mr. Speaker, Sir, I beg to give notice of the following Motion:—

THAT this House notes the advantage of piping water from Lake Victoria into Nyanza Province and the Rift Valley, and from Lake Rudolph southwards towards the Tana Valley.

BILLS

SECOND READINGS

The Agriculture (Amendment) Bill

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): Mr. Speaker, I beg to move that the Agriculture (Amendment) Bill, 1960, be now read a Second Time.

Mr. Speaker, I propose in moving this Bill to avoid reference to detail which, I believe, is far better dealt with in the Committee stage, and to confine myself at this stage to the broad principles of the amendments. In general terms, Mr. Speaker, the amendments to the Agricultural Ordinance proposed in this Bill may be clarified into three principal categories. Firstly, there are the amendments which are aimed at reshaping the structure of the agricultural boards and committees, both in the scheduled areas and in the non-scheduled

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areas, mainly along the lines which were advocated by the McGillivray Committee. Secondly, there are the amendments which are necessary to implement the agricultural aspects of land reform proposals which were put forward to this House by my colleague, the Minister for Local Government and Lands, in Sessional Paper No. 10 and Sessional Paper No. 6. Thirdly, Mr. Speaker, there are amendments designed to secure the better use of land and to foster the development of certain cash crops.

Now, Sir, if I may first go on to the various boards and committees, one of the most important features of this Bill is the new pattern which it creates for the organizational structure of the two Boards of Agriculture; namely, the Board of Agriculture (Scheduled Areas) and the Board of Agriculture (Non-Scheduled Areas). Also there is the system of committees and subcommittees and the functions under them. Up until now I think we have had, if I may say so, a slightly lop-sided set-up with a very strong and well-knit system in the scheduled areas and one not entirely balanced with that in the non-scheduled areas. And my aim in the amendments in this Bill has been to remedy this state of affairs; in other words, to increase the power and the status of the agricultural organization in the non-scheduled areas and to place this on a level with what has taken place previously and what will take place in the future, that is, the operations of the Board of Agriculture which has operated so successfully in the scheduled areas.

Now, Mr. Speaker, moving to the agricultural subcommittees, these—and I would like to emphasize this point—have for a very long time been the corner stone of the agricultural set-up in the scheduled areas. In my opinion we have now reached the stage, especially in the more advanced non-scheduled areas, where agricultural subcommittees could play an invaluable part in the development of agriculture in Kenya. Accordingly, I have made provisions in this Bill to empower provincial agricultural committees in the non-scheduled areas to establish subcommittees. The constitution of these subcommittees has been left deliberately flexible, both in the non-scheduled areas and in the scheduled areas. However, it will be mandatory for the majority of the members of these subcommittees to be farmers. In other words, in the non-scheduled areas there will be farmers from the non-scheduled areas. A similar flexibility, as I have already said, will be and is laid down in the procedure for the corresponding subcommittees in the scheduled areas.

Then, Mr. Speaker, if I may move to the existing agricultural committees, again in accordance

with the same policy. I have aimed in this Bill at increasing the power and the stature of the district agricultural committees, again in the non-scheduled areas, in order to bring them completely into line with what we know as the agricultural committees in the scheduled areas. To this end the Bill provides for the appointment of one farmer member by each agricultural subcommittee, where these do exist, or by the provincial agricultural committee where subcommittees are not established. Now, these appointments will replace the hitherto six members who are appointed at the moment by the provincial commissioner. In addition to this I have made it feasible for two members to be appointed by the African district council and by doing this I sincerely hope that this will ensure a much closer liaison in the non-scheduled areas between the district agricultural committees and the local authorities on agricultural matters.

Most of these changes will be to ensure there is a majority of unofficials on all these committees, and this, Mr. Speaker, I regard as a most important step forward. The Bill also proposes that agricultural committees in both areas shall be given power to make rules in matters of land usage.

Now, Mr. Speaker, I have heard a great deal of comment and perhaps in some areas the African farmer has not got to the stage where he will be able to partake successfully in some of the activities of these committees. All I can say, Mr. Speaker, is that I, in my tours round the African land units, have personally come across Africans of great calibre who one perhaps does not normally bump into because they are, like a lot of European farmers, farmers who remain in their districts doing their best for their district and helping in whatever way they can, and I can, without any fear of contradiction, tell this House that there are in the African land units Africans of calibre who will be able to participate and help in the development of agriculture.

Now, Mr. Speaker, if I may move to the boards of agriculture themselves, and if I may first of all explain to the House the important changes which are taking place in the Scheduled Areas Board. Firstly, the membership will be altered by reducing nominations made by the Minister from five to two. This, I am sure, will be very popular.

Secondly, the Agricultural and Marketing Organization, including all our main statutory boards, will cease to have full membership of the boards of agriculture for the Scheduled Areas and Non-scheduled Areas, and they will instead become associate members of both boards. These marketing Organizations operate on a Colony-wide basis, and their association with only one

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board would not be justified, and that is why I have proposed in this change that they be associate members to both boards.

Now I have been asked what this will mean. How I envisage this will work is that if there is an item on the agenda of either the Board of Agriculture, which is of interest to one of the statutory boards, or one of the industries which operates by a statutory board, then the representative who I presume would be the chairman of that statutory board, would be invited to the meetings of the Board of Agriculture round the subject, which was applicable to his industry. It also means that if members of the Board of Agriculture—either Board of Agriculture—wish to put forward propositions, or to be kept in the picture on how matters are going in the statutory board, all they have to do is to seek the chairman's permission to have that item put on the agenda, and that will mean that the representative, who as I have said previously, I hope will be the chairman, will attend so as to hold discussions on his industry with the Board of Agriculture concerned.

Thirdly, the functions of the Scheduled Areas Board will no longer be generally advisory on all agricultural matters, as they have been in previous years; they will now confine themselves to their statutory duty. This change, as hon. Members will remember, was advocated by the MacGillivray Committee, and has been fully accepted, not only by the Board, but by myself and my Ministry.

Moving to the Non-scheduled Areas side, the African Land Development Board, which we all know as ALDEV, is to be reconstituted as the Board of Agriculture (Non-Scheduled Areas) with a constitution and function corresponding to its opposite number in the Scheduled Areas. But there are two main changes which are going to take place in the membership of the present ALDEV when it becomes the Board of Agriculture (Non-Scheduled Areas).

Again, Sir, the first one is the reduction of appointments from five to two, to be made by the Minister; secondly, the nomination—and this is most important—of two farmers by each provincial agricultural committee instead of previously one farmer and one official. Now, hon. Members must bear in mind that the provincial agricultural committees will in fact have as a majority farmers on it. Therefore the farmers themselves are now going to nominate from their own provincial agricultural committees two members to the Board of Agriculture (Non-Scheduled

Areas). I have in the Bill made it possible for members coming forward from a provincial agricultural committee to bring with them either or both the provincial commissioner or the provincial agricultural officer to the Board of Agriculture to help them in the early stages with their technical background, although either of these two gentlemen when they attend will not have any voting power. I think this is important because in the early stages this Board will be operating with very little background information other than the technical officers who are appointed from my Ministry, and I think that they will find it very advisable, and I hope they will accept the advice of the provincial agricultural officers and the provincial commissioners, to come to these meetings to help them in the early stages.

These changes will of course result in an unofficial African majority on the Board of Agriculture (Non-Scheduled Areas), and I think it is only right in this day and age, and with the development that is going on in the African areas, that this should happen. I think they have earned it if by nothing else than by the achievement of African farming in the way it has progressed over the last four or five years.

Now, if I may just divert slightly to one of the functions of the Board of Agriculture (Non-Scheduled Areas), it still will have a great function in dealing with work to a large extent in the sub-economic areas, and by that I mean the drier areas and the development in those areas. It is mainly by grant money that we are able to develop these drier areas. We are fortunate in the House that we have the Deputy Chief Secretary who for many years was not only the Executive Officer of ALDEV but also Chairman of that Development Board for many years. I sincerely hope that during this debate he will speak, perhaps at greater length, on this matter.

There is one point, Mr. Speaker, which I must bring to hon. Members' notice, and that is the production approval. These amendments which I am now going to discuss are clauses 30, 32 and 43. The recommendation that the compulsory element in production orders is normally inappropriate, except perhaps in times of war or in times of emergency, was made by the MacGillivray Committee, and here again I have accepted the recommendation which the MacGillivray Committee put forward to me on a farmer who submits a programme of production of essential crops to request, if he so wishes, the issue of a production approval. If his request is agreed to by the Board it will become, so to speak, binding by both parties. On the other hand the farmer will be required, if he does

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ask for one, to carry out the programme of production which has been approved. On the other hand he will receive the element of protection against losses due to adverse cultivation conditions which is at present accorded to the growers of essential crops. I should also make it clear that the production order does not disappear altogether. I can, as Minister, if it is considered necessary in the national interest, and with the approval of the Governor in Council, direct the Board to make orders instead of approval in specified cases, and I think it is important that this power remain in case we run into emergencies or wars or any other such conditions. In the second event, Mr. Speaker, the Board may itself prepare a programme of production and may then issue a production order to the farmer to which the programme of production relates. These provisions will ensure the production of essential crops in conditions of national emergency. They will also enable the Board to take measures against the farmers who are not making a satisfactory contribution to the national economy.

Now, Mr. Speaker, if I may move to the Land Development and Settlement Boards, I would like to turn to the amendments which arise from the Government's land proposals. These are measures, Sir, which are designed to breathe life and reality into Government policy of raising racial land barriers which might otherwise, as has been suggested by certain people, remain a pious expression of intention only in a Government White Paper. The settlement scheme which the Government proposes to put into operation just as soon as we have the legal powers to do so, and I must emphasize that we are prepared to move the moment we have the legal powers to do so, and the powers under the scheme have already been debated in this House, and I do not think that I need enlarge upon them in the context of this Bill, although I do not know whether my hon. friend the Minister for Local Government and Lands will take this opportunity of touching upon land matters which arise in his Ministry in connexion with this Bill.

The legislation actually before the House sets up the legislation which in turn will allow us to set up the Land Development and Settlement Board and also gives it the necessary powers to prepare and implement the settlement scheme. Now, while it is our immediate intention to start in the scheduled areas it will be noted from the Bill that the Board will have Colony-wide power and I sincerely hope that in the not too distant future it will be able to devote attention to the development in non-scheduled areas as well as

scheduled areas. The actual provisions for setting up the Board are contained in paragraph 10 (a) of the Bill.

Now, Mr. Speaker, in discussions which I have had with various African Elected Members, and more so perhaps in this context with discussions I have had with certain Masal leaders, there is a feeling of urgency that they, the Masal, should be given the opportunity to get on and develop certain of their high potential areas. I am very, very pleased to hear this coming from certain Masal leaders and I hope that just as soon as the machinery not only of the Settlement Authority and the new Settlement Board but also the new Board of Agriculture is in being it will be possible for me as Minister to get discussions going between the leaders of the Masal people and these two Boards to see whether either or both of them will not be able to help the Masal develop some of their high potential areas. There are other African land unit areas, Mr. Speaker, which could also be developed on an economic basis, and it is mainly on an economic basis that in the first instance the Land Development Board must interest themselves. It is the Board of Agriculture (Non-Scheduled Areas) that will interest itself not only in the economic areas but more so with whatever grant money is available to them in the uneconomic areas or the drier areas.

Now, this new Land Development and Settlement Board which is established by this Bill will displace what has previously been known as, and is known as, the European Agricultural Settlement Board, and it is clause 64 which affects the repeal of the European Agricultural Settlement Ordinance. But, Mr. Speaker, it is, however, necessary to make some provision for the continued administration of existing settlement schemes which have been begun by the European Agricultural Settlement Board and schemes and agreements, both of tenants and assisted owners, have still to be honoured, and we have achieved this by setting up a Board of Trustees who are charged with the sole responsibility for administering the affairs of these existing tenants and assisted owners. In order that the Trustees may carry out their responsibilities they are given approximately the same powers in relation—and this is the important point—to those tenants and assisted owners who are already in the scheme as were conferred on the European Agricultural Settlement Board. I would like to emphasize most strongly that this is a winding-up Trust and that is its main responsibility, that is to say, the duty of the Trustees is only to complete the administration of schemes relating to settlers now within the scope of the European Settlement Board. The Trustees will hold the property of the European

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Agricultural Settlement Board subject to completion of existing schemes on trust for the Land Development and Settlement Board. In other words it is on trust on behalf of the new Board. Each year the Trustees will be required to pay over to the new Board the funds which are surplus to their requirements in running and administering the winding-up operations of the present assisted owners and tenants.

Then, Mr. Speaker, another most important point in this Bill which I would like to touch on is the clauses, and I think it is part 10 (b) of the Bill, referring to 'dispossession'. The Bill contains a number of measures to tighten up control over the utilization of land and to ensure that sound practices of husbandry are carried out by all farmers of all races in all areas. The most important of these measures is the general rule-making powers covering the preservation, utilization and development of Kenya's agricultural land. In the event of persistent contravention of these rules, what will happen? The following will happen. With the consent of the Board of Agriculture concerned the Minister will be empowered to insist on the land being leased to an approved tenant, or, in the last resort, being compulsorily acquired under the Indian Land Acquisition Act. Now we have gone to very great pains to ensure that this drastic power, if it is ever used, is so hedged about with safeguards that it cannot be abused, and that the rights of the individual are fully protected against arbitrary action by the State or the Minister, and perhaps it would be worth while if I went into a little detail on the safeguards. The first one, Mr. Speaker, is that the Minister cannot act alone. I would like to emphasize that. He cannot act at all without the consent of the Board of Agriculture concerned. That is the first safeguard. The second one is that the owner is given full opportunity to make representations against an order of dispossession being made. His third one is that if his representations are unsuccessful then he may appeal to the Agricultural Appeals Tribunal of which the chairman is a retired judge of the Supreme Court.

Then he has a fourth safeguard. If his appeal is rejected by the Agricultural Appeals Tribunal, he has a further right of appeal to the Supreme Court. So I do ask hon. Members to take note of these four safeguards, Mr. Speaker.

Now, it has also been necessary for Government to make provision in the Bill against the contingency that might arise of agricultural land being completely abandoned by its owner. We accordingly propose to take powers to manage abandoned land, put a tenant on it, or again in

the last resort to sell it. Here again, there is provision for appeal, first of all to the Agricultural Appeals Tribunal, and then, if so wished, a further appeal to the Supreme Court.

Mr. Speaker, if I may I will now move to the Special Crops Development Authority. This is dealt with in Part X (d). I would, Mr. Speaker, like perhaps to give a little further information on this Special Crops Development Authority. I did, in November last year, mention to hon. Members that Government did propose to establish a tea authority. Well, this is it now, having come forward—as most things do in Kenya—having changed its name two or three times on the way up. However, it is what I mentioned to this House as the tea authority, and I shall, Mr. Speaker, shortly be laying before this House the report of the two working parties which we set up on the tea authority. After hon. Members have had time to study these reports it will then be my intention to give the House an opportunity, if they so wish, to debate the details of the project. I can assure hon. Members, Mr. Speaker, that no steps will be taken to set up a permanent tea authority on the basis of the legislation in this Bill before that debate has taken place.

I would also like to stress that Part X (d) of the Bill is enabling legislation only and it is not designed to cover the establishment of an authority for tea development. In considering it, therefore, I think we will be unwise to do so with only tea in mind. There are a great number of crops which might well be developed and fostered by the setting up of an authority of the kind for which provision is made in this Bill.

I do not want to talk at very great length on this because I appreciate that there are Members opposite who are going to raise questions on it, and I would then take the opportunity in answering to answer those questions and may be able at a further moment during the Committee stage to debate the questions as and when they arise. There are many cases, Mr. Speaker, in which Government has pioneered the development of a crop and has proved basically that it is economically viable, but where neither the Government nor the grower—and often he is a poor grower financially—have been able to proceed further without loan money. Now, this is where commercial finance, Mr. Speaker, can step in and help, but naturally a commercial organization—more than Government—demands a certain measure of control in the way in which its funds are being used for development. This is precisely the function of a Special Crops Development Authority. I am confident that the enabling legislation which is in this Bill can prove of immense benefit to agriculture in the future.

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Just before I end, Mr. Speaker, I would like to thank my hon. friend, the Attorney-General, and the Legal Draftsman, Mr. Dunlap, for the tremendous amount of work which he—Mr. Dunlap—has put in getting this document, this Bill, ready for the House so that we could debate it in time before we disappear for our Christmas holidays.

There are, Mr. Speaker, a number of amendments of which notice has been given and which I will raise at the Committee stage. I must apologize if the list of amendments seems lengthy. It is not in fact as formidable as it looks. All the amendments do only deal with minor points and most of them are inevitable and arise from the completion of the Trust Deed which appears in the Sixth Schedule. I think it is, in the Bill, at the time of publication of the Bill the Trust Deed had not, of course, been signed or dated. This has now been done and it is necessary to complete the copy of the Deed in the Bill by adding the signatures of the trustees, the witnesses to their signatures and, of course, Mr. Speaker, the date.

Mr. Speaker, I think I have now covered the main principles of this Bill. All I can end up by saying is that I commend it to the House with not only my own confidence as Minister, but with the confidence of the Ministry. I believe that this is a piece of legislation which will greatly improve and strengthen the organizational structure of Kenya's agriculture and which will have far reaching and very great beneficial consequences in the full and proper utilization and development of our greatest asset, the land of Kenya.

I beg to move.

The Minister for Information and Broadcasting (Mr. Harris): seconded.

Question proposed.

Mr. Blundell: Mr. Speaker, I rise to welcome the Bill and I would like to congratulate the hon. Minister on the clear exposition of the Bill which is before the House. To read the Bill, with its many amendments, is not an easy task, and I am sure hon. Members on this side have been greatly helped by the way in which he put the objects of the Bill to us.

I believe the Government also deserves to be congratulated on the speed with which it has brought this measure forward. It is really essential that we should get on with the schemes of purchase and settlement which were outlined by the Minister in the debate on land on, I think, 19th July of this year. Those schemes and developments, Sir, must of necessity be an experiment

I was interested and encouraged at the 'Kenya National Farmers' Union Conference when a debate took place on the schemes for smaller farmers in what are known as the Scheduled or settled areas and doubts were expressed as to the wisdom of them. I was interested by the remarks of a Limuru farmer who stated unequivocally that although he was surrounded by a number of African farmers on smallholdings, nevertheless he had not been embarrassed in any way in his own farming operations. I believe, therefore, that Members of the House can support this whole development which the Government is projecting with confidence.

Again, Sir, I would like to support the Minister in his remarks about the wisdom of removing the Board of Agriculture—in its new form—the representatives of the corporate boards. I think he is wise to associate them when a matter affecting them is under discussion, and to allow them the power of voting. The only slight word of warning I would give is that if the Board of Agriculture in its new form is debating the structure of the maize industry, then I think we can assume that the chairmen or representatives of every statutory board will wish to be present, and the Minister just wants to make sure that the voting as between the associate members and the original members of the board will not be embarrassed by such an activity.

A weakness, Sir, in the original Agricultural Ordinance was this: the motive power behind that ordinance at the time that it was passed was full development of the land; but the fears and suspicions of the farmer really nullified the intentions of Government in moving the Ordinance in that it was not possible to put the ultimate sanction, by the compulsory purchase of land, on to owners who either consistently mismanaged or refused to develop. I entirely agree with and support what the hon. Minister has said in regard to what might be thought the drastic powers of dispossession and purchase. If we are sincere in wishing to get the maximum development of the land, then we have got to have a more powerful sanction than the mere production of development money. I believe that the safeguards in this Bill are perfectly adequate to make sure that the powers of the Minister or the Government cannot be abused. Again, Sir, I was pleased to hear the remarks which the hon. Minister made in regard to such areas as the Masai land unit. I would like to stress once again that the great area where the economy of Kenya can expand and where still tremendous potential exists is in what is known as the African land units. I feel the decision of the Minister to move to a board (Non-Scheduled Areas) with a majority of African farmers on that board will begin to enable us to

[Mr. Blundell] unfold that potential and certainly I think the majority of hon. Members on this side of the House will support that decision.

Now, Sir, I cannot—like the Minister—entirely remove from my remarks some details because we shall wish on this side of the House to have the answers of the Minister to one or two points and, therefore, I give him my apologies in advance for now turning to one or two matters of detail upon which we should like answers. I mention it because it may well be necessary for us on this side of the House to move one or two amendments in the event of the Minister's answers not quite meeting the points which I wish to put forward.

The first matter of detail, Sir, is merely to record that he has my fullest support in the introduction of the ADAS Rift Valley Province to the Board (Scheduled Areas). That is a wise and sensible provision. He is the technical officer in the Ministry most constantly in touch with the intricacies, developments and problems of the agricultural production which is represented by the Board (Scheduled Areas). Secondly, Sir, we welcome the reduction of this power of nomination to only two members, but I would like him when replying to indicate to us the area of experience from which he will nominate members; in other words, what his intention is and what type of man he will nominate to these boards, so that the House can have a clear picture in their minds of the pattern which he wishes to see developing from these boards.

Then, Sir, I want to draw the hon. Minister's attention to section 176U(2) where in the case of his compulsory entering and managing an abandoned farm he is given very broad—or his officers are given very broad—latitude in regard to waste. It says here "without any consideration whatsoever in regard to wasteful management," or something to that effect; I have not got the exact words. Well, prudent as this Government always is, Sir, and the most tremendous example of efficiency as it is, nevertheless, I think it is wise in dealing with humans not to encourage a concept of waste. I think perhaps it might be better to delete the whole of those words and replace them with something like this: "with due attention, in the circumstances of the moment, to the need for prudent management." That, I think, is what the Minister wants to aim at, rather than to imply that his officers will be removed from considerations of waste.

Then, Sir, I want to draw the hon. Minister's attention to 176Z(1). It is the whole principle of the powers which he now takes to himself for the establishment of authorities.

Now let me say unhesitatingly that I support the general principle of these powers. It is a wise, sensible measure to enable the Minister to control an industry in which Government and its associated partners—possibly the Colonial Development Corporation—are engaged for the actual benefit and development of the industry. In so far as that is the intention there is not, in my submission, any objection to the principle. But as it is drafted it would be possible for the Minister to establish a number of authorities primarily not so much to protect the developmental side of the agricultural industry as to establish a series of subsidiary marketing boards, if I may so call it, which have entered through the back door. Now having said that we support the principle of these authorities, Sir, I feel that in taking to himself these powers the Minister has indeed accepted them without enough checks upon himself in their use. It would be possible—to take it in its widest form—it would be possible for an unscrupulous Minister to nationalize the agricultural industry through the provision of the powers which are inherent in the whole of this section, and whereas I support the actual principle, I would like to see some checks upon the Minister's powers, and I would like to suggest that amendments should be moved on the following lines. Before the Minister moves to set up an authority I would like to see him statutorily compelled to consult the scheduled or the non-scheduled boards, or both, as may be most appropriate. The effect of that would be that the board concerned—that is the scheduled or the non-scheduled board—would immediately call into being the associate board of the industry concerned, and the Minister's intentions would have the advantage, I think, of examination and consultation and advice from a wider area than merely the Ministry or the governmental machine. That, I think, Sir, would be the first step which we should take in just limiting the very sweeping powers which the Minister seeks to allocate to himself.

Then secondly, Sir, I am a little worried by one of the clauses which in effect says—it is on page 295 of the Bill, and it is 176Z (h) 7—"To regulate and control the marketing of crops by growers and others, including the requiring of growers and others to sell crops to particular persons only." Now where those powers, Sir, are solely related to the developmental authority of the Government in association with some overseas concern, I do not think that Members in this House would greatly quibble at them, but as it is now worded it seems to me possible to incorporate into those powers crops grown outside the particular provision of the developmental area of the industry. If that is to be so, then immediately ordinary persons in this country, such as the owners of shops, persons who have built up a business in

[Mr. Blundell] the selling of this particular crop, may have their legitimate rights infringed. We do not want to cumber the decision of the Minister too much, but I do think we want to give the public an opportunity of expressing their views, and the second amendment I would like to introduce would be to suggest to the Minister that after he has consulted the scheduled or the non-scheduled boards, or both, as may be appropriate in regard to the use of these powers, and has made his decision, his decision should be notified in the official Gazette for public information, and no action taken for 30 days pending representations from the public in regard to the decision. That would have the effect of allowing a person whose business was in danger of being nullified by these powers of making his fair and just representations to the Minister.

Subject to those two checks, Sir, I myself would strongly support the concept of a more flexible system of setting up these authorities to deal with particular elements of the agricultural industry.

Further, Sir, I would like to draw the hon. Minister's attention to section 176U (7)—that is the section where the Minister, having compulsorily entered a farm and sought to purchase it or manage it, allows himself one year when he cannot ascertain the owner to decide whether to pay the owner the money for the acquisition or to pay it at the end of the year into a consolidated fund. I would like to suggest to the Minister that one year is not enough, and that he might like to accept an amendment in that regard, to say that after two years the money should be paid into the fund. I feel the Minister would be wise to take rather longer than one year.

And finally, Sir, on the whole question of principle, in 176Z (1) (h) there is power by an authority which the Minister has set up to impose levies on growers to finance its operations and for other purposes approved by the Minister. The only point I would like to have, Sir, is that as we are now suggesting the imposition of a levy on the industry, I think it is important that the industry itself, that is the growing side of the industry, or any other section of the industry which is affected by the levy, should be closely associated with the authority, and I would like to have an assurance from the Minister that when he sets up these authorities he intends clearly to place on the authority representation of the growers. If that is done, then I believe we need not worry about the impact of the levies because the growers will be associated with it.

And now, Sir, I would like to end by saying this. The old Board of Agriculture becomes, I think, the Land Development and Settlement Board.

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): The old Board of Agriculture becomes the new Board of Agriculture mainly without the associate members being members of the Board. In other words it is reduced from about 34 down to about 17.

Mr. Blundell: Mr. Speaker, I want to take this opportunity of recording to the House that a great deal of work in regard to this Bill, I imagine, but certainly in regard to the settlement side, has been done by the present chairman of the Board of Agriculture. I hope very strongly indeed that the Minister will find it possible to continue the benefit of that officer and gentleman's experience in the future in the Land Development and Settlement Board, which it is proposed to set up under this Ordinance. And I would like to take this opportunity of paying this tribute to Mr. Lipscomb, who has been chairman of the Board of Agriculture, and was chairman of the Board of Settlement, for a number of reasons. The first is that he has done a job with very little flourish of publicity sincerely and well. And the second is perhaps a personal thing. Some 18 months ago, or perhaps two years ago, I had occasion to criticize the officer concerned, and I do believe in the light of events that I was not fair to him. That seems to me, therefore, right and proper that I should take this opportunity of redressing the past by making this tribute to the work which he had performed before he left the Board of Settlement—the European Agricultural Settlement Board—and continuously on the Board of Agriculture, and to express our real hope on this side of the House that he will continue to give us his experience in the launching of these new ideas which are incorporated in this Bill.

And, with those words, Sir, I would like to support the measure which is before the House.

Major Roberts: Mr. Speaker, Sir, I support this Bill for the very simple reason that there is not much point in doing anything else. Sir, the controversial side of this measure came before this House when we were asked to note those two Sessional Papers. At the time I did note them—I noted them with horror. But, Sir, it is quite obvious now that the surgeon's knife is going to be applied, and therefore it is essential that as quickly as possible we condition the patient, and I think that this Bill is really designed to do just that.

Sir, I cannot completely support, as usual, everything that the hon. Member who has just sat down has said; and I do wish to voice a few opinions which I believe represent the views of the Kenya National Farmers' Union, and I think the hon. Minister will agree that that is a very

[Major Roberts]—important body—a very representative body in the industry—and that he should pay some heed to their wishes.

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): He always does!

Major Roberts: Try a little harder this time. Sir, the first point is the question of the Assistant Director of Agriculture for the Rift Valley Province being made a member of the Board. Sir, I do not think it is really necessary. He could be an advisor to it, but I do not see why he should be a member of the Board. I am sure the Minister will agree with me that a Board is a body of men who individually can do nothing, but collectively usually decide that nothing can be done. I would suggest, Sir, that we should keep our boards to the minimum number of people possible. I think it will function very much better, and if we can cut them down I think it should be done.

Sir, page 253, dealing with the composition of the boards, states that there should not be more than two persons appointed by the Minister. Sir, I do not think we want to leave the powers too much in the hands of the Minister, and I think that that should only be done with a very careful consultation with the Board itself. Then we come on page 253 to section 45. Sir, is it really necessary for associate members of the Board to have a vote? I feel that they are there as advisers, and as such they can contribute to the working of the Board without necessarily having a vote.

Sir, on page 256, section 83, if a man has a development order put on him and he has not got the money and can only obtain it under exorbitant conditions, and he can satisfy the Board that they are exorbitant conditions, then I think he should not be compelled to carry out the development order, and that should be made clear in this Bill.

Sir, now on page 259, subparagraph (5), it says that any such conditions may specify the circumstances in which a guaranteed minimum return shall or shall not be payable. Surely, Sir, that must be "must". There is no question about it at all, it must be more definite and the word "may" should be "must".

Sir, in any case where the Minister is able to appoint members to any of these Boards I do stress that it should be in consultation with the Board.

Sir, now I would like to turn to a matter I feel very personally about. In the proposed amendments the Minister is due to introduce at the Committee stage as given on the attachment to today's Order Paper, at the bottom of the page, Sir, paragraph 6 (g), it mentions the question of

limiting the size or the amount of land which an agricultural worker may be given by a farmer. Sir, I can see the necessity for that in high potential land, land where a farmer can utilize most of his farm economically. But, Sir, in areas where only a small proportion of the farm is economic arable land and where there is a large amount of hillside and escarpment with small pockets of land which are not economic from a commercial farming point of view but which are perfectly suitable for peasant agriculture, then I think the decision should rest with the farmer as to whether he allows land and how much land he allows those employees to cultivate. Surely, Sir, that is helping the economy of this country. If you restrict him, Sir, a large number of these pockets cannot be used. I think he should also consider the unfortunate officer who may at some time have to go to check on the amount of land. I can take him to my farm and I think after he has climbed the highest hill to have a look at one spot of land he would not want to look at any more. I think it is a decision, Sir, that can be left to the farmer. In high potential areas he is not going to waste his land that way; in other areas he is going to make use of it, and I think it would be a contribution to the economy of the country.

Mr. Speaker, I support.

Mrs. Shaw: Mr. Speaker, Sir, I should like to join the first speaker in congratulating the Minister for Agriculture on his very able and clear exposition of this Bill when introducing it.

I welcome this Bill for I have always held the view that no country can be developed to its fullest economic extent without the free flow of skills and capital and no artificial barriers. To my mind, Sir, all land should be held by individual ownership, safeguarded by a Bill of Rights enshrined in the Constitution. But the emphasis must be on development, on sound economic lines, which means that there must be, just as in achieving independence, an orderly transference of power; so in this case there must be an orderly, phased and planned transfer of ownership so as not to upset the economy on which the whole of our future depends.

Many Africans believe that when this Bill becomes law, as it shortly will do, they will be able to buy anywhere within the Highlands five- or ten-acre plots and then to practise their present subsistence-level agriculture. Were change of ownership to mean this, Sir, it would destroy the whole of Kenya's economy and spell ruin, putting paid to all our hopes for a prosperous future for all races. For about four-fifths of Kenya's economy comes from the produce of her land, and as Mrs. Elpheth Huxley so rightly says, it is a question of whether the country's economy can survive, let alone expand, under such a drastic

[Mrs. Shaw] change of ownership. To substantiate the point made by Mrs. Huxley in her most excellent book, *A New Earth*, I should like to read, with your permission, Mr. Speaker, one short paragraph from this book. Mrs. Huxley has this to say on the general policy of Kenya's agriculture:

"Of the agricultural exports on which Kenya depends for its existence, £26,300,000-worth came, in 1958, from the European sector of the country, and £5,900,000-worth from the African. As the developments I have outlined proceed, the African share will rise year by year until eventually it overtakes the share of the Europeans. For instance, if the coffee programme proceeds as it should—and the big threat here is a break in the market—African production should catch up European by 1970 and thereafter surpass it. And there is reckoned to be twice as much land suitable for tea in the African areas as is at present planted in the European.

This lies in the future: at present it is mainly European production that supports the country's economy, and provides the bulk of the revenue on which all progress depends. And so no conscientious government could surrender control until it was satisfied on at least two counts: that Africans would run things efficiently, and that they would not, through inflamed racial soreness, wreck the European sector of the economy, at any rate before they were themselves in a position to take it over with a good chance of success."

This, to my mind, Mr. Speaker, puts the whole case precisely and clearly and in perspective, by stating the facts, underlining the difficulties and by posing the question. The future alone can give the answer, but as the very existence of our people depends on the outcome we must do all that we can to insure that the answer is a satisfactory one. Hence the necessity for this Bill, its many provisions, and, Sir, it is our duty as Members to see that the safeguards provided under the various clauses are adequate to ensure success.

For instance, I am not certain that the Minister has not been given too wide powers maybe under section 10 and possibly under section 176Z as at present drafted. In fact, this was outlined by the hon. Specially Elected Member, Mr. Blundell, when he stated that he would move an amendment on that particular section of the Bill on which I dwelt.

Most of the planning for the change of ownership and resettlement of farms must be done by members of the Boards and I feel it is essential as far as possible that they should have a free hand in this work. After all, they will be elected

not only for their knowledge of agriculture but for their knowledge, specialized knowledge, of the areas which they represent in the light of experience of climate and conditions of soil. I think that most people will agree that if their services are to be of the greatest value they must be given complete freedom to advise and act within the overall control of the Ministry. Much of the detailed work for the carrying out of the Board's recommendations will devolve on the new Land Development and Settlement Board: to be set up under the provisions laid down in section 24, and I am glad to hear that it is a possibility. I hope a probability—that the man who has done so much for European agriculture and settlement already is to steer this new ship through the dangers of the uncharted waters in this sea of difficulties.

I wish the Board, when appointed, every success, for on their planning and performance will surely depend the success or failure of this drastic experiment, the outcome of which is so vital for all of us in Kenya. One of their first tasks, I imagine, will be to consider, assess, and finally settle all genuine outstanding land claims in a just and equitable manner; their second will be to plan a resettlement campaign in the light of land offered for sale, taking into account its value and its suitability for development under the proposed yeoman or peasant farmer schemes, always remembering that the economic balance must be retained. This will be an immense task involving an immense amount of work, and requiring all the specialized knowledge of the members of this Board as well as the technical aid at their disposal through the officers of the Agricultural Department.

Then, too, there is the development of plantation crops such as coffee, sisal, and, in the higher rainfall areas, tea; and in this connexion I am delighted to hear that the plans for the new Tea Authority are so well advanced. I mean development in this connexion with plantation crops both within the Highlands and the African land units, for, as Mrs. Huxley says, there is as much land available for tea, lying within the African land units as that already planted in the European Highlands. In fact I believe it to be true that the undeveloped potential of the Highlands is infinitesimal when compared with the undeveloped potential in the African land units. The infusion of new capital to establish plantation crops in suitable areas could change the whole African economy just as in the past few years the magnificent work of planning done by the agricultural officers has changed the face of the African land units with consolidation. I feel certain that some of the larger companies will be only too willing to participate in such schemes

[Mrs. Shaw] devised for African land units lying contiguous to a tea-growing area, for instance, by the provision of factory facilities as well as their skills and know-how. In fact, a number of companies are already co-operating with Government in such development.

I also suggest that Government might consider setting up African tea companies on a co-operative basis for the growing by individual African farmers of small acreages, totalling up to 50 or even 100 acres, run as one plantation, which could well combine with established European farmers in supplying the 500 acres minimum necessary for the economic running of a tea factory. Schemes such as these, whether sponsored by Government, companies, or indeed by individual farmers, would I am sure gain the support of the Europeans in the areas concerned. Already in the European farming areas of Nyanza—

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): On a point of information, Sir, does the hon. Member mean that if the commercial people take an interest they should have situated round the factory they have put up 500 acres on which they could plant tea or not?

Mrs. Shaw: No, Sir, I am sorry. I have not made myself clear. What I was suggesting was that in smaller districts Government might be prepared to sponsor African tea companies run on co-operative lines, each African planting up to say five or ten acres of tea, totalling up to 50 or 100 acres, which could then, in conjunction with established small tea growers, make a factory unit for an economic factory unit is about 500 acres.

Already in the European farming areas of Nyanza, members of the K.N.F.U. have sponsored the formation of African branches and have run combined field days to enable farmers of all races to meet and discuss their common problems. I believe that on co-operation such as this depends the success or failure of agriculture in any future Kenya. Were economics solely involved this would not present any great difficulties, Mr. Speaker, but, as we all know only too well, this is a human problem, having its foundations deeply rooted in the land, a love of which is a basic characteristic common to farmers of all races.

The solving of these problems, which will undoubtedly arise, will call for good will on both sides, for the greatest patience and understanding, and for the most tremendous feats of adaptability as far as my own community is concerned. Given this, and showing their courage and character, as the pioneers of old, they will be able to remain, I believe, being the centres of British influence in

the Colony, so that, as in those far off days, when European farmers went before the flag, they may be able to survive it, playing their full part in making a great contribution to the future of any independent Kenya.

Major Benn: Mr. Speaker, Sir, while supporting this Bill, I do not want to make any comment on detail, but I would like to put to the hon. Minister for Agriculture one of two points and observations.

In the East African Royal Commission Report, 1953-55, on page 56, paragraph 7, it says, "It is, therefore, that we think it necessary to encourage the breaking down of tribal and racial boundaries and to replace them by confirming individual titles, etc." Also in the Memorandum of Objects and Reasons for this Bill it says, "This Bill proposes to make a number of amendments to the Agricultural Ordinance, 1955, 'firstly... secondly... and thirdly, 'to promote the settlement and development of land by persons of all races'."

Now, I see in the "Notes on Proposed Settlement Schemes" under peasant qualifications, "Tribal spheres of influence to be taken into account". I presume this means certain areas in the Scheduled Areas will be reserved for certain tribes. If this is the case I believe that it strikes at the objects and reasons for this Bill, which are, "To promote the settlement and development of land by persons of all races". Also, which is more serious in my opinion, it perpetuates tribalism.

I would like to refer again to the Royal Commission Report, page 366, paragraph 63. "A policy of land reservations or of safeguarding sectional interests, even when these may conflict with those of the community as a whole, is the antithesis of what we have recommended."

Another point I would like to raise is this. In His Excellency the Governor's opening address at the Kenya National Farmers' Union Conference, he said that he had an intense eagerness to see Kenya's soil well farmed. The introduction of peasant farming into the Scheduled Areas from an economic point of view, from a land utilization point of view, and from the point of view that it will relieve the pressure on the over-populated areas in the native reserves is, in my opinion, false. One knows from the Scheduled Areas, which consist of 7,200,000 acres, of which half is mixed farming and plantation areas, £35,000,000-worth of produce is produced, of which nearly £20,000,000-worth is available for export. Also the total production available for sale from native areas is approximately £5,000,000 of which not all goes for export. If peasant farming is introduced into the Scheduled Areas then I fear that the economy of the country will suffer.

[Major Benn]

Secondly, from a land utilization point of view, I believe that people of all races and tribes should be able to farm in the Scheduled Areas provided they can show that they can make better use of the land than is being done at the present and on that criterion only. I believe that peasant farming means subsistence farming with continued cropping and with the inevitable result in lower yields.

Thirdly, as far as relieving pressure on the over-populated areas is concerned, I understand it is estimated that there are some 130,000 landless families. In the Scheduled Areas we have already one African family which on an average must consist of at least six to eight persons per 70 acres and one labourer per 30 to 40 acres. This includes the mixed farming areas. These people are doing an invaluable service to the country, not only in assisting the European farmer, but also themselves, producing valuable crops, in many cases off land which it would be impossible for the farmer to work.

If you introduce peasant farming you may well find you are introducing one lot of people only to replace another. I believe that the problem of the landless must be faced. There are areas in this country which have already been referred to and which, if opened up, would suffice for all, but due to tribal restrictions this cannot be done. This is the problem, I submit, which must be faced.

Mr. Speaker, Sir, this is the first time I have the privilege and honour of addressing this House. I am deeply conscious of it.

I beg to support.

The Speaker (Mr. Slade): I did not want to interrupt the hon. Member in his maiden speech, on which I am sure other Members will wish to congratulate him, but I must remind hon. Members of Standing Order 50—"No Member shall read his speech but he may read short extracts from written and printed papers to support his argument and may refresh his memory by reference to notes".

Mr. Hennings: Mr. Speaker, I had an invitation from the Mover himself to speak so I feel that I am bound to stand up at this juncture.

I do not know whether other Members of the House remember that the drafting of the Agriculture Bill started, I think, in 1947, and went right through to 1955. It took seven years to produce that Bill, and I do very heartily support the congratulations which have been voiced today to officers both of the Ministry of Agriculture and of the Legal Department for getting these major amendments through in a period of a few months. I think it is a tremendous task done very well.

I have only got a few remarks to make, Sir, but I personally am very glad to see that the Board which has been known for the last few years as ALDEV is taking on a new lease of life under the new title of the Board of Agriculture (Non-Scheduled Areas). The ALDEV Board has already had, I think, four or five names. It started off as the African Settlement Board; it then became the African Settlement and Land Utilization Board; and then when the emphasis changed from settlement to the development of African land it became the African Land Utilization and Settlement Board, to include land utilization first. When the Agriculture Ordinance became law in 1955 it became the African Land Development Board. The new Bill converts that Board into the Board of Agriculture (Non-Scheduled Areas) and the major change as I see it is that it gives a large African majority on the Board. I am sure that this is an excellent thing and I would like to pay tribute to the half dozen African members of the present African Land Development Board. They came on to the Board about five years ago and I can vouch from my own knowledge of the Board that they have been a great source of strength to the ALDEV Board, and on many occasions when we were touring African areas the African members of the ALDEV Board were prepared to take a stronger line than the European members on their own would have dared to take. I think this is a very great tribute to those members, and I only hope that the members of the new Board coming forward, two farmers per province, will be as good as the members we have had to date.

There is a new Board which is called the Land Development and Settlement Board in the Bill now before the House and I think it is clear from the remarks of the hon. Mover that its main task will be on the settlement side. I think I might just briefly mention the record of the ALDEV Board, under its various names. In the field of settlement, Members will realize that by definition of its functions it was confined to settling what we call the African areas, or such Crown land as could be made available to it; and the result has been over the last 15 years, roughly, that 17,000 families have been settled or resettled by the ALDEV Board. If you count six persons per family, which is fairly modest, that is over 100,000 persons. That may not seem very many in a population of over 6,000,000 but the effect of those settlements has been a good deal wider and more important than the mere numbers concerned, particularly, for instance, in the Machakos District: the effect of having a settlement at Makuweni, which landless Wakamba could go, was extremely important in changing

[Mr. Hennings]

the whole atmosphere of the Reserve from opposition to Government's work in the Reserve on land development to wholehearted support.

Most of these settlements were sub-economic, that is not fully economic, and as I understand the work of the new Land Development and Settlement Board it will operate 100 per cent upon an economic basis. Now, this is something which is quite basic to development in this country. A great deal of the land in Kenya is good land where development or settlement can be carried out on a fully economic basis. There are other areas not so good where it is not possible to get development going from the start on a full economic basis. One of the most important trends in land development in the African areas over the last 15 years has been the gradual change from sub-economic development, that is to say, 100 per cent grant development, gradually more and more over the years to economic development based on loans which are 100 per cent repayable. This trend can be seen quite clearly in the Annual Reports of ALDEV. The first loans to African farmers were made about 1949 or 1950; they have been getting bigger the whole time; more and more water development schemes or grazing schemes in African areas have been developed on a basis of loans and that applies particularly, I am glad to say, to the cattle-owning tribes who sometimes, it is claimed, are left out of these schemes. In fact, some of the cattle-owning tribes, the Masai and the Samburu, and to some extent the Tugen, have financed their own development by selling cattle, and the fact that they have that source of wealth to pay for their own development should always be borne in mind.

Although there is more and more development and settlement on a purely economic basis, and the new Land Development and Settlement Board will be particularly charged with that work, I think it is clear that there is a great need still in many parts of the Colony for the sub-economic type of development, that is to say, mainly grant development moving over to loan development as soon as possible, because this basic development of water supplies, bush clearing, and these sort of activities, particularly in the marginal areas, is the basis on which economic development can be built at a second stage.

I think it is quite wrong that grant money should be poured into an area for an indefinite period, but I think there is a very strong case in many areas for a little grant money for a relatively short period. It may be a matter of five to ten years which is quite a short period when you are dealing with the development of this undeveloped continent. But there should always be seen

an end to that grant money and a period when development will proceed on an economic instead of a sub-economic basis. That has been the policy which the old ALDEV Board has pursued; I hope it will be the policy which the new Board of Agriculture (Non-Scheduled Areas) will pursue.

I was very interested in the remarks of the last speaker and I would like to congratulate him—the Acting Member for Aberdare—on his maiden speech which was a very lucid contribution to our discussion. He did bring up the extremely important point that tribal exclusiveness in the African areas has not vanished, at a wave of the wand, and that by passing this Agriculture (Amendment) Ordinance, of course, we cannot get rid of tribal exclusiveness in African areas. This, I think, is one of the basic facts which make it necessary to have two rather different methods of dealing with land development in Kenya. In the areas where you have individual title freely transferable, even in areas where you have some sort of title which is not freely transferable, you can proceed to develop the land by making loans which are secured on those titles and which are 100 per cent repayable, 100 per cent economic. In the very much larger areas where you do not have individual documentary titles, where there is no transferable title, also where tribal customs prevent titles being transferred, it is very much more difficult to develop land by way of loan because there is no security for the loan. I think it is this basic reason which makes it necessary to have a rather different method—two methods—for developing the land in Kenya. I see this really as one of the major underlying reasons for having two Boards in the Colony instead of one, because they have to work in rather different ways.

I do not think, Sir, that there is anything more that I need say, but I would like to wish every success to the new Board (Non-Scheduled Areas) which is of particular interest to me, and to give my strongest support to the Bill now before the House.

Mr. Hassan: Sir, I rise to congratulate the Minister for the very able way in which he put up this Paper today. We, the Asians, welcome this Bill because it has at least on paper removed all the racial barriers and discriminations for the possession of one's nationality, race and colour. But, Sir, on reading this Paper I was not in a position to satisfy an Asian friend of mine before I left Mombasa who asked me a point-blank question: "Will I be able to obtain a piece of land in the Highlands in order to engage in agriculture?" I told him that I remembered the advice of the wise man of a village in olden times, when a young man asked him, "Sir, I see a very nice and beautiful crane on that pond every morning and I would like you to tell me how to catch it."

[Mr. Hassan]

"Oh", he said, "it is very easy, sonny. You crawl along very slowly, keeping yourself always at his back until you get near him and then very quietly put a small piece of wax on his head and retire to a safe distance. That should be done in the morning when the sun is rising. The wax will melt, it will go into his eyes and he will be blinded and you will be able to catch him." So the young man said, "Sir, why on earth couldn't I catch him before I put the wax on his head?" He said, "That would be a foolish act. It is not the expert who would do such a thing!"

I have been reading of the conditions and the way one can possess land and as far as the Asians are concerned I do not think it will be very easy for them to possess it. However, I am glad that on paper it is non-racial and that all will be able to acquire it. How they will do it I do not know; that will be very difficult for them.

It is a very interesting change to be getting rid of some of the racial boards, and new boards have been appointed which are considered to be non-racial. However, with the exception of one corner of Kenya where we have some Asian farmers and where one of them is a member of the board, Asians are debarred from being members of those boards, at the district, provincial or country levels. We have been requesting the authorities for years to permit us to engage in agriculture and help and assist towards the economy and development of this country. However, the land that was the best for agriculture was only considered good enough for certain races and indigenous population. I am glad, Sir, that the policy is now changed and the time may come one day when we shall have Asian farmers in much larger numbers in every corner of Kenya, helping and assisting and co-operating with other races towards the agricultural development of this country.

I would like to associate myself with what the Specially Elected Member, Mr. Blundell, said regarding the Minister having too much power for ordering certain crops and their disposal to a particular individual, and land confiscation. I would like the Minister to give a little more consideration to that clause and see if the confiscation clause could not provide that the board which would decide that the land should be confiscated because a person has not developed it, according to the orders of the board, should reach a unanimous decision. And if it is not considered advisable to lay down that, it should be the unanimous decision of the board, it should at least be the decision of two-thirds of the members of that board so that every opportunity should be given to that individual to shake off that danger, instead of being diverted to the

Appeal Court and the Supreme Court and to other most expensive methods which very few people will be able to afford.

I must congratulate the Member for bringing in this Bill in the quickest possible time. I never thought he would be able to bring it in before this Legislative Council is done away with, but he has done it very quickly and as far as I can see everybody appears to be giving their blessing to it. I hope he shall have all the credit for the hard work which he has done.

As regards the land in the coastal areas, I must bring to the notice of the Minister the fact that land in that area—with the exception of some situated on the seashore which can grow crops without any difficulty, permanent crops, and the fruit trees usually grow in their own shade and where a little water in the coral does the rest—away from the shore it is not possible to rely very much on the rains. I hope the Minister will draw the attention of the boards that will be appointed later to the fact that we have two large rivers in Kenya taking away the most fertile soil from the Kenya Highlands into the Indian Ocean. Something could be done to divert them, before they fall into the sea, on to the land which is considered to be fairly fertile, to help and assist the people at the Coast to have easy agriculture and to grow anything they like with the help of that irrigation. I know it would cost money but I remember that we had a considerable number of applicants sending in applications asking for big chunks of land areas to put up schemes for diverting the river and placing those areas under rice and other cultivation. So if private individuals can think of doing that, surely the Government should find it even easier for them to do this for the benefit of the people in that area.

With these few words, Sir, I have great pleasure in supporting the Bill.

Mr. Maxwell: Mr. Speaker, Sir, I do not intend to take up the time of this Council by speaking at length. Firstly, Mr. Speaker, I would be accused, I feel, of inconsistency if I said I welcomed this Bill in view of the fact that I and certain others bitterly opposed Sessional Papers Nos. 10 and 6. But in view of the fact that those Papers have been approved I of necessity will not oppose the introduction of this particular Bill.

Sir, I would like to refer to pages 284 and onwards, and particularly to the powers conferred or about to be conferred upon the Minister in regard to the acquisition of farms which have apparently been abandoned. The hon. Specially Elected Member, Mr. Blundell, also drew your attention to this particular point. Under section (7) of 176U at the bottom of page 292, if you

[Mr. Maxwell]

cannot find the address of the owner you can forfeit the amount of money for which you have sold the farm can be paid into a consolidated fund, at the end of a period of one year. I feel that in law that is quite wrong and not equitable. It is highly probable that the owner may for some reason have left the country, died possibly, and he may have some heirs and successors to his estate. To assume that the Government would be right in claiming the money after giving one year's notice, particularly since the notice is confined to the Kenya Gazette which, even in this country, is not widely read, is I think, quite wrong and I would ask the hon. Minister for Agriculture to go into this matter with the Solicitor-General or the Attorney-General with a view to tidying up that particular point.

I enjoyed—but I was not fearfully impressed, Mr. Speaker, Sir, by the "Talk Success" speech of the hon. Member for Nyanza. She mentioned something about a flag. Presumably she was referring to the Union Jack. Provided the Union Jack remains, I would, indeed, support her—to some extent.

The Acting Member for the Aberdares drew attention, Sir, to the question of African land units and the tribal land barriers that exist. I believe that when Government first considered the introduction of Sessional Papers Nos. 10 and 6 mention was made at that particular time—the hon. Minister will correct me later if I am wrong—that it was the intention of Government to put land tenure on the same basis throughout Kenya. It seems to me that all we are achieving at the present time is to remove so-called barriers which enclosed that area of land occupied by the Europeans in the Highlands, but that the tribal barriers still exist. Sir, I am a little bit concerned—it does not actually appear in this Paper, but in the notes which the Minister prepared—in regard to peasant farming, and this is because if land was acquired, say on the periphery of any particular European settled area, tribal spheres of influence would be taken into account. That, in my opinion, is definitely wrong. If subdivisions are to take place in the areas to which I have referred, obviously title must be granted in respect of a particular piece or parcel of land, whether it is 5, 10 or 20 acres. That title must be freely negotiable, and those titles should be, indeed, issued irrespective of race or tribe. And if you are going to extend these tribal boundaries you are going to perpetuate tribal thinking, but if Government intends to break down the African land barriers you must set about it in the right way: certainly not by enlarging the existing land units.

The hon. Member for the East Electoral Area gladly welcomed the Bill in view of the fact that

it would now make land available for those hungry and landless people of his particular community. After this Bill has gone through its various stages I shall be delighted to introduce Dr. Hassan to a large number of estate agents who would gladly place large areas of land at his disposal.

Mr. Speaker, Sir, I support.

Mr. Khamisi: Mr. Speaker, Sir, I rise to make a few comments in connexion with the Bill before the House. In doing so I know that this House and the country as a whole believe and know that land is the only asset which provides the chief mainstay of this country. Therefore, it is most imperative and necessary that all land should be properly utilized throughout the country. Now, for this reason, Sir, I would like to welcome the suggestions that have been put forward in this Bill which are aimed at making the best possible use of the best possible land that is obtainable at present in this country. One thing, Sir, which has struck me, and on which I have heard nothing from the Minister as yet, but perhaps it is a point which he may care to answer, is the question of the acquisition of unused land which will come into being as a result of this Bill. I see that the regulations are rather stringent and that the people who will be allotted these settlement schemes will be expected to make the best use of them. If they do not, the Minister, through the machinery that has been set up in this Bill, will be able to acquire such land. I would, however, like to ask the Minister whether the same procedure will be followed with regard to the people who are at present in occupation of large areas of land and who do not make the fullest possible use of their land. In this respect, Sir, if I may point out areas around Mombasa and the coastal regions, there are many farms or land which have been acquired by people, perhaps granted to them by the Crown or perhaps bought by from private individuals, which are left there for years and years without any attempt being made to make the best use of the land. I do know that some of these lands are being kept there purely for speculative purposes, so that at some future date somebody will be able to sell it at a much higher price than was given when the land was bought. I should like Government to consider the acquisition of this land. As an example, for about 25 years the East African Estates held thousands of acres purely for speculative purposes until they got rid of it quite recently and sold it at most exorbitant prices, compared with the nominal price they paid for the land when they bought it. Now, there are many other people who hold similar land in the Kwale District, in the Kilifi District and generally throughout the Coastal Province. As you know—and as this House is

[Mr. Khamisi]

aware—most of the land in the Coast Province, particularly along the coast, can only be utilized for fruit trees. However, it is the best land throughout the Province because the nearer you are to the coastline the more rainfall you have and the more fertile the land is. There are many people who hold several hundred acres, unutilized, just kept there, and they do not want to use them. They have no intention of using them. The only intention they have is that of speculation. I should like Government to see that these lands, which are very badly required by the Africans—because most or some of this land was acquired although Africans were living on the land and no consideration was given to them, not even compensation, for the trees or permanent crops they had planted on this land—are taken note of and I hope, therefore, that the Minister will also cast his eyes towards the coastal Province and towards these areas which I have mentioned to see that the land which is lying idle there is utilized by the Africans if the owners of this land have made no attempt to use it. In fact, I feel, Sir, that since it has been bought purely for speculative purposes it should be returned to its owners.

At the same time I should also like the Minister to look at the large areas of Crown land and forest reserves which are lying idle in these areas so that attempts may be made to have these lands either utilized for the benefit of the country or returned to the Africans who are prepared to use them. At least they will provide some subsistence living for them. At present, Sir, there are very many Africans who have nowhere to go to occupy land in these areas and I am very anxious that Government should do something about this matter.

The third point I would like to put to the Minister is the question of financial assistance to peasant farmers. I feel, Sir, that the peasant farmers should not be excluded from Government financial assistance, and that the Government should make available funds, either funds in cash or in kind by the provision of tractors and ploughing implements, to assist these people so that these peasant farmers would not only make a living but also be able to make sufficient cash to raise their standard of living. I feel, Sir, it is quite wrong for the Government only to think in terms of the Africans who live in the areas of high potential. I have said that in this House before, and I would like to repeat it once more. All the taxpayers in this country, whether they live in high potential areas or in the lower to coastal regions are entitled—it is their right—to have assistance from Government funds in order that their standard of living may be improved.

And if this Bill will do that, it will serve a useful purpose; but if it will not, I feel the only use for it would be as scrap, so that something that would be useful for the poorer people would be placed before this House next year.

With these few remarks, Sir, I beg to support the Motion before the House.

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): Mr. Speaker, Sir, I am afraid, to a certain extent, I have been caught unawares and have not got all the necessary answers, but I will do my best to deal with those questions that have been put to me, and perhaps those that I am unable to deal with at this stage I will deal with in the Committee stage.

—First of all, Mr. Speaker, I would like to thank the hon. Specially Elected Member who spoke first for the kind remarks he made, not only about members of my Ministry, but the remarks he made about Mr. Lipscomb in his capacity as Chairman of the Board of Agriculture, and as the previous Chairman of the Settlement Board. I would, perhaps, like to add to his words thanks to the people who for many, many years on and off have served on the Board of Agriculture. There are a great number of people who have given a tremendous lot of time for no remuneration whatsoever to the Board of Agriculture, and I think that we may find that familiar faces under the new set-up may begin to disappear, and so I would like to take that opportunity to say so now.

The hon. Specially Elected Member did ask me if it would be possible for all the chairmen of the statutory boards to attend, for instance, when the contentious maize industry was being debated or discussed in a board of agriculture. I think it would be completely correct to have all those chairmen of statutory boards who are vitally concerned with an industry, such as the maize industry, to attend, but I think it would be wrong to give them all a vote at that meeting; but I do think it would be correct to allow the industry concerned to have a vote. I have not had time to look at this, but I would think that perhaps they would be able to outvote the board.

Mr. Blondell: I thank the hon. Minister for giving way. The point is as it is now drafted it looks to me as if they would have an entitlement to vote.

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): I have said, Mr. Speaker, that I will look at it. I have not had time since 2.35 to look at it.

Mr. Blondell: Correct!

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): I also agree with him in what he said with reference to the great potential which is in the African land units—the potential lying awaiting development. This point was also touched on by the hon. Member for Nyanza. The new Board of Agriculture will be able to utilize its influence and money which it will have available to develop these potentials as will the tea authority when it is set up and other authorities which may be set up under these special cash crop developments.

He also raised the point of whether the A.D.A.S. appointment to the Board was good or not. The hon. Specially Elected Member maintained it was good, whereby the hon. Member for the Rift Valley maintained that he thought that perhaps he could attend as an adviser only, for the main reason he gave of cutting down the numbers. Well, I do not know whether the hon. Member for the Rift Valley likes attending meetings when he can only attend in an advisory capacity. I sincerely hope that his time here in the House over the last year has only been in an advisory capacity because I can promise him that on a number of occasions I have listened very carefully to what he has said and weighed it in the balance as far as my Ministry is concerned, and he may not believe this, but strange as it may seem, I am sure that there has been an occasion whereby we have accepted a point that he has put forward. But I am very sorry that in this instance I do not think that I can accept his point, and why I cannot accept his point is because I am sure that it would be wrong—and he did agree that it would be a good thing for him to attend the meeting, but in an advisory capacity, but I think that it would be wrong to ask anybody with technical experience, such as an A.D.A.S. has, to attend such a meeting in an advisory capacity only.

Another point raised by the hon. Specially Elected Member was the point that under 176Z—and I am pleased to see that he obviously was one of the people who did his homework on this Bill because he had his numbers and Z's and U's and T's right most of the time but I am quite agreeable to bring forward an amendment at the Committee stage incorporating something along the lines "after consultation with the appropriate Board of Agriculture".

He also raised the point of whether it would be possible to allow a number of days, and I think he said 30 days, before what the Minister proposed to do would, in fact, be done, and I am also prepared to accept an amendment along those lines, although I do not know at this stage whether I would be prepared to accept 30 days

or the more legal one which is often used by my hon. friend, 28 days.

He also raised the point on page 292, paragraph (7), that the time be increased from one year to two years. This point was also raised by the hon. Member, I think, for the Trans Nzoia, who also maintained that one year was not enough, and perhaps one ought to give not only longer than one year, but also one ought to look at the legal aspect of it, and I think what he was really after was that Government ought to attempt to do more rather than just putting it in the Gazette. Well, I am quite agreeable, Mr. Speaker, to consider and again report at the Committee stage, from one to two years. I will also discuss with the legal people the legality of what he has said, and I will also see whether I cannot, at the Committee stage, give a greater assurance that we will do more than perhaps just pop it into the local Gazette.

The other one raised by the hon. Specially Elected Member was page 295, the one on the levy, and I can give him an assurance that it is my intention as Minister, and it is the intention, to see that the various authorities which may be set up will, in fact, have a very great representation of growers or producers on that authority. Therefore, I think the point which he raised on page 295 on the levy is met by that assurance.

If I may then move to the points raised by my hon. friend the Member for Rift Valley. I have covered his first one on the A.D.A.S. being on the Board. He also raised the point on the associated members having the power to vote. Now here again, Mr. Speaker, I am sure, not only from the point of view of myself as Minister, but I am sure that the chairmen of these boards, or whoever attend these meetings on their behalf, would feel that they were alien to the Board if they could not, after going into perhaps violent discussions in some instances, at the end of it all cast their vote. Now in all this Bill I have been in very close communication with the chairman of the Board of Agriculture, the Executive of the Board of Agriculture, and they, in turn, have been in very close contact right the way through with agricultural committees and agricultural sub-committees. Over and above that the chairman of the Board of Agriculture has kept the President of the Kenya National Farmers' Union very closely in the picture on it all, and we have had no dissent on this at all from the Board of Agriculture and its various committees, and I am sure, like myself, they would, in fact, insist that they ought to be given the vote. Therefore I am sorry that I cannot give way on that one. Mr. Speaker, I am attempting to find out what I might be able to give way on.

Oh, 256, section 24, he voiced that there would be hardship if a development order was

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issued on a person who was in financial difficulties—

Major Roberts: Mr. Speaker, it is not a question of being in financial difficulties, it is a question of being unable to obtain the finance for that development except under exorbitant conditions, which would make it almost impossible for him to carry out that order economically.

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): Mr. Speaker, the answer to that one is that as far as Government finance is concerned the Board of Agriculture will be the Board who are the executive body to take care of lending that money, and I would have thought that a Board with a majority of your own farmers on it would be the last people to attempt to put such exorbitant rates of interest or terms to a loan so as to force somebody to be unable to farm. I do not know how you could get a fairer body of people to negotiate terms for a farmer than a group of farmers themselves. Perhaps the hon. Member has not looked very carefully at the constitution of the Board, but I can promise him that the Board is in the majority farmers, such as himself, and I am sure he, as a farmer, would not put such onerous conditions on somebody who had a development order issued on him and was in financial difficulties because he may have preferred to put his money in something else other than land.

I think also the hon. Member made reference to all land being treated equally. This, I think, he will find will be covered in the Order-in-Council, and will apply to all land, and land all over Kenya will either be private land, trust land or Crown land. Maybe I am getting muddled—I think it might have been raised by the hon. Member for Aberdare.

There is a further point, Mr. Speaker, which was raised by the hon. Member, and that was 239, paragraph 5, where the word "may" should be "must". What I would like to do is to leave this at the moment, and I will promise him I will look at this one with my legal friends and see whether he is correct or not, because I think that he may quite likely be correct in this one.

If I may then, Mr. Speaker, move to the points raised by the hon. Member for Nyanza. Again I greatly appreciate the kind remarks which she made at the beginning of her speech, and also for the quotation from that excellent book written by Mrs. Huxley, and which I think that every hon. Member if they have the opportunity should read. She also raised, Mr. Speaker, the point about the granting of too great powers to the Minister, and I think perhaps I have answered those when I

answered the queries put forward by the hon. Specially Elected Member.

She did get on to section 24, and I must admit that I thought for a moment that she was talking about my hon. Nominated friend, Capt. Hamley, when she started talking about sailing ships—not sailing ships as opposed to steam ships—but sailing ships, and I quite agree with what she said when she went on with her kind remarks about the Chairman of the Board of Agriculture.

Mr. Blundell: Would the hon. Member give way on a point of order? Is the hon. Minister correct in drawing the attention of the House to the very great age of the hon. Nominated Member, Capt. Hamley?

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): Mr. Speaker, I did emphasize that I was not talking about sailing ships in the same context as steam ships. I was talking about navigating or negotiating ships—sailing ships.

The hon. Member also mentioned development in African areas with special reference to the tea authority and the way in which it will develop tea areas. The tea authority, in the first instance, will be set up, and as I have said we will have the opportunity of debating the two Working Party Reports. But with the tea authority the intention is to set it up, with the sole intention in the first instance, of developing the tea lands which are available in African areas, and I am pleased to say that we hope we will have commercial participation and help in putting up six and maybe seven factories in these areas. Perhaps at the same time I could cover a point which was raised, I think, perhaps by the hon. Member or some other hon. Member on the acreages of available tea land in African areas. In fact, it is anybody's guess that perhaps there are available in African areas a potential tea land of from anything from 300,000 acres, not 30,000 acres to 500,000 acres, which does show the great potential of the land in some of the African land units.

Both the hon. Member for the Aberdare and the hon. Member for Nyanza mentioned the 1958 figures of European production and African production. Now, Mr. Speaker, one must be very, very careful when 'you' quote figures because figures can always be wrapped up in such a way that you can either utilize them to put your point of view, or another person can utilize them to put the exact opposite point of view, and I would like perhaps to take this opportunity of giving the correct figures as far as the African land units are concerned. The African land units turn out £57,000,000 worth of produce and they export from the African land units a further £9,000,000 in cash crops, making a total of £66,000,000, so

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you do see that the African land units are, in fact, turning out a greater amount of produce. As I have already said there is a very great potential left in the African areas, and we have already seen that by land consolidation in the Central Province, and following up with the Swynnerton Plan, or an accelerated Swynnerton Plan, that the potential of development when you get the co-operation of the African farmers is fantastic to say the least of it, and I think that there is and has been over the last year a general move in all African land units—a move towards co-operation, seeing the benefits which are obtainable from the advice of the Department of Agriculture and the Veterinary Department, and I am pleased to say that there is a tendency in all the African areas, and I think it has been shown by the Masai leaders in their great willingness now to try and move ahead and develop some of their high potential land. I think one can only say that it is an agricultural giant that is awakening in these areas of great high potential, and I am sure that you will see a very marked change in these figures of £57,000,000 and £9,000,000 over the next two or three years.

Mrs. Shaw: On a point of explanation, I was merely quoting Mr. Huxley's book and they were export figures not concerned with production.

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): Mr. Speaker, I did say that this point had been raised by two hon. Members in different contexts, and I was trying to cover both questions with one answer. I think the export figure which you quoted at me was £5,000,000 in 1958.

Mr. Speaker, I would like to apologize to the hon. Member for Aberdeens for interrupting him during his maiden speech. I must admit that at the time I did not appreciate that it was his maiden speech, and I hope he will accept the apology for the interruption while he was talking.

He did mention that there were 130,000 people landless. I do not know whether he meant in the Central Provinces or in all the African land units.

Major Benn: I meant in all the land units.

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie):

I think what the hon. Member would find is that that figure is mainly people who are on under-subsistence farming and not completely landless. The figure of 130,000 is not completely landless people, but people who are on very small acreages of land, in other words, well below the subsistence level.

Mr. Speaker, while agreeing with a number of the points which he put forward, I am afraid

I could not agree with his ultimate findings which were that the peasant scheme, if it was set in motion, would kill the economy which is derived from the European areas, or what has been known as the European areas. If, for instance, one picked out all the high potential and highly developed land of the European areas and developed them as peasant schemes as against yeoman schemes, then I would agree with him, but here again, I am sure that the constitution of the Settlement Board will not allow people who do not appreciate the national economy to get on to that Board, and I am sure that he can rest assured that the people who will get on the Board through the method of election will be people who will take care of the very fear which he has brought forward. But in saying that I do not say that they will have no peasant schemes, but I think they will be perfectly aware of the danger of vast land reform schemes. I do not, for instance, think that they will attempt to move forward on a peasant scheme which is subsistence only. In fact, arising out of discussions which I have had with the Board of Agriculture, it is their intention, as it is my intention as Minister, that these schemes will be greater than subsistence. And, in fact, so as to make ourselves available for the finances from international sources, our schemes have got to be economic.

Sir, the hon. Member for the Coast Area told us a tale about wax. At one stage, I must admit, I thought he was going to tell us the old salt tale, but the wax one was a new one on me. I can assure him, as I did when I had a discussion with him this morning, that this Bill, when it has gone through and the Order-in-Council has gone through, his friends will be able to purchase land. Not only will they be able to purchase land, but they will be able to associate themselves with the development of agriculture, and I sincerely hope that they will take this opportunity of doing so and not standing now they have got the opportunity. We welcome their participation. From my knowledge of his community I know they will do just that, that is to come forward and help us with this development which is so badly needed.

He asked me if I would draw attention to the Boards on the matter of the two great rivers which flow into the Indian Ocean from Kenya, and the potential of the Coast which could be geared up if irrigation was used from these rivers. I most certainly will draw the Board's attention, both the Board's attention to this, but the hon. Member will also have the opportunity of speaking further to this when the Motion put up today by the hon. and gallant Member, Mr. Commodore Howard-Williams, is debated. I would also

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remind the hon. Member that under the new set-up of elections all the way up the machine to the Board of Agriculture, the Coast people themselves are going to be able to put up to the Board of Agriculture these very same problems and persevere until either it is proved to them that they are uneconomic and cannot be done at the present time, or that they will succeed in being able to convince the Board that they ought to go ahead with them.

If I could then move to the point raised by the hon. Member for Trans-Nzoia. He told us that he bitterly opposed Sessional Papers No. 6 and 10. This must just go to show what the human memory is like, because although I well remember him opposing them, I must say that I cannot remember him bitterly opposing them. In fact, I have never known the hon. Member to be bitter, and I sincerely hope that he has no intention of starting to be bitter now.

He raised too, Sir, the point of the abandoned farms, which I dealt with in the aspect of one to two years, and I also told him that I would look at the other point which he raised.

He raised a third most important point, which is a problem which is worrying me as Minister and is going to be a great worry to the Settlement Board, and that is the acceptance of tribal spheres of influence on land adjacent to the present land units. Now, Sir, it may interest the House to know that arising out of discussions which I have had with various African Members of this House and African leaders who are not in the House, opinions differ very, very greatly on this one. There are certain African leaders who maintain that this may be the first opportunity of trying to remove tribal influence and tribal associations, so as to build the eventual bigger and better Kenya. There are others who maintain that we must tread very delicately at this stage on this one, and all I can tell the hon. Member is that my members of the Board, that is the technicians and people responsible to me, as is the present chairman of the Board of Agriculture, and as his executive are, and his executive are the people who will put a certain number of people on to the Settlement Board, are fully alive to it, and I have full confidence that they will deal with it as it should be dealt with. I am sure that they will, in the first instance, have discussions with the African leaders and the tribe who maintains it, is within their sphere of influence, and I think it is only out of quiet discussion, maybe over quite a lengthy period, that we will be able to come to an eventual deciding factor on this one, and I think you will find they will differ area by area. In some areas some of

the tribes maintain that their sphere of influence is greater in one area than another, but all I can promise at this stage is that we are well aware of this problem, as are the African leaders, and I am sure that the Board, the way it is constituted, will accept this, and I think it is only out of discussion with the tribes concerned that we will get the right and correct answer.

I can end by saying that my feelings are to a great extent the feelings of the hon. Member.

Then, Sir, the point raised by the hon. Member for Mombasa Area. He asked about the acquisition of unused, and I presume he also means, under-developed land, at the same time. Well, Sir, the powers of the Minister after consultation with the Board, or on instruction from the Board, which I mentioned in my opening address, do not only cover the land involved in the settlement scheme. It covers all land in all areas belonging to all peoples. Therefore, he is quite correct in asking whether the land he mentioned lying idle at the coast could not, perhaps, be looked at at an early stage to see if it could not be brought into fruition and could not be developed, and that perhaps notice of this could be brought to the Board by the Minister.

I would assure him that when I meet the two boards after their meeting I will bring this point to their notice which is, in fact, one of the points which I intended bringing up to them. He also raised the point of the Crown land and forest land in the coastal areas. He could not have brought this up at a more opportune moment and I would like to invite him to join the Minister for Local Government and Lands and myself in conjunction with the Minister for Labour down at Mombasa at 2.30 on the afternoon of 1st December in the Provincial Commissioner's office, where we are having discussions on this very matter. I would be quite prepared to let him have a memorandum on how far we have got on this subject. We have already got a long way on the Crown land, especially the 40,000 odd acres of land between Mida and Kilifi Creek and I would be most obliged if he would be prepared to give not only that afternoon but the following day to us so that we can discuss it further with the people at the coast. I particularly hope that he will join us on the morning of the 2nd on a flight up and down the coast looking at that land.

He also raised the point about financial assistance, especially for peasants in all areas. I know he meant the peasant outside the peasant scheme. Well, now he raised this very point, I think it was in the Budget debate and it just so happened that I had to answer that Budget debate on Friday morning when the Mombasa air express had left

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and all the Mombasa people had left the House, Mr. Speaker. But I did say then and I will repeat it now, although it is in HANSARD, that we have International Co-operation Administration finance to help us in loans to African farmers and when we obtain the £2,000,000 loan from the International Bank for Reconstruction and Development for 4,000 ft. and above, I did promise the people from the coast in answering that £100,000 would be made available for the lower altitude areas and mainly in the coast, and this amount of money has been in operation and available for the coast now for some months and some loans have already been given out, although I must say we had one application from a very greedy farmer at the coast who applied for the whole lot in one fell swoop. Needless to say he did not get it. It will be entirely up to the Board of Agriculture in the non-scheduled areas on how these loans are given out, and who they are given to, and what I would suggest is that at an early stage the coast members on the Board of Agriculture make application for some of this money and the further money which we hope to have available for development—financial development—for all farmers of all races early next year.

Mr. Speaker, I think I have answered most of the questions that I am able to answer at this stage, but I will look through HANSARD to see if I have missed any points and if I have done so I will take the opportunity, if I may, Mr. Speaker, during the Committee stage, to answer those questions.

Mr. Speaker, I beg to move.

The question was put and carried.

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

The Rules of Court Bill

The Temporary Minister for Legal Affairs (Mr. Courry): Mr. Speaker, Sir, Article 9 of the Kenya Colony Order in Council, 1921, which possibly not all Members are wholly familiar, gave the Supreme Court of Kenya power to make rules dealing with procedure. That Order in Council was repealed by the Kenya (Constitution) Order in Council, 1958, which although it saves the rules which had been made under the 1921 Order in Council did not save the rule-making power, and the purpose of the Bill whose Second Reading I am about to move is to fill that gap and to give to the Supreme Court the power to make these rules which it possessed from 1921 until 5th April, 1958.

Mr. Speaker, Sir, I beg to move the Rules of Court Bill be now read a Second Time.

The Minister for Information and Broadcasting (Mr. Harris) scolded.

Question proposed.

The question was put and carried.

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

The Public Collections Bill

Mr. Hennings: Mr. Speaker, Sir, I beg to move that the Public Collections Bill, 1960, be read a Second Time.

Sir, this is quite a normal Bill. There is nothing odd or extraordinary about it because in every country it is necessary to have an effective system of controlling and supervising collections of money. It is a very easy way of making a livelihood to collect public money and then to put most of it into your pocket and I think it is quite clear that in a country where a large part of the population is unsophisticated and uneducated and illiterate, it is easier than in other places. We have at present certain substantive provisions regarding public collections, but they are so brief that they really are inadequate. They are included as part of section 179 of the Penal Code which relates to rogues and vagabonds and are merely two short paragraphs and two provisos.

In July this year there was, in fact, a great deal of illegal money-collecting in parts of the Rift Valley and the Central Provinces. So much so that the Governor acted under the Preservation of Public Security Ordinance and he made the Public Security (Public Collections) Regulations, 1960, under powers conferred by section 3 of the Ordinance and these were applied as recently as September. The Bill which is now before the House is substantially the same as these Regulations and it has been modelled on the Malayan House-to-House and Street Collections Ordinance, 1947, which was itself based on the United Kingdom Act on the same subject.

The draft Bill which the House has before it, I think, quite simple and largely self-explanatory. Perhaps there are three main points I should comment on. The first is that anybody who wants to make a collection in a district gets a permit from a district commissioner. Anyone who wants to make a collection in a wider area, either the whole Colony or more than one district makes his application to the Chief Commissioner. And if in either case the application is refused, reasons have to be stated and an appeal will lie to the Minister.

There are just two other points, Sir. Subsequent to the publication of the Regulations, it was found from experience that two small amendments were

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required. These have in fact been made under amending regulations and at the Committee stage of this Bill I shall be moving two additions to the Ordinance. The first is the addition of a third subsection to clause 2 which will make it clear that trying to enroll people in political organizations which require a membership fee for the purposes of this Bill is a public collection and, secondly, a new subsection to clause 4 which gives a district commissioner or the Chief Commissioner an additional reason for refusing an application if in the area in which the collection is intended to be made persons have recently been engaged in unlawful collecting.

Sir, I beg to move.

Mr. Bechgaard seconded.

Question proposed.

Mr. Cooke: Mr. Speaker, I shall be glad, Sir, if the Minister when he gets up will explain what he means by "charitable" purposes. I know it is not very easy to give a definition, but is, for instance, the collection of money for sending boys and girls to America for scholastic purposes included in "charitable" purposes or not?

Mr. Hennings: In answer to the question from the other side, Sir, I think the answer is no, it is not *ipso facto* a charitable purpose, it would be considered on its merits.

Sir, I think all I need to do is to move that the Bill be now read a Second Time.

The question was put and carried.

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

The Insurance Companies Bill

The Minister for Finance and Development (Mr. Mackenzie): Mr. Speaker, Sir, I beg to move that the Insurance Companies Bill be now read a Second Time.

Sir, this Bill forms part of a series of enactments which the Government has made during recent years intended to provide business with more up to date legislation under which it can operate.

[Mr. Speaker (Mr. Slade) left the Chair]

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

I need only mention the Bills that in recent years have been enacted to deal with companies, building societies, and now we have insurance companies, and it is possible that at some future date we may be dealing with hire purchase. That is another matter which will probably be dealt with in the future.

Sir, at the present time the only legislation governing the control of insurance companies is in the Motor Vehicle Insurance Third Party Risks Ordinance, Cap. 233, and the African Life Assurance Control Ordinance which is under Cap. 108. The Companies Ordinance provides for the registration of particulars of companies but does not provide control over insurance companies. There are, Sir, over 130 insurance companies operating in Kenya at the present time of which only, at the moment, about 15 are registered to write African insurance. This means that more than 100 companies are not subject to any control. Apart from the danger to the public from unsound business practice, a loss of confidence in the operations of any one or two of these could obviously result in serious consequences for the rest. At least one insurance company drew the Government's attention some three years ago to the importance of providing legislation to control the activities of the various insurance companies, which operate here.

The Government has, in fact, been considering this matter in consultation with the Governments of Tanganyika and Uganda since 1956. At that time it was felt that legislation should be introduced to protect the insuring public by bringing all insurance business within the scope of one Ordinance by confirming the financial status of companies wishing to operate in the Colony, whether the companies are British or foreign, and by giving sufficient powers of control to the Registrar of the Insurance Companies. During the following time, various forms of regulations of legislation have been considered by this Government and by the Governments of the neighbouring territories. It has, however, been necessary not only to consult fully at governmental level but also to bring other parties into consultation. During last year the first full draft of an Ordinance was sent to the Association of the Life Officers operating in Nairobi and there have also been discussions which were very necessary with the Board of Trade who regulate these matters in the United Kingdom and, of course, who have had very great experience in dealing with insurance. I should say that the advice which the Government has received from various parties, in particular from the local insurance representatives and from the Board of Trade, have been of the very greatest value to us in preparing the legislation which is now before the House.

The Bill, Sir, is mainly based on the United Kingdom Insurance Companies Act of 1958. There are, however, certain modifications which have been included and those are taken from the Insurance Act of 1956 of the Federation of Rhodesia and Nyasaland. I should say that the decision to include those particular modifications was

[The Minister for Finance and Development] taken on the advice and suggestion of the Board of Trade.

Now, Sir, the main points about the Bill are covered to a very great extent in the Statement of Objects and Reasons. There is, as Members will have noticed, provision for the appointment of a Registrar of Insurance Companies and a Deputy and Assistant Registrar. There is provision for the prohibition of carrying on of insurance business except by an incorporated company licensed by the Registrar, those are of course measures that are necessary to give control.

Then, Sir, under clause 5 there is a provision that no licensed company, no company incorporated in East Africa and licensed under this Ordinance, shall carry on any business other than insurance business. I would like to explain that particular point, Sir, since it may, as it stands, give a false impression. Quite often in the course of its business it might arise that an insurance company might through having investments in some other form of property find itself in actual fact carrying on a business, of what we say, landlord in respect of property in which it is invested. We might be asked whether that is forbidden under this clause. I am advised, Sir, that the answer to that would be that in those circumstances it would not be caught by this particular clause since the general rule embodied in the General Clauses and Interpretation Ordinance is that ancillary functions relating to the carrying on of a business are considered to be part of the business.

Then, Sir, in clause 6 there is provision that the Registrar should be satisfied before the issue of a licence that the company has a paid-up share capital of not less than £50,000 and a sufficient margin of solvency; and that the business will be conducted on sound insurance principles. That, of course, is very necessary to protect the public. It is a principle that up to now has been followed by the Government in licensing companies to write insurance for Africans and now the protection that has previously been granted to Africans will be extended to the whole of the community.

There is a further provision in clause 7 that licensing shall be annual. In this connexion I ought to say that although there is provision in the Bill for a licence fee to be paid, I do not think the actual amount is given, but it is intended that the amount of the annual licence fee shall be £100 and I understand that this has been discussed again with the insurance companies who do not consider it to be unreasonable.

A further provision is that an insurance advisory board is to be appointed to consider appeals against proposals by the Registrar to reject appli-

cations for licences or to cancel licences and also the board would advise generally. That, of course, again is an obvious necessity to protect companies against arbitrary action.

Under clause 14 there is provision that the funds in respect of a company conducting business of more than one type shall be kept separate. There again, I think the reason for that is fairly obvious that the various funds of the companies should not be merged formally so that each class of person insuring can be satisfied that there is sufficient solvency in the part of the company that he is dealing with.

There is provision under clause 16 for actuarial investigation into the financial condition of every insurance company carrying on long-term business including valuation of liabilities and it is provided that this shall take place once in every five years. That again is intended to protect the public and to ensure that a proper continuous control is maintained.

Under clause 23 the amalgamation or transfer of businesses is covered and this is only allowed after sanction has been obtained from the court by petition and after the publication of sufficient information to enable policy holders to lodge objection.

Clauses 26 and 27 make provision for the Registrar to investigate companies of doubtful solvency and to deal with the winding up of insurance companies.

Under clause 38, which is a very important one, it is provided that each policy shall state the sums insured and the premiums and all other sums mentioned in the policy in the currency of the Colony unless the parties have expressly agreed otherwise.

Finally, Sir, under clauses 47 and 48 there is provision for the Governor in Council to exempt any company from the provisions of the Ordinance and there is also provision for the repeal of the African Life Assurance Control Ordinance under Cap. 108.

Sir, since the Bill was finally drafted there are a number of points that have been brought to the attention of the Government. The first of these is that there should be an obligation for a company to report to the Registrar if it cancels any of its reinsurance business or severs connexion with a guaranteeing company and to satisfy him that suitable alternative arrangements have been made. Another of these points is that there should be safeguards concerning the practice of selling revenue, that is premiums between companies. Thirdly, the Government has been advised that there should be provision for companies to satisfy the Registrar concerning the soundness of their investment and perhaps for the Minister to instruct companies to make certain investments.

[The Minister for Finance and Development] Finally, it has been suggested that liabilities in respect of life assurance business should only be reinsured with life insurers. I am assured, Sir, that it would in fact be possible for the Registrar, if he considered it desirable—and I emphasize that particular point if he considered it desirable—to cover these points when he is dealing with a company's application for a licence and that at that time he would be able to lay down appropriate conditions according to the standing and formal position of the company. It is not therefore considered necessary to cover this in the substantive legislation.

I have mentioned earlier one of the main points in the Bill and that is the repeal of the African Life Assurance Control Ordinance. This Ordinance was originally enacted in 1945 with the intention of ensuring that any company which desired to carry on life insurance business with Africans was likely to be able to meet its obligations, and it was also intended that it would prevent the imposition of conditions in policies written for Africans which might result in depriving the person entering into the policy of any rights under it. I think that at that time these were probably very necessary provisions.

In 1948 two amendments were made to that Ordinance, the most important of which allowed exemption from the control imposed for such Africans as were considered to be suitable for exemption. Subsequently, in 1958, a Motion was moved in this Council that section 6 of the Ordinance requiring the attestation of African signatures on life insurance policies should be rescinded. At that time, Sir, a number of hon. Members of the House suggested that the Government ought to go further and to remove entirely the control provided by the particular Ordinance. The first of the suggestions was, in fact, accepted by the Government, but not at that time the second one. However, in the same year the Government did make another small alteration when it passed an amending Bill and it also removed the need for the attestation of signatures. When the present Bill was under consideration, the question of retaining these special provisions to protect Africans was considered, but it was fully discussed with the Provincial Commissioners and it was decided that this attempt to protect Africans by special racial legislation was no longer justified. As, of course, as I have already mentioned, the real point—the important point—is that this Bill provides the same kind of protection that was previously provided for the Africans for all members of the community—while, Sir, I suggest it as it should be.

There is a further point which has been raised and that is whether the Bill as it stands should

cover insurance brokers. I am assured, Sir, that the Bill as it stands has not that effect and that insurance brokers would not be covered by it. Consideration has been given to introducing a clause or subclause which would place this beyond any question at all and the matter is still under discussion with the Board of Trade. If they thought it was necessary to do this, I have no doubt that the Government would give consideration to it; I should, however, say that there is a great deal to be said for not departing from British practice in a matter of this kind because every departure tends to weaken our reliance on case law in the United Kingdom.

When we come to the Committee stage, Sir, I shall have a number of minor amendments to propose. The first one, which refers to clause 3, subsection (1), is purely one of drafting; in fact, I believe, merely it is to correct a typing error; and the second one, which will apply to clause 48, subsection (3), is also to amend a point of drafting, and I do not think I need go into it at this stage. Finally, Sir, I should propose an amendment to paragraph 2 of the First Schedule by proposing that the words "the association" be deleted and that the words "an association which is constituted in the Colony" be substituted therefor. The reason for this is that the matter has been discussed with the representatives of Lloyds' agents in the Colony and it is merely intended to put the matter in question beyond reasonable doubt.

A further point to which I should draw the attention of the House, Sir, is that in the final clause of the Statement of Objects and Reasons it is stated that if the provisions of the Bill become law, the additional expenditure of public moneys in respect of staff and administration expenses that would be incurred would be to the extent of not more than £1,000 per annum. I am now advised, Sir, that the actual expenditure may be a little more than this since the routine inspection of the company's affairs will involve quite a considerable amount of time, of qualified staff, and, of course, there may also be occasions that could arise when a special investigation would have to be made, and I think hon. Members will appreciate that in a case of this kind that could be quite an expensive procedure. I am, however, sure that the rest of the Statement of Objects and Reasons is quite correct; that expenditure will be more than offset by the licence fees.

Sir, my final point is that this legislation has been the subject of correspondence with our two neighbouring Governments and I understand that it is hoped that the principles are generally accepted in the other territories and we hope that they will, in due course, have legislation of their

[The Minister for Finance and Development] own on similar lines to the Bill before the House, in which case there will in fact be legislation, parallel legislation, throughout East Africa which will be of considerable benefit to all concerned. The other territories have not yet been able to press on with this as fast as we have owing to other preoccupations. We all have our different priorities, but I am assured that they have the matter in mind and that in due course we may expect to see something similar happening there. Sir, I beg to move.

Question proposed.

Mr. Bompas: Mr. Speaker, I welcome the opportunity that this debate affords me to repeat a little more publicly something of what I said at a recent insurance association dinner, and on behalf, Sir, of those who are engaged in the local insurance industry and those head offices which control them, I would like to put two facts on record. The first is that the insurance industry wholeheartedly accepts as desirable that legislation should be enacted to control the transaction of insurance business in Kenya. The Bill now before the Council is, of course, as the Mover has said, designed to protect the public—to protect the public against those fly-by-night insurers whose financial capacity is probably in inverse ratio to the flamboyance of their publicity and the blandishments of their agents. Sir, but in protecting the public, the proposed legislation, of course, also guards the good name and the high repute of the industry in general and of those insurers who have built up, some of them over many, many years, a world reputation for fair dealing and for unshakable stability: and so it is, Sir, that all reputable insurers will welcome this measure, despite the fact that it circumscribes their liberty of action to some extent and involves the onus and a slight cost, not too heavy we hope, of making returns to the Registrar.

Sir, the second point that I would like to make is that as far back as 12th November, 1958, speaking in the debate of the Speech from the Chair, I made a plea that ample time should be given to all interested parties to study the basic principles which were involved and to study the mooted control measures and discuss them, and to discuss advance drafts of any Bill. An assurance was given by Government that that would be done and, Sir, I am very happy to record that Government has indeed honoured that undertaking in most generous measure. Sir, the whole problem and the Bill itself is highly technical and very complex, but Government has had the good sense and the courtesy to take the industry into its confidence and as a consequence of the exhaustive discussions which the hon. Mover has mentioned and conferences both here and in London, the difficulties, the anomalies and various imprac-

tibilities have been mutually resolved. So, Sir, on behalf of the insurers, I would like to express thanks to all the officials concerned here, and in Britain, and including members of the Board of Trade, for their co-operation and for their patience.

So effective, Sir, has that co-operation been that although I sought a brief to the Insurance Association of Eastern Africa and also from a fairly important head office, apart from a few minor errors which the hon. Mover has already referred to, typographical and possibly drafting to a limited extent, which appear on today's Order Paper as Notice of Motion and which will be cleared up at the Committee stage, there was only one point remaining which caused the insurers the slightest uneasiness. That, Sir, is section (5) of Part II of the Bill which again the hon. Mover has already mentioned. As insurance business is not defined, the Insurance Association did feel that the section might be held to preclude a locally registered insurance company from owning property and from leasing redundant parts of that to other firms or individuals. It seemed to me, however, Sir, that the purpose of this section must essentially be to prevent locally incorporated insurance companies from setting up in sidelines such as retail business, or manufacturing or farming, and could not be directed against a reasonable investment in any such activity as an adjunct to its investment policy. Insurance companies, and particularly those engaged in life assurance, have to invest their reserve funds both securely and profitably, and to this end they naturally look for a widespread and a balanced portfolio which would include Government stocks, corporation stocks, mortgages, equities and real estate. Now, I could not believe, Sir, that it was Government's intention to curtail investment in a spread of that nature, nor to invest the company the right to manage any investments that might unhappily come into their hands. Sir, if I appear to flog this particular point—although the Mover has dealt with it in some length—it is because I want to get the situation resolved and on record beyond any doubt whatsoever.

Sir, in the Mover's speech the only point on which I want specifically to ask him a question relates to this as yet undisclosed licence fee. The Minister said he believed it would be of the measure of £100. I am not quite clear whether it is £100 per company or whether it is £100 per class, because you get companies who may be doing four, five, six or the whole gamut of the classes of insurance described in the Bill. On that, Sir, I would seek information.

Arising, Sir, from that brings me to the question of the expenditure that the Minister referred to under paragraph 14 of the Objects and

[Mr. Bompas]

Reasons. He suggested that £1,000 might be exceeded. I would remind him, Sir, that if there are 130 insurers in this country—and that is an approximately correct figure—they are each going to pay £100 and that is £13,000 according to my arithmetic. I do hope the Registrar is not going to show an enormous profit in the first year and then plead poverty in succeeding years and claim that the licence fees should be increased because filing fees are inadequate. I would suggest that the first year's profits, Sir, might well be put into an endowment fund which can be equated over a period.

Finally, Sir, I was glad to hear the Minister say that the adjacent territories accepted the general principle of this legislation and I would like to urge Government to impress on those territories to the fullest possible extent that the legislation should be wholly uniform. Sir, this is most important, I believe. I myself prefer to see it completely different if it cannot be wholly uniform because therein lies a tremendous snare for insurance officials who are transferred from one Colony to another. It is extremely difficult for people such as that to keep track of minor differences in legislation.

Sir, I beg to support.

The Temporary Minister for Legal Affairs (Mr. Conroy): Mr. Speaker, Sir, if I might reinforce the assurance which has been given by my colleague, the Minister for Finance, on which worries the hon. Member for Kiambu provides. Clause 5 as follows: "No company incorporated in East Africa and licensed under this Ordinance shall carry on any business other than insurance business." Well, Sir, section 44 of the Interpretation and General Provisions Ordinance which is not new law but which is a statement of the general common law says this ("I will leave out the irrelevant passages): "Where any written law" (and this is a written law) "confers power upon any person to do any act or thing" (that includes insurance business), "all such powers shall be deemed also to be conferred as are necessary to enable the person to do the act or thing." Now, Sir, as I understand insurance business, particularly life business, part of the insurance business is invested. Part of it may well be running businesses for short periods while companies put in receivers. And, Sir, I would certainly advise the hon. Member that this clause is all right, that it would permit an insurance company to invest premla in real property; it would permit them to carry on in accordance with normal insurance company business any assets in the way of other businesses which might come in their possession. What it is intended to do is to prevent some businessmen carrying on as a sideline to his

normal business insurance business. That we do not want, but we do want to prevent an insurance company carrying on a legitimate part of insurance business by way of investment or by way of management for the time being.

Sir, I hope that assurance assists the hon. Member and I am happy to give it. I beg to support, Sir.

The Minister for Finance and Development (Mr. MacKenzie): Mr. Speaker, Sir, I should like to thank the hon. Member for Kiambu for the very kind things that he has said about the Government in the handling of this matter. It has indeed, Sir, been, I think, a model of how these things ought to be dealt with, of consultation between the Government and the people who are running the business in order to ensure that we get the best possible form of legislation.

As regards the licence fee, the position is that this will be an annual fee, so there is, indeed, no need for an endowment fund. As to its actual destination, Sir, I am very happy to say that it goes to the best of all possible causes in that it will be taken in as an appropriation-in-aid of the Vote of my hon. colleague, the Minister for Legal Affairs, who will in fact be ultimately responsible through the Registrar for the administration of the Ordinance. I am sure all Members of the House will agree that that is a most worthy thing to be done and that they can rely on my hon. friend to see that the administration is kept as economic as it possibly can be.

Sir, the only other point that I have to deal with is that of the adoption of similar legislation by the other territories and of the importance of seeing that we all keep in line so that people being transferred backwards and forwards do not get themselves confused with different legislation in different neighbouring places; particularly, of course, as in many cases the people insured will also move backwards and forwards around these territories. That is a point which we have very much in mind and I can give the assurance that we shall keep in the closest possible touch with our neighbours in this matter.

Sir, I beg to move.

The question was put and carried.

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

ADJOURNMENT

The Speaker (Mr. Slade): That brings us to the end of the business on the Order Paper. I adjourn Council until tomorrow, Thursday, 17th November, at 2.15 p.m.

The House rose at forty-two minutes past five o'clock.

Thursday, 17th November, 1960

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

[Mr. Speaker (Mr. Slade) in the Chair]

PRAYERS

NOTICE OF MOTION

TEACHERS' UNIFIED TERMS OF SERVICE

Mr. Ayodo: Mr. Speaker, Sir, I beg to give notice of the following Motion:—

THAT in view of the fact that the East African Salaries Commission has stated categorically that it will not consider the Salaries and Terms of Service of teachers who are not civil servants, this Council urges the Government as a matter of great urgency to consider the immediate introduction of—

- (a) unified teachers' terms of service; and
- (b) improved scales for all teachers.

BUSINESS OF COUNCIL

Sir Charles Markham: Mr. Speaker, could I, with your permission, ask the Leader of the House to tell the Council Government's intention regarding sittings of this Council and business during the next week?

The Acting Chief Secretary (Mr. Griffith-Jones): Mr. Speaker, Sir, thank you; I was just about to do so.

Mr. Speaker, Sir, the position is that we shall not have business for which to recall the House next week. The following week is the week during which the Central Legislative Assembly will be sitting, and we have a number of Members who are also Members of that body and we customarily do not sit whilst it is sitting. Consequently, from the conclusion of business tomorrow, Mr. Speaker, I suggest that we will have to adjourn until 6th December. Tomorrow I contemplate that there will be two Private Members' Motions—the Motion of which notice was given by the hon. Member for Nairobi North regarding an Upper House, and the Motion of which notice was given by the hon. Member for Nyanza North, regarding the restriction of Elijah Omolo Agar. I shall, with your permission, Mr. Speaker, move tomorrow the suspension of Standing Orders, it being Private Members' Day, to enable us to take the Report stages tomorrow, before we adjourn, of those Bills which may be amended at the Committee stage today.

Mr. Cooke: Mr. Speaker, if I may have permission to speak, surely Government was fully acquainted with the fact that there would be a

meeting of the Central Legislative Assembly in a fortnight's time. Why could we not have been informed a week ago that that was likely to happen? Once again it has interfered with my arrangements, and possibly the arrangements of a lot of other people in this House. I do think that more notice should be given of these adjournments.

The Acting Chief Secretary (Mr. Griffith-Jones): Mr. Speaker, to the best of my recollection it was made known to the House a long time ago that during that week there would be no sitting of this House. Again I regret if the hon. Member has been inconvenienced, but I think he must have been out of the House when it was mentioned.

COMMITTEE OF THE WHOLE COUNCIL

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

IN THE COMMITTEE

[U. J. M. Nyagah, Esq., in the Chair]

The Agriculture (Amendment) Bill (Bill No. 56)

Clauses 2, 3, 4 and 5 agreed to.

Clause 6

Mr. Smith: Sir, may I ask the Minister if under this section, which is 26 (1) in the original Ordinance, new agricultural subcommittees have to be formed throughout the whole country before planting or approval orders can be given for 1961?

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): No, Sir.

Clause 6 agreed to.

Clause 7 agreed to.

Clause 8

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): Mr. Chairman, Sir, I beg to move the following amendment of which notice has already been given: that clause 8 of the Bill be amended by leaving out the word "deleting" and all the words following the same, and by inserting in place thereof the words "substituting for the words 'agriculture in its production area', which appear therein, the words 'the powers and duties of the Agriculture Sub-committee'".

Sir, section 37 of the Ordinance empowers an agricultural subcommittee to take up with the agricultural committee such matters as it may think fit in relation to agriculture. The general advisory function of the Board of Agriculture (Scheduled Areas) has been deleted and this

[The Minister for Agriculture, Animal Husbandry and Water Resources] amendment is to tie up the same effect between the agricultural subcommittee and the agricultural committees. And also there will be a further amendment which I will move under clause 11 having the same effect between the agricultural committee and the Board of Agriculture.

Sir, I beg to move.

Question proposed.

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

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

Clause 8, as amended, agreed to.

Clause 9

Mr. Alexander: At the end of clause 9 an agricultural committee is permitted to co-opt not more than three members. The point I wish to seek clarification on is that it does not give powers to replace casualties. Is this covered somewhere else, because if not we are going to find a situation arising from this where the Board has no powers to act?

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): I think that is covered in the previous Ordinance. Mr. Chairman, but I am not completely certain on it. I am prepared to look at it and to discuss that matter with the hon. Members.

Mr. Blundell: But the Bill will be finished by the time you have done that, Mr. Minister.

The Temporary Minister for Legal Affairs (Mr. Conroy): I think the answer is that where a power is given to anyone it may be exercised from time to time. That is contained in the Interpretation and General Provisions Ordinance if specific provision is not made in the principal Ordinance.

Clause 9 agreed to.

Clause 10 agreed to.

Clause 11

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): Mr. Chairman, I beg to move the following amendment of which notice has been given on the Order Paper.

THAT clause 11 of the Bill be amended by leaving out the word "deleting" and all the words following the same, and by inserting in place thereof the words "substituting for the words 'agriculture in its production area', which appear therein, the words 'the powers and duties of the Agricultural Committee'".

Mr. Chairman, this is identical to the previous amendment which I moved excepting that it deals with the relationship between the Agricultural Committee and the Board of Agriculture as the other one was the Subcommittee to the Agricultural Committee.

Question proposed.

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

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

Clause 11, as amended, agreed to.

Clause 12

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): Mr. Chairman, I beg to move the following amendment, notice of which has already been given on the Order Paper.

THAT clause 12 of the Bill be amended by inserting, at the end of paragraph (a) of the new subsection (1) introduced by paragraph (a) of the clause, the words "after consultation with the other members of the Board".

Yesterday, Mr. Chairman, both the hon. Specially Elected Member, Mr. Blundell, and, I think, the hon. Member for Rift Valley, referred to the question of voting rights of associate members, and I said yesterday that I thought it was essential to retain the voting power of the associate members. Either both of those hon. Members, or one of them, asked if I would attempt to see if in fact the Board would continue to have the majority. I have done that and the voting, if they all attended, would be 18:14.

Question proposed.

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

Clause 12, as amended, agreed to.

Clause 13

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): Mr. Chairman, I beg to move an amendment to clause 13 as follows:—

THAT clause 13 of the Bill be amended by inserting at the end thereof the words "and the proviso to subsection (3) thereof".

Mr. Chairman, previously under the Ordinance the Agricultural Committee and Subcommittees were prohibited from appointing executive staff. With their new responsibilities, especially with the working of the divisional boards and the settlement schemes, they may need to appoint executive staff, and this allows them to do so.

I beg to move.

Question proposed.

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

Clause 13, as amended, agreed to.

Clauses 14, 15, 16 and 17 agreed to.

Clause 18

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): Mr. Chairman, I beg to move an amendment to clause 18 of which notice has already been given in the Order Paper as follows:—

THAT clause 13 of the Bill be amended by inserting at the end thereof the words "and the proviso to subsection (3) thereof".

THAT clause 18 of the Bill be amended by renumbering the new section 54 thereby introduced as subsection (1) thereof, and by inserting at the end thereof a further subsection as follows:—

(2) The Board (Scheduled Areas) may assign to an Agricultural Committee or an Agricultural Subcommittee the carrying out, within the area of the Committee or Subcommittee, of any function, or of any part of any function, allotted to it under paragraph (c) or paragraph (d) of subsection (1) of this section.

I do not think it needs any explanation, Mr. Chairman, as I think it is quite straightforward. It enables the Board of Agriculture to delegate additional functions to the committees and subcommittees as it so wishes.

I beg to move.

Question proposed.

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

Clause 18, as amended, agreed to.

Mr. Alexander: (Inaudible.)

Clauses 19, 20, 21 and 22 agreed to.

Clause 23

Sir Charles Markham: Mr. Chairman, could I raise something on this clause? I would like to ask the Minister for some assistance. It talks in this clause, under (f) about "(f) is in a position to raise sufficient moneys on the security of the land concerned," and in (ii) "has available sufficient moneys out of the moneys . . ." etc. I am a little unhappy on this one, Sir, at the moment, because it is always in times of boom that the banks will lend you money on security and at times of worry they always think the security you have offered before is no longer as good as it was. I am wondering how this is going to be

worked in practice. If, for example, somebody has a lot of shares in one of the well-known public companies, does it mean that that person might be required to realize those shares at a loss, and particularly in view of the depressed state of the stock market at the moment it might be a considerable financial hardship, or will the Minister accept that as adequate security based on the par value in normal times? I am thinking of this one because it could well be, as the Minister has such powers, that what the Minister thinks is the right position to raise sufficient money may not be what the farmer thinks is the right position as far as he is concerned.

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): I appreciate that the hon. Member could not be here yesterday afternoon when this point was in fact raised by the hon. Member for the Rift Valley. Clause (23) (i) is identical to what is in the present Ordinance, and the Minister can only enforce either provision 23 (i) or 23 (ii) with the concurrence of the Board. Now, the Board has a majority of farmers on it and I think that we must assume that they are going to act in a reasonable manner. The Minister cannot act without the concurrence of the Board of Agriculture, the majority of which is farmers or the companies in question to which the hon. Member has referred to as an example. Therefore I do think that we must accept that farmers on the agricultural subcommittees or on the Board will in fact act in a reasonable manner.

Sir Charles Markham: I had not read the speech of the hon. Member and I would apologize to him. This, I think, is serious because if money available for orders which come later on under the land development order are inadequate then surely the Board will always try to make the individual carry out the order from his own resources and then you may find it is almost impossible for the farmer to borrow money as a private individual at an economic rate of interest. If the farmer is forced to pay 8½ per cent on an overdraft on security, Sir, it will be a crippling blow to him. I can see the inference there, that the Board of Agriculture is bound to make the individual use his own resources. Perhaps the Minister could reply to that one.

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): All that I can add to this is that in discussions which I have had with the Chairman of the Board of Agriculture, and in discussions which I had with him yesterday evening after this point was raised, he still did tell me that in fact up to the present with 23 (f) being in, and in discussions which the Board have had, the position has never

[The Minister for Agriculture, Animal Husbandry and Water Resources]

arisen when this type of hardship was brought forward because of the Board having recommended that such action ought to be taken; and I am sure that with a group of farmers sitting on such a Board in the first instance it must come from that Board or, if it does come downwards, from the Ministry; but it must be, as I have said, with the concurrence of that Board on which the majority is composed of farmers. I cannot see a group of farmers agreeing that any hardship such as a high rate of interest would be accepted by them. I think that they would judge each case on its own merits and I do not think that we can get any better safeguard or advice for the Minister than the Board of Agriculture itself.

Sir Charles Markham: Sir, could I raise my final point? This concerns the subparagraph (2). I have been a member of the Land Board for quite a long time now and so often when we have given land to an individual he has listed out his assets of money he has available to develop that particular farm. He has under those circumstances quite often put down the money he holds in actual ready cash and the money he holds in securities. Sir, the value of those securities today—and some of them are Government ones, too, not the Kenya Government but the British Government, which are equally low in value today—would make that particular clause extremely difficult again. I am not worried, Sir, at all about your group of farmers acting in a wise manner because I feel certain that they will. All I am frightened of, Sir, is when the time comes when the money is not available and the Minister is anxious to have this order made for the benefit of agriculture. Where—rather crudely—is the money going to come from?

If I could give one example, Sir. A particular farmer applied for some land near Londiani through the Government to the Land Board. He got it and he listed out his assets. We knew what he had available for development of that land. Well, naturally, Sir, if today he had to realize the money he said was available in some instance it would be less than one-third. Now, those were shares, Sir, of public companies—not private companies, but public companies—one of which is very near the home town of the Minister for Agriculture.

The Temporary Minister for Legal Affairs (Mr. Conroy): Well, I think we did try to take care of this in the drafting—because we said that this requirement of these two subparagraphs would only come into force when the Minister and the Board are of the opinion that the farmer "has available sufficient monies out of the monies which he put

forward as available on his application for land". It is unfortunately true in life that availability of money alters from time to time, so we have here the double safeguard that you first of all must have the opinion of the Board which consists mainly of farmers and, secondly, they must be satisfied that he actually has "available" the money. Now, that must vary in every different set of circumstances, in every different case, and it may be desirable that the man should realize his assets at their present state or it may be desirable that he should use them to borrow money from the bank, if the rate is reasonable. But I think the words "has available" do assist the hon. Member in answering this question and I really think the draftsman put in for that reason.

Mr. Cooke: Does that mean, Mr. Speaker, that he will be required to sell out securities even at a very small price in order to prove the availability of his money to pay? Do you mean that the farmer must make that sacrifice? He would have the money available perhaps if he sold his securities at a very much lower price than he ordinarily would on the market.

The Temporary Minister for Legal Affairs (Mr. Conroy): Sir, I am only a simple lawyer, but I have always been given to understand that farmers are sensible people. Farmers being sensible, and the Board having a majority of farmers on it, would never direct a fellow farmer to do something that was stupid. They would look at the circumstances. If they felt that here was a very wealthy farmer who was trying to hide behind the difficulty of realizing his assets, then I am sure the sensible fellows—the Board—would say, "We are of the opinion that he has available the money." If, on the other hand, you have a small farmer without much assets—possibly, say, an insurance policy on his life—then I think it would be wholly unfair to make him realize that to the possible detriment of his family in order to show that he has available the money. But you must leave it, I think, within the discretion of the Board who, as I say, are farmers and therefore sensible.

Clause 23 agreed to.

Clauses 24 to 31 agreed to.

Clause 32

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): Mr. Chairman, Sir, I beg to move an amendment to clause 32 as follows:—

"That clause 32 of the Bill be amended by leaving out of subsection (5) of the new section 113 thereby introduced all the words which appear therein after the word 'Board'."

[The Minister for Agriculture, Animal Husbandry and Water Resources]

Mr. Chairman, this matter was raised in the debate yesterday by my friend, the hon. Member for Rift Valley. He drew my attention to the fact that perhaps the word "may" should in fact be "must". We have looked into this, as I promised, and the wording is in fact taken—as it stands—from the present Ordinance. Looking at it yesterday evening, I must admit that for the life of us we could not make out why it had ever been put in at all. So what we have done—and as I promised yesterday that I would find something to give way on—is to give way on this and I have deleted all of what he asked me to alter.

I beg to move.

Question proposed.

The question that the words proposed to be left out be left out and carried.

Clause 32 agreed to.

Clauses 33 to 40 agreed to.

Clauses 41 to 50 agreed to.

Clauses 51 to 55 agreed to.

Clause 56

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): Sir, I have a number of amendments to clause 56. I do not know how you would like me to take them? My first one is in 1761i. Would you like to take them separately?

The Chairman (Mr. Nyagah): Yes, take them separately.

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): Mr. Chairman, I beg to move that clause 56 of the Bill be amended as follows:—

By inserting in the new section 1761i thereby introduced, immediately after the word "it", the words "and the Minister may approve".

The new section 1761i, Mr. Chairman, empowers the new Settlement Board to appoint staff and it is obviously most desirable that the terms and conditions on which such staff are employed should not be divergent from the terms and conditions of the Government staff. The purpose of this amendment is to require the Board to seek the Minister's approval of such appointment.

Mr. Chairman, I beg to move.

Question proposed.

Sir Charles Markham: Mr. Chairman, I do not think that it makes sense as it reads now, Sir, and I think it is rather bad English, too, with respects to the Minister. It would read now, Sir, if you

were to read the clause out as the Member suggests: "The Board may appoint at such salaries and upon such terms of conditions as it thinks fit and the Minister may approve such officers and employees as it may deem necessary. . . ."

There is then, some doubt as to who is "deeming necessary", I would have thought, whether it is the Board or the Minister. I think it is only wording, Sir, but if it is going to be amended I would have thought it could have been amended to make quite certain, quite clear, what the intention behind it is.

Mr. Alexander: Mr. Chairman, Sir, are we talking to the amendments proposed by the Minister, or is it here that we deal with all matters under this clause?

The Chairman (Mr. Nyagah): We deal with them one at a time.

The Temporary Minister for Legal Affairs (Mr. Conroy): Sir, I think it is probably true to say that statute law is the most repellent form of English expression known to man, and this is not a particularly happy example of amendment. The true test is not the beauty of the language, but whether even a court could misunderstand, I do not think it could misunderstand it here because even after the new constitution one could not call the Minister "it". One would have to call it "him".

Sir Charles Markham: It describes the Minister as "it".

The Temporary Minister for Legal Affairs (Mr. Conroy): There is, therefore—although this is not a very beautiful piece of English—no possibility of misunderstanding. The test which the draftsman can apply for himself is whether even a person who wanted to misunderstand this could do so, for that is what most of our opponents in the courts like to do, and I do not think they could. What we are saying here is that we must insert that the Minister must approve these appointments, and the "it" cannot refer to the Minister, no matter what the hon. gentleman says opposite.

Sir Charles Markham: If I could suggest, then, Sir, in view of that assurance, that there is a danger that the Board "may think necessary" and the Minister may not. There is that conflict. If that is so, to carry out the intention—I cannot move another amendment, Sir, because I have to put it in writing and give notice—could not the clause start: "Subject to the approval of the Minister, the Board may appoint . . . etc., etc." as then, Sir, there is no danger of the Minister being called an "it".

The Temporary Minister for Legal Affairs (Mr. Conroy): I am most grateful to the legal draftsman opposite, with whom I agree. The difficulty

[The Temporary Minister for Legal Affairs] is that I cannot move the amendment because I am not the Minister in charge of the Bill.

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): Mr. Chairman, may I have leave to withdraw my amendment and put up a further new amendment on 1761i? Mr. Chairman, I would now like to move that 1761i of clause 56 be amended by adding at the beginning the following words "Subject to the approval of the Minister", then continuing as in the Bill, "the Board may appoint". It would then read as follows:—"Subject to the approval of the Minister, the Board may appoint etc., etc." I beg to move, and I would like to thank the hon. Member opposite.

Question proposed.

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

Section 1761i agreed to.

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): Mr. Chairman, my next one is 176a.

The Chairman (Mr. Nyagah): For the convenience of hon. Members the Clerk will call the subsections.

Sir Charles Markham: Mr. Chairman, on a point of order, Sir, the Minister asked to move his first amendment. That was right at the beginning when the clause was first mentioned on 56, and my hon. friend did get up and say when would he have a chance? So I would suggest we read out the clauses of 176a, b and c in the normal order.

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): I would agree with that.

Section 176a agreed to.

Section 176a

Mr. Alexander: Mr. Chairman, 176a, subclause (2) dealing with the authentication of deeds by the common seal. The clause provides that the Chairman may authorize someone else to act in his place. Would it not be far better for the Board itself to authorize this, and I am wondering whether the Minister perhaps has dealt with this somewhere else, or he may be prepared to introduce an amendment?

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): Mr. Chairman, Sir, I doubt whether the chairman would, in fact, authorize anybody acting on his behalf without having discussed it either with his board or with his executives, and if he is going to be a responsible chairman, I would have thought that he would have taken that as a precaution. I do not think that it is necessary

to put in the Bill "that the chairman after consultation with his board", or that "the board should name somebody in his stead or on his behalf". If he is going to be a chairman of a responsible body such as this, then I think that he would naturally consult the board before he did so.

The Temporary Minister for Legal Affairs (Mr. Conroy): If you write in a requirement such as that you might find some super-cautious lawyers who would refuse to accept the seal and signature of the chairman without proof that he had consulted the board, if he was executing a document on behalf of the board. You must accept that the chairman is responsible, and if one writes in this kind of thing you may find that it gives rise to considerable difficulties in practice.

Section 176a agreed to.

Section 176c

Mr. Alexander: Mr. Chairman, 176c, on page 270, subsection (6). This authorizes the Minister to approve fees and allowances for members who are not in the public service. Would it not be wise for the Minister to keep the House informed of what authorities he is given under this subsection, and I am wondering if he would agree from time to time to table a note in this House when these fees are—

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): Mr. Chairman, I am correct in saying that the Minister would not be able to approve unless the money is authorized by this House for him to do so.

Mr. Alexander: Mr. Chairman, yes, but the authority from the House in the Estimates would be a block vote. What the Minister does with it in detail under this is entirely his own affair, but I am suggesting he might let us know.

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): Surely the hon. Member does not want every time the Minister approves a payment to members of this Board that he ought to jump up in this House and inform this House. I would have thought that hon. Members opposite have every opportunity of raising any question they may have of such approval. I should think that there may be a number of approvals under this section over the year, may be different ones for different people at different times.

The Temporary Minister for Legal Affairs (Mr. Conroy): The question of fees, of course, is dealt with in the reports and accounts of the new Settlement Board and of the trustees. I think that would probably give the hon. Member the information he requires.

Mr. Alexander: Mr. Chairman, looking at the trustees, clause 13 (4), it would seem that the accounts even need not be published, but they have certainly got to be audited.

Section 176c agreed to.

Sections 176d, e, f and g agreed to.

Section 176i

Mr. Alexander: Mr. Chairman, 176i—this is page 275—clause 4 (a), but while I am dealing with it I will raise the same question under the clause 176q (5) and the trustees which I have just referred to, clause 13 (4) and also under clause 176z on page 296, all these deal with either the auditing or the preparation of accounts, but nowhere, except under this 176i does it refer to publication—publication in the form that the public will know about. 176i does say that the accounts will only be published if the member so orders it. These boards and activities under the whole of this Bill will be handling very considerable sums of money, and I would have thought, Mr. Chairman, that wherever accounts are to be prepared that there should be a general instruction that they should be published, at least in the official *Gazette*, and perhaps to the extent of publication in the local Press, so that this very fundamental and vital matter concerning the whole Colony and all the peoples in it shall be known to the world at large.

The Minister for Agriculture, Animal Husbandry and Water Resources: Mr. McKenzie: Mr. Chairman, I would have thought that if you read one further to 176i (4) (b) "The Minister shall lay the Board's report and the auditor's report, together with the balance sheet and such other statements of account as he may have required, on the Table of the Legislative Council within fourteen days," etc., etc., would that not satisfy the hon. Member?

Mr. Alexander: Mr. Chairman, I read that, but we, in this House, know what this means. In fact, as we go to our pigeon holes day by day we pick out masses of accounts that have been laid on this Table for us to lay them, literally lay them, in the basket on the floor. That is in fact what happens in practice. I am referring to a matter that I believe the general public should know about. The Minister may answer, of course, and say it is up to the public themselves. If they are laid on the Table here the public can come and ask the Clerk of the Council all about them, but the public, I think, have a right to be served rather more generously in this matter, and I am suggesting all these accounts should be published at least in the official *Gazette*.

The Minister for Agriculture, Animal Husbandry and Water Resources: Mr. McKenzie: The hon. Member may not know, but this refers

to a number of my statutory boards, and as a matter of form whenever the reports and balance sheets and auditor's reports are laid in this House, at the same time the reports and balance sheets, etc., are distributed all round to all those people who are normally interested in the workings of those statutory boards, and they are also sent through the Government Information Department to members of the Press, and I would see no reason at all why the procedure should be altered for this Board. In fact, what would happen, as and when they are laid in this House, so as with other reports they would be circulated to those interested through the Government Information Department to the Press, as is done at the moment.

The Temporary Minister for Legal Affairs (Mr. Conroy): Sir, I think it is also relevant to point out that as they are laid before this Council they are available for examination by the Public Accounts Committee.

Section 176i agreed to.

Sections 176j, k, l, m, n and o agreed to.

Sections 176r and q agreed to.

Section 176s

The Minister for Agriculture, Animal Husbandry and Water Resources: Mr. McKenzie: Mr. Chairman, I have a number of amendments under 176s, starting at 6 (b), followed by 6 (c), (d), (e) and (f) on the Order Paper.

The Minister for Agriculture, Animal Husbandry and Water Resources: Mr. McKenzie: Mr. Chairman, I beg to move the following amendment, of which notice has already been given, by inserting at the beginning of paragraph (e) of subsection (2) of the new subsection 176s thereby introduced, the words "provide for". This is purely a drafting amendment. As if it is at the moment it makes no sense at all without the addition of the words "provide for".

Question proposed.

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

The Minister for Agriculture, Animal Husbandry and Water Resources: Mr. McKenzie: The next amendment is by renumbering paragraphs (j), (g) and (h) of subsection (2) of the new section 176s thereby introduced as paragraphs (h), (j) and (k) thereof. This, Mr. Chairman, is simply relettering the subsection to make room for the new paragraphs (j), (g) and (h), which I will move.

Question proposed.

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

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

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): If I may, Mr. Chairman, I will now move the amendment for the three new paragraphs as follows: "(f) confer upon agricultural workers the right to harvest and remove crops grown by them on land provided by their employer for their use, or to be compensated therefor in lieu;" "(g) limit the size of the plots of land which may be provided by an employer of agricultural workers for their use for cultivation or for grazing, and require stock grazing on any such land to be branded;" and "(h) provide for the determination by a magistrate of disputes arising out of the provision by an employer of land for the use of any of his workers for cultivation or for grazing;"

This point was raised yesterday, Mr. Chairman, by the hon. Member for the Rift Valley, and I would like to explain to him and to other hon. Members that matters dealt with in these three new paragraphs are at present provided for in the Resident Labourers Ordinance, and it is the view of Government that the regulation, cultivation and of the keeping of stock by persons employed on agricultural land, are matters which should more properly fall under the scope of the Agriculture Ordinance rather than legislation dealing with labour. The hon. Member must also appreciate that the control in such matters is with the agreement of the local authority and it is in fact these local authorities who do scrutinize and come to the decision on the size of the acreage or the number of small stock or large stock which is allowed to be grazed in areas within their jurisdiction and will operate under (j), (g) and (h) now to be removed from the Resident Labourers' Ordinance into the Agriculture Ordinance.

I beg to move.

Question proposed.

Sir Charles Markham: Mr. Chairman, in the main I welcome the fact that the Ministry will now take an active part in dealing with the cultivation of land which was previously covered under the Resident Labourers' Ordinance because there has always been some difficulty in getting the enforcement of that Ordinance for a local authority by the Labour Department. There is one aspect of the amendment before the House that does cause me concern. Under the new paragraph (j) it is stated, "confer upon agricultural workers the right to harvest and remove crops grown by them on land provided by their employer for their use, or to be compensated therefor in lieu." Sir, that is perfectly fair if it is read with the intention which I believe the Minister has. Let us take a specific example where the

land is allocated to the employee and the months go by and he is working on that land, and he is then told specifically by his employer that he is not to grow maize, that that land perhaps requires some rehabilitation and that it has had too much maize grown on that acreage in the years gone by. Then, Sir, the maize appears out through the ground when they get some rain and the employer dismisses his servant in this instance for having disobeyed his instructions. Under this new clause, Sir, you will have to compensate him for growing the maize illegally or allow him to come back and remove it. That is my first point, Sir, and I think it is a very serious one because that is one of the difficulties which has existed under the system which we know as the squatter system, where those people have not looked after their resident labourers properly and have allowed considerable abuse of the land to take place.

The Temporary Minister for Legal Affairs (Mr. Conroy): Mr. Chairman, this new paragraph (j) of course does not give the right to compensation; it merely gives a right to make rules to deal with this problem. I am sure, the attention of the Minister having been drawn to this, that it will be dealt with in the rules. I would also point out that the rules can only be made on the advice of the Board and I am sure that the rules will deal with this problem to ensure that compensation will only be payable in proper cases.

Commander Goord: Mr. Chairman, the purpose of subsection (4) is to empower local authorities to make by-laws for any of the purposes for which rules may be made under this section. Mr. Chairman, I do not fully understand this. If the Minister is going to make rules then why does the local authority then have to make by-laws? I do not follow the tie-up.

The Temporary Minister for Legal Affairs (Mr. Conroy): I think the answer is that it is intended to make the local authorities have power to make appropriate by-laws for their individual areas. But the person who can give them that power is the Minister by making rules to invest the power in the local authorities to make by-laws. It helps to break the thing down more to suit local conditions.

Sir Charles Markham: Could I ask the Minister just a small point on this, under (h). Is it intended by this new paragraph (h) to give your employee who has some cultivation rights, by privilege, virtually legal rights to the land, too? I think that perhaps the Solicitor-General will remember some of the troubles that have been caused in England under the squatting system and I fear, Sir, every time the employee knows that a magistrate is going to be brought in to determine the dispute, the quota of magistrates

[Sir Charles Markham]

required to deal with this problem will be very considerable. I have yet to find, Sir, much as I am very fond of my friends who are generally involved in this particular type of employment, any of them keeping to the acreages laid down by the local authority or by the employer, and very soon the encroachment starts until the employer goes round and again checks it. But in certain areas—I regret to say bad areas—where this type of farming has gone on that system has become so abused that we have always tried to abolish it; and in the progressive areas, Mr. Chairman, we have gone away from this system altogether. In fact it has always been thought that only those areas which are backward would retain this system. Yet now under this amending Bill the scheme has been reintroduced with further legal powers which is the one thing we wanted to avoid. I would have thought that this did not require the rules or descriptions laid down in the Ordinance; all it requires is your local agricultural committee to have powers of enforcement of good husbandry and a good agricultural policy; but this particular clause, which I am afraid I must oppose, is going once again to put in the statute book the squatter system with even more powers. I am glad to see the Solicitor-General shaking his head, but the wording of this when it comes into law is such that dispute after dispute will start as to rights; you are going to find that the Minister may make rules to decide the plots to be provided by the employer, etc., and that you are back to the one system which we have always been told in the past is what should be avoided.

The Temporary Minister for Legal Affairs (Mr. Conroy): I do not think that this gives any rights at all. The rules may limit the size of the plots which the employer may provide; it does not put on the employer the duty to provide them, and in particular paragraph (h) merely says that the rules may provide for arbitration, if you like to call it that, by a magistrate where disputes have arisen out of the provision by the employer of these squatter plots; there is no duty upon the employer to provide them. If he provides them and if a dispute arises then that dispute may be referred to a magistrate if the Minister makes rules providing for that dispute to be so referred. But it does not give rise to the provision by an employer of land. It is up to the employer whether he provides the land or not. If he does, and a dispute arises, then the Minister may make rules for the magistrate to settle it. I hope that answers the hon. Member's point.

Sir Charles Markham: It does to this extent, Sir. I now understand the implications involved. But could I repeat one point raised by my hon.

Nominated friend, Commander Goord? What happens if your local authority forbids this system in any area, as they have power to do at the moment? Take my own area of Ukamba. In parts, the Nairobi County Council, by ward numbers, have eliminated this particular idea in so far as livestock is concerned. But will that power now be taken away from the local authority, because it has always been they who have had the power to say "Yea" or "Nay" to the question of resident labourers holding livestock.

My last point on this, Sir, is that I remember a short time ago attending a meeting at Thika at which a very prominent senior agricultural officer talked to us, and in the course of his remarks he castigated the local people for allowing such a system to exist. Now, Sir, I suppose that he will have to eat his own words.

The Temporary Minister for Legal Affairs (Mr. Conroy): He will have to do nothing of the kind because under subparagraph (c) the Minister could prohibit the squatter cultivation in any particular area.

Commander Goord: Mr. Chairman, on this point which I raised before, I think the Minister will have to make up his mind if rules under this section are to be made by him on the advice of the agricultural committees, or whether they are in fact to be done on the advice of the local authorities. It seems to me to be a very difficult position if the local authority is going to be empowered to make by-laws on advice given to the Minister by the agricultural committees. I have no objection to this clause remaining in, but I do think the Minister will have to make up his mind which way round he is going to do it.

The Temporary Minister for Legal Affairs (Mr. Conroy): I am sure that the Minister will step like Agang in this matter.

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

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): Mr. Chairman, the next amendment is a consequential amendment and is the re-lettering of the letter "(g)" in subsection (5) and altering it to the letter "(f)"; in other words by leaving out of subsection (5) of the new section 176x thereby introduced the letter "(g)", and by inserting in place thereof the letter "(f)".

Question proposed.

Question that the letters proposed to be left out be left out put and carried.

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

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): I beg to move that clause 56 be further amended by inserting at the end of the new section 176a thereby introduced a new subsection as follows: "(6) For the purposes of the disposal of fines imposed for the contravention of by-laws made by a local authority under rules made under this section, the by-laws shall be deemed to have been made under the law under which the local authority is established."

Mr. Chairman, section 43 (c) of the African District Councils Ordinance provides that one-half of any fine imposed for contravention of by-laws made under that Ordinance be paid to the Council. The purpose of the amendment is to ensure that the existing practice, whereby this kind of revenue accrues to local authorities, shall be extended to the by-laws made under the Agriculture Ordinance.

I beg to move.

Question proposed.

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

Sections 176a, s, t agreed to.

Section 176u

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): Mr. Chairman, I beg to move that clause 56 of the Bill be further amended (a) in subsection (2) of the new section 176u thereby introduced, by inserting immediately after the word "management" where it last appears therein, the words "but with due attention to the need for careful management".

Question proposed.

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

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): Mr. Chairman, I beg to move that clause 56 of the Bill be further amended (b) by leaving out of the new section 176v thereby introduced subsection (7) thereof, and by inserting in place thereof a new subsection as follows: "(7) Where, under an order made under subsection (4) of this section, any moneys are due to an owner whose present address or whereabouts is not known to the Minister, the Minister shall make diligent enquiry of such address or whereabouts with a view to informing the owner of the moneys due to him, and if, at the end of a period of not less than two years, there appears to the Minister no practical possibility of so informing the owner, he may direct that the money be forfeited and paid into the consolidated fund."

Mr. Chairman, both these last two amendments have been introduced to meet a point which was raised by hon. Members opposite during the debate yesterday. In fact, Sir, I think we have gone even further in safeguarding the rights of the individual on these two points than was actually put up by the hon. Members opposite.

Question proposed.

Mr. Maxwell: I was wondering if the Minister would add "apart from the owner"; because if the man has died in the meantime he might have heirs and successors.

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): I think, Mr. Chairman, that that would automatically follow. If it is known to the Minister that the person died then obviously the Minister would attempt to find the next of kin.

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

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

Section 176u agreed to.

Sections 176v and 176w agreed to.

Section 176x

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): Mr. Chairman, I beg to move that clause 56 of the Bill be further amended in the new section 176x thereby introduced, by inserting, immediately after the word "may", the words "after consultation with the Board (Scheduled Areas) and the Board (Non-Scheduled Areas) and after giving thirty days' notice in the Gazette of his intention so to do".

Mr. Chairman, this amendment is also designed to meet points which were raised by hon. Members yesterday. In fact I think the point was raised by the hon. Specially Elected Member Mr. Blundell.

I beg to move.

Question proposed.

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

Section 176x agreed to.

Section 176y

Major Roberts: Mr. Chairman, I was wondering if the Minister would agree, in 176y (1), after the word "Treasury", inserting "and the Board (Scheduled Areas) or the Board (Non-Scheduled Areas) as the case may be".

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): Mr. Chairman, I think this is a bit of a fast one

[The Minister for Agriculture, Animal Husbandry and Water Resources]

at this stage. I would be prepared to look at it and, if I consider it necessary, bring it back as an amendment at a later stage; but I do think you will find that whenever a crop is declared to be a special crop no Minister would do so without having had full consultation with the Board of Agriculture. I think you will find that the Minister would never move without having had consultation with this Board. That is the normal way in which a Minister operates.

Major Roberts: In that case, Sir, what is the objection to inserting these words at this stage, then there could be no question about it.

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): Mr. Chairman, I would like to express the thought that this Bill has lain for 40 days, and if the hon. Member had thought that it was so obvious it is a pity that we had not been given this information a little sooner than at this stage when it is now impossible for him to move an amendment, and when it is only possible for me to move an amendment, having put the whole load on to me.

The Temporary Minister for Legal Affairs (Mr. Controy): I would point out that snap amendments are liable to lead us into difficulties. We have had one snap amendment this afternoon and I do not think that Members opposite appreciate what they have done, and that was the amendment to 176t. You will remember that we altered that round. The amendment is entirely different from the amendment moved by the hon. Minister in the first place, and if hon. Members will look at section 176t they will see what they have done.

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): Mr. Chairman, I am afraid I cannot accept it at this stage.

Section 176v agreed to.

Section 176z

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): Mr. Chairman, I beg to move that clause 56 of the Bill be further amended by inserting in subparagraph (ii) of paragraph (c) of subsection (1) of the new section 176z thereby introduced, immediately after the word "the", the words "purchase and".

I think that this amendment, Mr. Chairman, is self-explanatory. What it does is to allow the Special Crops Authority not only to sell seed and seedlings but to purchase seed and seedlings.

I beg to move.

Question proposed.

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

Major Roberts: Mr. Chairman, may I turn to page 296, paragraph (4), the very last paragraph in this section. I think the Minister has already had suggested to him an addition to that paragraph. Sir, I would hope I shall not be accused of asking for a snap amendment. I think the words suggested to you yesterday, Sir, were these which were to be added: "Provided that no order made under this section shall become operative until 30 days after the publication of it and provided that no such order shall become operative if the Minister is satisfied that there is an appreciable opposition to it by means of complaints in writing sent to him before the expiration of the 30 days by persons or organizations representing groups of persons?"

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): Sir, I do well remember in the Budget debate the self-same hon. Member opposite asked if I was a betting man and whether I would be prepared to have a wager with him on a certain matter which he raised. Well, now, I know he is a betting man from what he said in that debate. I, Mr. Chairman, am now prepared to wager Sh. 10 that nothing at all yesterday was mentioned on this section, i.e. on page 296 (4) at the bottom of the page. All the hon. Member has to do, Mr. Chairman, is to read in HANSARD to know whether he has to pay me Sh. 10 or whether I have to pay him Sh. 10; and I shall have great joy in accepting his Sh. 10.

Major Roberts: Mr. Chairman, it was not said in this particular House, but was mentioned to the hon. Minister last night outside the Council.

The Temporary Minister for Legal Affairs (Mr. Controy): Sir, as a lawyer perhaps I could be permitted to hold the wagers for both sides and declare this contest null.

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): Mr. Chairman, that being the case, I must admit that in the discussion we had after the Council rose yesterday afternoon I obviously must have misunderstood the hon. Member. I thought that he was taking up the same point which had been taken up by another Member on an issue much the same but earlier on in the Bill concerning another 30 days, one which I agreed to earlier on this afternoon. Sir, I am sorry to have to tell him that owing to a misunderstanding this is another "snap amendment" of his. I only wish that he acted as per Standing Orders and perhaps put it in writing this morning.

Major Roberts: Sir, I have a note here handed to me which says that the Minister said he would

[Major Roberts]

recall such an amendment but that the drafting legal draftsman might be better. I was wondering if he remembered saying that?

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): Mr. Chairman, may I ask if that note was a note from me? Was the note a note from me?

Major Roberts: No.

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): Because I must have been in an awful state last night if I could not remember writing a note!

Clause 56 as amended agreed to.

Clauses 57 to 60 agreed to.

Clause 61

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): Mr. Chairman, I wonder if I could move the amendment to clause 61 of this Bill as it is in the Order Paper for Thursday, 17th November, 1960. It is a very long amendment and I would ask your permission that I need not read it out, Mr. Chairman. It is purely formal.

That clause 61 of the Bill be amended in the Copy Trust Deed contained in the Sixth Schedule thereby introduced—

(a) by inserting in the first line of the Copy Trust Deed in the two blank spaces therein the words "Fourteenth" and "November" respectively;

(b) by leaving out of paragraph (b) of clause 10 of the Copy Trust Deed the word "persons", and by inserting in place thereof the word "person";

(c) by leaving out of paragraph (4) of clause 13 of the Copy Trust Deed the words "the clause", and by inserting in place thereof the words "this clause";

(d) by leaving out of paragraph (2) of clause 14 of the Copy Trust Deed, the word "Trustees" where it last appears therein, and by inserting in place thereof the word "Trustee";

(e) by inserting in the testimonium to the Copy Trust Deed—

(i) below the name of Howel Gwynne Prettejohn the expression—

K. J. Roffey,
Box 1507, Nairobi,
Executive Officer.

(ii) opposite the name of Howel Gwynne Prettejohn the expression—

H. G. Prettejohn.

(iii) below the name of Arthur John Minchin the expression—

John M. Heath,
P.O. Box 210,
District Agent.

(iv) opposite the name of Arthur John Minchin the expression—

A. J. Minchin.

(v) below the name of Elbert Lukas Steyn the expression—

J. Roye,
Box 97, Eldoret,
District Agent.

(vi) opposite the name of Elbert Lukas Steyn the expression—

E. L. Steyn.

(vii) below the name of William Hugh Hindley the expression—

V. K. H. Channer,
Box 634, Nakuru,
District Agent,
E.A.S.B.

(viii) opposite the name of William Hugh Hindley the expression—

W. H. Hindley.

(ix) below the name of Cenydd David Hill the expression—

V. K. H. Channer,
Box 634, Nakuru,
District Agent,
E.A.S.B.

(x) opposite the name of Cenydd David Hill the expression—

Cenydd D. Hill.

(xi) below the name of Forrest Loudon Megson the expression—

K. J. Roffey,
Box 1507, Nairobi,
Executive Officer.

(xii) opposite the name of Forrest Loudon Megson the expression—

F. L. Megson.

(xiii) below the name of James Archibald Macdougall the expression—

I. M. Galway,
P.O. Box 30498,
Nairobi,
Stenographer.

[The Minister for Agriculture, Animal Husbandry and Water Resources]

(xiv) opposite the name of James Archibald Macdougall the expression—

J. A. Macdougall.

(xv) below the name of Lancelot Donald Abel Baron the expression—

Gwladys M. Crowe,

c/o P.O. Box 30099,

Nairobi,

Secretary.

(xvi) opposite the name of Lancelot Donald Abel Baron the expression—

Question proposed.

Question that the amendment be approved put and carried.

Clause 61 as amended agreed to.

Clauses 62 to 64 agreed to.

Title agreed to.

Clause 1 agreed to.

The Rules of Court Bill

Clause 2 agreed to.

Title agreed to.

Clause 1 agreed to.

The Public Collections Bill

The Temporary Minister for Legal Affairs (Mr. Conroy): Might I ask you, Sir, with the permission of the Council, to take the Insurance Companies Bill first?

The Chairman (Mr. Nyagah): Yes.

The Insurance Companies Bill

Clause 2 agreed to.

Clause 3

The Temporary Minister for Legal Affairs (Mr. Conroy): Mr. Chairman, I beg to move that subsection (1) of clause 3 of the Bill be amended by deleting the words "external insurance" appearing next after the definition of "employers' liability business", and by substituting therefor the words "external insurer".

This is merely to correct a typographical error.

Question proposed.

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

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

Clause 3 as amended agreed to.

Clauses 4 to 10 agreed to.

Clauses 11 to 13 agreed to.

Clauses 14 to 22 agreed to.

Clauses 23 to 30 agreed to.

Clauses 31 to 36 agreed to.

Clauses 37 to 47 agreed to.

Clause 48

The Minister for Finance and Development (Mr. Mackenzie): Mr. Chairman, I beg to move that subsection (3) of clause 48 of the Bill be amended in paragraph (b) thereof by substituting for paragraph (a) of the proposed new paragraph 23A to be inserted in Part III of the Sixth Schedule to the Companies Ordinance, 1959, the following paragraph:—

(a) "as respects its balance sheet, those of paragraphs 2 and 3, paragraph 4 (so far as it relates to fixed and current assets), paragraph 8 (except subparagraph (1) (a) and (d) and subparagraph (3)), paragraphs 9 and 10, and paragraph 11 (except subparagraphs (4) to (8) inclusive and (10)); and"

Well, Sir, as hon. Members will, I am sure, appreciate, the object of this particular amendment is to improve the drafting and I think the House will probably welcome it as such.

Question proposed.

The Temporary Minister for Legal Affairs (Mr. Conroy): I do not think it is so much a question of improving the drafting. I would rather use the expression "to clarify the English".

The question that the words proposed to be left out be left out put and carried.

The question that the proposed to be inserted be inserted put and carried.

Clause 48 as amended agreed to.

First Schedule

The Minister for Finance and Development (Mr. Mackenzie): Mr. Chairman, I beg to move that paragraph 2 of the First Schedule be amended by deleting the words "the association" and by substituting therefor the words "an association which is constituted in the Colony". The paragraph will then read:—

"The accounts of every member of an association which is constituted in the Colony shall be audited annually by an accountant approved by the Registrar, and such accountant shall not be an employee, manager or director of the member."

The object of this amendment, Sir, is to make it quite clear that this particular paragraph only

[The Minister for Finance and Development] refers to associations which are, in fact, constituted in the Colony and does not apply to associations constituted elsewhere.

Sir, I beg to move.

Question proposed.

The question that the words proposed to be left out, be left out, put and carried.

The question that the words proposed to be inserted, be inserted, put and carried.

First Schedule as amended agreed to.

Second Schedule agreed to.

Third Schedule agreed to.

Fourth Schedule agreed to.

Title agreed to.

Clause 1 agreed to.

The Public Collections Bill

Clause 2

Mr. Hennings: Sir, I beg to move an amendment to clause 2:—

THAT clause 2 be amended by adding at the end thereof a new subsection as follows:—

(3) For the purposes of this Ordinance an invitation to any person to join a society, association or other organization, the membership of which implies, or can reasonably be understood from the circumstances of the invitation or the manner in which it is made to imply, an obligation to pay money or property shall be deemed to be an appeal to give money or property which is not due nor about to fall due.

The purpose of this amendment, Sir, is to bring touting for political organizations within the scope of the Bill.

Question proposed.

The question that the words proposed to be added, be added, put and carried.

Clause 2 as amended agreed to.

Clause 3 agreed to.

Clause 4

Mr. Hennings: Sir, I beg to move the following amendment:—

THAT subsection (5) of clause 4 be amended—

(a) by inserting immediately after paragraph (g) thereof a new paragraph as follows:—

(h) that in the area in which the collection is intended to be made persons have recently been engaged in the

lawful collection of money by means of intimidation or undue persuasion; and

(b) by renumbering paragraph (h) as paragraph (f).

I think the purpose of this amendment, Sir, is self-explanatory.

The Chairman (Mr. Nyagah): Is the word "or" or "and"?

Mr. Hennings: I think the word is "and", Sir. The Temporary Minister for Legal Affairs (Mr. Conroy): I think the word should be "and". I do not really think there is any necessity for the second part of the amendment because it is a consequential matter which I think the Clerk might well be able to see to under his powers of correction, Mr. Chairman.

Question proposed.

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

Clause 4 as amended agreed to.

Clauses 5 to 13 agreed to.

Title agreed to.

Clause 1 agreed to.

REPORTS

The Temporary Minister for Legal Affairs (Mr. Conroy): Mr. Chairman, I beg to move that the Agriculture (Amendment) Bill as amended, the Rules of Court Bill without amendment, the Public Collections Bill as amended, and the Insurance Companies Bill as amended be reported to the Council.

Question proposed.

The question was put and carried.

Bills to be reported.

The House resumed.

[Mr. Speaker (Mr. Slade) in the Chair]

REPORT

The Agriculture (Amendment) Bill

Mr. Nyagah: Mr. Speaker, Sir, the Committee of the whole Council directs me to report the Agriculture (Amendment) Bill (Bill No. 56) with amendment.

Report ordered to be considered tomorrow

REPORT AND THIRD READING

The Rules of Court Bill

Mr. Nyagah: Mr. Speaker, Sir, the Committee of the whole Council directs me to report the Rules of Court Bill (Bill No. 52) without amendment.

The Temporary Minister for Legal Affairs (Mr. Conroy): I beg to move that Council doth agree with the Committee in the said report.

The question was put and carried.

The Temporary Minister for Legal Affairs (Mr. Conroy): Mr. Speaker, I beg to move that the Rules of Court Bill be now read a Third Time.

The Minister for Finance and Development (Mr. Mackenzie) seconded.

Question proposed.

The question was put and carried.

The Bill was accordingly read the Third Time and passed.

REPORTS

The Public Collections Bill

Mr. Nyagah: Mr. Speaker, Sir, the Committee of the whole Council directs me to report the Public Collections Bill (Bill No. 53) with amendment.

Report ordered to be considered tomorrow.

The Insurance Companies Bill

Mr. Nyagah: Mr. Speaker, Sir, the Committee of the whole Council direct me to report the Insurance Companies Bill (Bill No. 57) with amendment.

Report ordered to be considered tomorrow.

MOTION

TRANSFER OF POWERS (ANIMAL HUSBANDRY)

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): Mr. Speaker, Sir, I beg to move that this Council approves the orders cited as the Transfer of Powers (Animal Husbandry) (No. 2 and 3) Orders, 1960.

Mr. Speaker, this is a formal Motion transferring the powers, as the Government policy, from the Governor to the Minister, and I will be happy to answer any questions which hon. Members either opposite, or on this side of the House, would like to raise on the Motion.

I beg to move.

The Minister for Finance and Development (Mr. Mackenzie) seconded.

Question proposed.

The question was put and carried.

ADJOURNMENT

The Speaker (Mr. Slade): That concludes the business on the Order Paper today, and I adjourn Council until tomorrow, Friday, 18th November, at 9 a.m.

The House rose at twenty minutes past Four o'clock.

Friday, 18th November, 1960

The House met at Nine o'clock.

(Mr. Speaker (Mr. Slade) in the Chair)

PRAYERS

PAPERS LAID

The following Papers were laid on the Table:—
The East African Statistical Department Annual Report, 1959/60.

(By the Acting Chief Secretary (Mr. Griffith-Jones))

Sessional Paper No. 9 of 1959/60: Transfer of Government Property to Boards of Governors of Secondary Schools and Teacher Training Colleges.

(By the Temporary Minister for Education (Mr. Miller))

Cotton Lint and Seed Marketing Board Fifth Annual Report and Accounts for the year ended 31st October, 1959.

(By the Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie))

NOTICES OF MOTIONS

LIMITATION OF DEBATE

The Acting Chief Secretary (Mr. Griffith-Jones): Mr. Speaker, Sir, I beg to give notice of the following Motion:—

THAT this Council limits the time during which Members may speak on Mr. Nyagah's Motion on Capital Punishment as follows:—

The Mover and Seconder to be allowed 40 minutes each to introduce the Motion.

One Government Member to be allowed 40 minutes in which to reply.

All other Speakers to be allowed 15 minutes.

The Mover to be allowed 20 minutes to reply.

Mr. Speaker, Sir, with your permission I would mention that the Sessional Committee last night decided that probably this Motion would be taken when the House reassembles on 6th December, as that is commonly a day when we do not have much other business.

SESSIONAL PAPER No. 9 OF 1959/60

Transfer of Government Property to Boards of Governors and Teacher Training Colleges

The Temporary Minister for Education (Mr. Miller): Mr. Speaker, Sir, I beg to give notice of the following Motion:—

THAT this Council approves the proposals set out in Sessional Paper No. 9 of 1959/60:—

Transfer of Government Property to Boards of Governors and Teacher Training Colleges.

ORAL ANSWER TO QUESTION

QUESTION No. 149

Mr. Alexander asked the Acting Chief Secretary in view of the fact that the Government has referred the terms and conditions of service of temporary officers to the Salaries Commission, will it agree to postpone the implementation of Establishment Circular 51/58 from 31st December, 1960, until such time as the recommendations of the Commission and the Government's intention with regard to these recommendations are known?

The Acting Chief Secretary (Mr. Griffith-Jones): No, Sir. Establishment Circular No. 51 of 1958 reflects the decision taken by the Government two years ago to abandon the temporary and special contract enhanced scales, which had been introduced in 1955 and were peculiar to Kenya, and to translate officers serving on those enhanced scales to the basic scales. A two-year period was set for this process, starting on 1st January, 1959. That period is now almost complete, and the cases of the majority of officers affected by the Circular have, during the last 22 months, been dealt with in accordance with the Circular. It would be manifestly unfair to those officers to defer at this late stage the application of the Circular to the remaining officers affected by it, neither does the Government consider that any such deferment is warranted on any other ground.

By the beginning of 1961, all temporary staff will be serving on the basic scales applicable to permanent and pensionable staff. The same will apply to contract staff on the expiry of their existing contracts during the course of 1961, who re-engage on further contracts thereafter. If any increases in these basic scales should result from the salaries revision now in progress, temporary and contract staff serving on those scales will benefit therefrom.

Mr. Alexander: Mr. Speaker, Sir, that reply acknowledges that Government having made one mistake, wish to perpetrate another. Two questions arise, Mr. Speaker. Firstly, is it not a fact that notices terminating engagement of temporary staff are already going out and if the Salaries Commission modifies in favour of the staff, how will it be possible to regain their employment?

[Mr. Alexander] And will Government give an assurance that, for example, primary schools next year will be adequately staffed?

Secondly, Mr. Speaker, is it not a fact that for the first time in the history of the Civil Service under this matter they have asked for it to be referred to arbitration? Would it not therefore be better and wiser to lay this matter open?

The Acting Chief Secretary (Mr. Griffith-Jones): Mr. Speaker, Sir, replying to the speech by the hon. Member, the Government does not accept that merely because the hon. Member does not agree with it the Government is necessarily guilty of having perpetrated a mistake. I am trying hard to recollect the various sections of the supplementary, but the fact is that the circular is being implemented in the manner in which it contemplated and in accordance with its terms. So far as temporary staff are concerned, they will have the opportunity, if their services are still required, to accept engagement on the basic scales. They will have the prospect of participating in any increases in those basic scales that may be awarded as a result of the Salaries Commission. As I have said in the main reply to the Question, the Government does not see any grounds for back-peddling on this circular, and sees in fact every ground in equity and in justice to the various officers concerned to continue with the implementation of the circular. Government does not accept in this—or for that matter in other issues affecting the Service and public funds—that it would necessarily be appropriate to submit it to arbitration.

Mr. Shaw: Mr. Speaker, Sir, arising out of that rather unsatisfactory and worthy reply, might I ask the hon. Minister if he is aware that he will lose the services of a great many of these valuable experienced women, and is he absolutely satisfied that as regards education he will be able to refill their posts if they do not postpone this until the award of the Salaries Commission is known?

The Acting Chief Secretary (Mr. Griffith-Jones): Mr. Speaker, Sir, however unsatisfactorily my reply was worded I can only say that the Government does not accept the hon. and gracious lady's premise that it will lose the services of many experienced women, and it is believed that it will be able to continue satisfactorily to staff the services.

Mr. Bompas: Mr. Speaker, Sir, in view of the present situation in relation to school staff, does the hon. Acting Chief Secretary accept that the Government is wise in even running the risk in this matter of losing the staff?

The Acting Chief Secretary (Mr. Griffith-Jones): Mr. Speaker, Sir, the Government is attempting to rationalize the salary scales structure of the public services. I cannot believe that with the possibility and prospect of participating in the increase on the basic scales the staff concerned will be suffering any hardship.

Mr. Alexander: Is the Minister aware that staff regard it as a considerable insult, having been engaged by Government for 10 to 15 years, to receive a circular stating, "You will be liable to instant dismissal for incompetence, misconduct or insubordination"?

These replies have been most unsatisfactory and I ask your permission to raise this on the Adjournment.

— MOTION

SUSPENSION OF STANDING ORDERS

The Acting Chief Secretary (Mr. Griffith-Jones): Mr. Speaker, with your permission I beg to move that Standing Orders be suspended to the extent necessary to enable Government business to have precedence at this day's sitting.

This Motion is moved, Sir, as projected yesterday, when I mentioned the course of business to the House. It is moved in order to enable us to complete the Report stages of those Bills which were reported from the Committee stage with amendments yesterday.

Sir, I beg to move.

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): seconded.

Question proposed.

The question was put and carried.

BILLS

REPORTS AND THIRD READINGS

The Agriculture (Amendment) Bill

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): Mr. Speaker, yesterday the Committee of the whole House reported its consideration of the Agriculture (Amendment) Bill and its approval thereof with amendment.

I now beg to move that the Council doth agree with the Committee in the said Report.

The Minister for Local Government and Lands (Mr. Havelock) seconded.

Question proposed.

The question was put and carried.

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): Mr. Speaker, I beg to move that the Agriculture (Amendment) Bill be now read a Third Time.

The Minister for Local Government and Lands (Mr. Havelock) seconded.

Question proposed.

The question was put and carried.

The Bill was accordingly read the Third Time and passed.

The Public Collections Bill

Mr. Hennings: Mr. Speaker, Sir, I beg to report that the Committee of the whole Council has considered the Public Collections Bill (Bill No. 53) and reported its consideration yesterday to the effect that the Committee approved the Bill with amendment.

I now beg to move that the Council doth agree with the Committee in the said Report.

The Acting Chief Secretary (Mr. Griffith-Jones) seconded.

Question proposed.

The question was put and carried.

Mr. Hennings: Sir, I beg to move that the Public Collections Bill (Bill No. 53) be now read a Third Time.

The Acting Chief Secretary (Mr. Griffith-Jones) seconded.

Question proposed.

The question was put and carried.

The Bill was accordingly read the Third Time and passed.

The Insurance Companies Bill

The Minister for Finance and Development (Mr. MacKenzie): Mr. Speaker, Sir, yesterday a Committee of the whole Council reported that it had considered the Insurance Companies Bill and approved the same with amendment. I beg to move that Council doth agree with the Committee in the said Report.

The question was put and carried.

The Minister for Finance and Development (Mr. MacKenzie): Mr. Speaker, Sir, I beg to move that the Insurance Companies Bill be now read a Third Time.

The Acting Chief Secretary (Mr. Griffith-Jones) seconded.

Question proposed.

Mr. Tyson: Mr. Speaker, Sir, am I in order in asking why this Bill is brought to this Council and was not brought to the Central Legislative Assembly?

The Minister for Finance and Development (Mr. MacKenzie): The answer to my hon. friend's question is that this would not fall within the jurisdiction of the Central Legislative Assembly as a matter of this kind would not fall within the powers of that body, or indeed of the High Commission. It is, as the House is aware, a point that has been considered on several occasions, but unfortunately that is the present position, and I am afraid there is nothing that we could possibly have done about it.

The question was put and carried.

The Bill was accordingly read the Third Time and passed.

MOTION

ALL RACES UPPER HOUSE

Air Commodore Howard-Williams: Mr. Speaker, Sir, I am bringing this Motion to the notice of the House because I am convinced that therein lies sense. It is nothing new, Sir, and I would be brief. I merely want to have the views of the House on the subject. We have need, Sir, to use the best brains and brawn in Kenya. Our African friends will agree that many of the older and more experienced characters of all races have something useful to contribute to any debate. Therefore I say let us start up the new independence for which we are seeking, and to which they aspire, with an Upper House drawn from these experienced persons and leave our friends in the Lower House to get on with something they know more about, perhaps, than we do, the business of governing their own people. By the way, the Governor would choose the Upper House, Sir, as I see it, and thereafter the Lower House would sit as an electoral body and would choose their successors. This Upper House would be non-racial, it would contain a number of people whom the country has reason to trust, including perhaps of the Members opposite. It would in effect be an extrapolation of the Council of State. Their job would be to debate and to advise but not to control the country; that must ever be the job of the Lower House. The Upper House would sit when the Lower House was not in session. That way, Sir, all races in Kenya would get the best of all worlds and have a sheet anchor which could but make it more difficult for one side of this House to put the other side in gaol for five years as is done in Ghana and as would be done in the Congo if only they could get what they would call a "stable government". What I advocate, Sir, makes for democracy with a small "d" as we have seen elsewhere, not for Dictatorship with a large "D".

[Mr. Commander Howard-Williams]

This is the time, Sir, I suggest, to consider these matters rather than after independence is a fact hastily sprung on the Colony by a terrified Colonial Office in answer to pressures they do not even comprehend. Were this to be freely accepted I for one would welcome the other races giving up their phone reserved seats. The alternative, Sir, to some such proposal can but be the biggest battle of all over independence which is likely to lead to some people getting into trouble. That battle will waste time because the best thing we can do, Sir, now that MacLeod's folly is being built to fly it through the south barrier to independence as soon as we properly can with a course set fair economically and commercially, I feel sure that our merchants and our farmers wish this and commend the concept to the good sense of our African friends. Alternatively, Sir, count me as one who will fight on against a premature independence until the cows come home.

I have kept my speech short, as is my wont, in the hope that my colleagues on both sides of the House can accept the Motion for all its simple terms, or prepare for a Hundred Years' War. The Motion merely implies a committee of the House to resolve the way ahead to independence before the next election is hot upon us with the result favourable to one party or the other when, this being Africa, there is likely otherwise to be a first class clash which can this way be sensibly avoided.

I beg to move.

Mr. Bompas seconded.

Question proposed.

Mr. Muliro: Mr. Speaker, Sir, with all due respect to the hon. Member of this Motion, I stand to oppose it and the African Elected Members will never accept a Motion of this nature. We have said all the time that we do not want two Chambers in Kenya. We want a single Chamber. When we were at Lancaster House we rejected the idea and also we have opposed the idea of a Council of State all the time and therefore I do not see any merit in my hon. friend moving a Motion of this nature in this House.

The Motion says that it will have the power to advise and powers also to amend, but not to control, the legislation. If we are going to have another body above the free legislature elected by the voters of this country by the majority vote, and another body which would have the power to amend the laws of this country, no one would accept such a body. Therefore I oppose this and I hope the Government will also reject it. If it is a question of the Kenya constitution in the future, we will leave this to the final drafting of the Kenya constitution and hon. Members can

raise these points there and they will be rejected accordingly or they will be discussed at that time. But this House has no competence to discuss Kenya's constitution.

I therefore, Mr. Speaker, beg to oppose.

Mr. Nazareth: Mr. Speaker, Sir, the hon. Member in moving the Motion appeared to desire an expression of views more than to entertain any hope that this Motion will be passed and I stand up to do precisely what he desires me to do, express my views on this Motion.

Kenya is the only territory of the four East African territories which has at present a second chamber and although it has limited functions it has been a useful body and contains the possibilities of transformation into something with a wider and higher ambit and a more useful function than it has performed in the past.

We have at present before us a possibility that Kenya might federate with one or more of the other East African territories and if that eventually were to be fulfilled then obviously a second House would be necessary to deal with the regulation of the relations between the different territories. We would then have to consider whether the present Central Assembly and our present Council of State would not both have to be transformed and a second chamber created for each of the East African territories associated under a federal constitution. Therefore, although the time is much too early to pass a Motion of this kind, in fact it is quite the wrong time to pass a Motion of this kind, nevertheless the time is ripe for a study of the functions of the Central Assembly and of the present Council of State to consider whether or not we should not now set in process some study for the purpose so as to be ready when the time arrives for having a federal constitution with a second chamber which would take over the functions of the Central Assembly and the Council of State.

It is from that point of view that I have risen to commend to hon. Members who may be Members of the incoming Legislative Council in the course of a few months a study of federal constitutions. A second chamber of that kind would be a body which would, as I have said, deal with the federal legislation which would apply to all the territories. It would probably have to be entrusted with the power to amend the federal constitution. It would have to be entrusted with the duty of protecting the rights of the judiciary. Matters of that kind would have to be taken into account, also the paramount duty of protecting the rights of the individual. A body of this kind would be necessary and important. I therefore take this opportunity of commending to hon. Members a study of two important books that deal with the question of the

[Mr. Nazareth]

problem of power, the study of constitutions, the ways in which you can prevent an abuse of power.

One of these books is *The Federalist*, which is a series of papers written by three very eminent gentlemen. One, I believe, became the President of the United States later—Hamilton—and another also, I think—became President of the United States—Madison. The third was, I think, John Jay, who became Chief Justice of the United States. They wrote these papers in order to get New York to ratify the American constitution and they deal with the whole question of constitutions, the distribution of powers within the Government, the relation between two or more states—questions of that kind. These matters will be of the utmost importance in the near future and I hope Members who will have duties to perform of a legislative character in the next Council will make a study of that particular book, containing those articles, about 86 articles.

Another book I might recommend to Members who have an interest in democracy and who desire to safeguard democracy is a series of lectures by Lord Radcliffe, published in one of these pocket books entitled *The Problems of Power*.

While I am not able to support this Motion, I think it fulfils a very useful purpose if it draws the attention of hon. Members to the necessity of undertaking a study of the problems with which we will be confronted in the next two or three years.

Mr. Khamisi: Mr. Speaker, Sir, I also would like to join my friend on the left who opposed this Motion. I very strongly wish to oppose this Motion because I feel that it is premature and retrogressive. Whereas one of the things that he says is that such an Upper House would have "powers to amend", he then goes on to say that it will "not control". How can you amend a thing and then not control it? The fact that you are able to amend legislation means that you are able to control legislation. Therefore, I think an Upper House serves no useful purpose, to my way of thinking.

I have not been convinced in my own mind of the necessity or the essentiality of having the Council of State. In fact the amount of money—£10,000 that we are spending every year for the running of the Council of State—is to my mind money wasted. It could be used better if that money were devoted to education or to some other thing which would bring benefit to this country.

Now, the Lancaster House Agreement made no mention at all of an Upper House and if an Upper House is required I hope the proper

time to discuss such a requirement would be after the General Elections next year when this House will have an elected majority. The House will be fully elected and that will be the time for a Motion of this nature to be discussed. Even so, I do not see any hope even next year for a Motion of this nature to be favoured by any elected House of Kenya. If it is a question of a Federation, as has been mentioned by the hon. Member who spoke just now, the question of Federation will be dealt with at the time when these countries become independent. Therefore, a Federal Council would not be an Upper House; it would be a Federal Council composed of members from all the territories who would sit in such a Council. But certainly an Upper House for Kenya alone is undesirable because it would serve no useful purpose. It would be quite undemocratic. The election of such Members as has been mentioned by the Mover would be done by the Government which would be to undo whatever progress we are now making towards a democratic Kenya when all the Members of the House will be elected. Then we will bring in a Motion of this nature to suggest that the Government should elect a few people and make them Members of an Upper House.

Mr. Speaker, I very strongly oppose this Motion because I do not believe that it will serve any useful purpose.

Mr. Travadi: Mr. Speaker, Sir, I support the underlying principle of this Motion, though no doubt differing on more than one point of detail thereof. The Motion raised two or three points. One is the setting up of an all-races Upper House, whether it is by nomination by the Governor or the Colonial Office, or by election—direct or otherwise—is not disclosed at all. Whether it would be on the basis of universal adult franchise or what, is not disclosed. What would be the criterion of the setting up of a new Upper House?

Now, whether this Colony would be able financially to afford a second House, whether it is run on a bicameral or a unilateral basis, is a question that must be faced and decided upon at a later stage when the Africans are in power and when the revenue will perhaps be pouring in—more or less. One cannot guess about that at the moment, but as the tempo goes now the revenue is dwindling, and that is a point to be decided as well.

Now, the last point raised by the gallant Member is that it should sit when the Legislative Council is in recess. That is purely a question of detail, when it should sit and when it should not sit; it should not have been put in here. But it seems to me that when we were thinking dispassionately about this, last year, before we went to the London conference that the two

[Mr. Travadi]

African Members who have just sat down, if I remember rightly, welcomed very much this idea of having a second chamber necessary to check impulses and to put brakes on and balance out the passions that might arise during the days of the elections—

Mr. arap Moli: Not in London.

Mr. Travadi: Before that, my dear friend! You were one of the persons who agreed to this bicameral House. I have got the papers with me. Before we went to London, I said! Even before my colleague, Mr. Nazareth, and myself were dismissed on the radio for not paying Sh. 5 when the Kenya National Party had received hundreds of shillings in an indirect way. Well, I am not fighting the African Members because since those days the wind of change has swept all over the world, even, as you know, into the United Nations Organization; and so I cannot talk about these African Members. They have every right to change their minds. However, as at present constituted, and also with the new proposed Legislative Council that is coming into being next year, the Governor has full powers of veto as arbiter.

As long as that power remains I do not think there is any necessity at the moment for a second Chamber, but no sooner it disappears than there is every necessity, and it is absolutely essential, that this country should have a second Chamber irrespective of whether the Legislative Council is composed entirely of Africans or of mixed races; I always feel that the qualifications and the franchise thereof should be an adult universal franchise, and so the racial question would absolutely disappear then.

Mr. Speaker, this Motion is not for passing but just for ventilating the views and getting the views of other Members, and I feel that full consideration should be given now before things get too hot after the elections, and it is high time that the Government set up a sort of committee to recommend to the Colonial Office when the right time has come, so that they will better be able to advise the African Members what to do then.

I beg to support only the principle. When the country attains responsible government, at the moment they have not got responsible government, however, Sir, when self-government is attained this second Chamber should be in operation to replace the present Council of State. The numbers should not be more than double the number of Members of the present Council of State, that is, half the number of Members of the next Legislative Council. The proposed half of the number of Members in the Legislative Council would not exceed 32 or so, or if the Council of State is composed of 15 or 16 members

then it actually comes to the same number and the number of Members of the second Chamber should not be more than 32 or 33.

With these remarks, Mr. Speaker, I beg to sit down, not supporting or opposing the Motion.

ADJOURNMENT UNDER STANDING ORDER 12:
TEMPORARY TERMS OF SERVICE FOR CIVIL
SERVANTS

Mr. Alexander: Mr. Speaker, Sir, on a point of order, under Standing Order No. 12, I wish to propose to move the Adjournment of the Council for the purpose of discussing a definite matter of urgent public importance, the matter, Sir, being the question raised this morning and the answer thereto.

The Speaker (Mr. Slade): I am of the opinion that the subject-matter of this question is a definite matter of urgent public importance. I would enquire whether you have ten other Members supporting you.

(Ten members rose.)

The Speaker (Mr. Slade): In that case it is for me to nominate a time today at which this Motion may be moved. I nominate 12 o'clock, or such earlier time as the other business on the Order Paper may be finished today.

MOTION

ALL RACES UPPER HOUSE

Continuation of debate.

Mr. Hughes: Mr. Speaker, Sir, I would like to say that I do agree in principle with the Motion before the House now. But, Sir, I do join issue with the hon. Member when he says that the Upper House should be reserved merely for the wazee of the country. I think it could be a most useful body and I think it could represent sectional interests which are vital to the economy and the welfare and development of Kenya; and so I would like to suggest that an Upper House, when it is considered, should represent young, enthusiastic and qualified people to sit on this Council.

I do not agree with the last Member when he says that it should be considered now because I think the atmosphere is certainly very high with election fever, and I would suggest that this is a constitutional change which should be rightly considered by the new legislature after the elections next year.

I wish to support, Mr. Speaker.

Commander Goord: Mr. Speaker, I fully support the concept of an Upper House in that it is something which would, I believe, contribute to stable Government in the future.

I oppose the Motion. In the first place I feel that it is patently ridiculous to appeal to the Government in this matter. Secondly I feel that

[Commander Goord]

it is most unwise at this time for the House to consider the matter at all. The proper time will be after the elections, probably well after the elections. I am quite sure that this is something which ought to flow naturally as a constitutional evolution at the proper time. If we go on debating the matter now and talking about matters of detail we are being quite unrealistic and we are tending to commit ourselves to points of view which at some future time we might not be able to sustain. I therefore think that we would be wise to bring this debate to a conclusion as early as possible.

I beg to oppose.

The Acting Chief Secretary (Mr. Griffith-Jones): Mr. Speaker, Sir, in common with a number of other Members who have already spoken in the debate the Government feels it must oppose this Motion but only on the issue of timing. I think the fact that it is perhaps not only premature but ill-timed is illustrated by the fact that opposition has been expressed to it by people who, when the issue becomes a real one and an acute one at some later stage, may very well wish to support the concept of an Upper House but are unable for a variety of reasons—some of which I might describe as intrinsic, others which I would perhaps dismiss as political—to do so now. However, the point is, I think, that the debate has already illustrated that we have not yet reached a stage at which Members can express firm views one way or the other, and so while, as I say, the Government feels it must reject the Motion, it does not commit itself in any way either to a rejection or to an acceptance of the principle of an Upper House at a later stage if that should be an appropriate form of constitutional institution to be established in this country.

Sir, it is perhaps worth while just to canvass fairly briefly and cursorily the main purposes for which Upper Houses have been established in other countries, which are many.

Perhaps the first purpose of an Upper House is to provide a stabilizing and restraining influence, say, a *depositum sapientiae*, through which the legislation passed by the fully political and representative Lower House passes for experienced and dispassionate scrutiny without the full stresses and strains of political affiliations and stresses.

I am sorry that the hon. and gracious lady for Uasin Gishu has just left because it has been mentioned to me by one of my colleagues on this side that perhaps the reason why she felt it would be unwise that the Upper House, if and when it is established in this country, should and when it is established in the wazee, as the said, was that otherwise we would probably not get any members of her sex to serve because they would be

unwilling to admit to their age. I agree with her that age itself should not be the criterion: what an Upper House, serving this particular purpose which I am discussing, would need would be wisdom and experience, and that does not necessarily denote great age.

The second classic purpose to be served by an Upper Chamber is the protection of a variety of interests. They may be internal interests of various sectors of the community in the State, of various interests, economic or otherwise, forming part of the collective life of the nation; they may be for the protection of what are sometimes termed "minority interests", and here I do not mean only racial interests, but possibly tribal interests, communal interests, and other like interests. But also it would be for the protection of interests, in a federal association of states, of the individual component territories. That is again a classic purpose of an Upper House. We see it under many federal constitutions, and also in France with the representation of the various *departements*. And so I do ask hon. Members not to dogmatize in anticipation on this issue. I think it would be unwise to set our faces firmly against the concept of an Upper House at any time. It may very well be that we shall need an Upper House, and indeed when the time comes, the collective opinion of the various sections of society in this country may demand an Upper House for the safeguarding of the component parts of the whole; but the timing must await judgment at a later stage. We are embarking on a considerable step forward in the constitutional advance of this country, and we must give ourselves a chance to make a success, in the interests of all of us, of that step. We must not try to take too large and indigestible a bite at one go.

I do not think, Sir, that in view of what I have already said there is really any purpose in dilating on this subject, interesting though it is. I think that the suggestion made by my hon. friend, the Member for Western Area, is a very sound and sensible one—that we should, each of us in our own time, study the theory of bicameral legislatures and see whether in due course of time it would not be to our advantage to borrow from the example of other countries who have found it wise and in their own interests to establish bicameral legislatures. In the meantime, we ourselves have gone part of the way with our Council of State and perhaps, to a certain extent, with the provision for National Members in our next legislature. For the time being I think it is a problem on which we should cogitate and not leap into precipitate judgment, because conditions are not ready yet for any such conclusion to be given practical application.

I beg to oppose.

Mr. Nyagah: Mr. Speaker, Sir, I will just be very brief in giving my personal views on this subject. While I agree with most hon. Members that the time is not ripe for giving this subject serious consideration, I would like to say this. We should avoid at all costs using the word "never", because we do not know what the future developments will bring. It is possible, Sir, that Westminster will not be our model, or even any other Commonwealth country. We may develop our own body which will act in an advisory capacity only. It is unfortunate that the Motion is worded in a way which is both confusing and rather contradictory. We are moving towards a form of government where I hope democratic principles will be followed and the citizens will elect people to represent them in the legislature; and yet here we are asking the Government to set up a body. Again, we are trying to give this body power to amend, and at the same time contradict them by saying they cannot and should not control what is passed by the body whose rules and laws they are supposed to amend, and which is contradictory.

On the other hand, Sir, I think the hon. Mover for his foresightedness in trying to search for a "stabilizing factor", and to give a better and more stable future for Kenya.

What I want to put on the record, Sir, is that the word "never" should never be used. The time may come when circumstances may force us, or may lead us to think of a body—purely an advisory body, perhaps elected or by another method of getting this body set up naturally.

That is my contribution.

Mr. Ngoni: Mr. Speaker, Sir, I would like to support the spirit of this Motion, and I would like to give a little explanation why I support the spirit of this Motion.

I think, Sir, it has already been described that the time is getting hotter and hotter and the Government in this country should try to prepare and consider what is going to happen at the time when independence has come to this country. In Western ideas, if a lady is expecting a child very soon, you generally prepare the baby's clothes—a custom which is contrary to African custom. If Africans tried to adopt that idea it would be clumsy. You would not try to prepare baby clothes or a baby's coat when you do not even know whether the child will be born alive or dead. But it is the European's idea to believe that such preparation is very necessary—contrary, Sir, to native custom. Therefore, Sir, I think it is very necessary for the Government to make strong preparations for the forthcoming independence and to set out the interests of all races in this country. We can foresee what is going to happen under the present structure.

I remember, Sir, in 1939, when I was in Nakuru, the district commissioner there told me to go to the native locations because he wanted me to interpret the blackout to the African people there. What he said, Sir, was to tell the African people that the Italians will not come here, but we want to see that in case at night Italian planes come to part of the country, they will see no light at all. I did not know what was going to happen but I had to do the interpretation, Sir, and I remember the district commissioner told me to give the idea that the Europeans do it in this way. That is, it is better to prepare the *bona* before the cattle disappear, and therefore we want the blackout to start in this country before we see the danger.

Now when I say this, Sir, I think it was well moved by the Mover when he said we might face 100 years' war if we are not careful about it. Nobody likes trouble in this country, but if trouble is there we must try to face it. I can understand very little of what the hon. Acting Chief Secretary said, and I am very doubtful about it. We do not know what will happen next year when independence comes, or after the elections we do not know what is going to happen, but I think it is a good idea if Government is going to consider what the hon. Mover of this Motion's ideas are here. His intentions may not have been interpreted in the terms of this Motion, but the Government should understand what the hon. Mover of this Motion really means, and if he wants the protection of all races in this country, and if he wants really to safeguard every race in this country, the Government should do something, not in the terms of his Motion, but in the terms of the spirit of his Motion.

Therefore I feel it is my duty to support what the hon. Mover is trying to ask the Government to do.

I support the Motion, Mr. Speaker.

Mr. Odiga: Mr. Speaker, Sir, I have to join the people who oppose the Motion and I should say that the last speaker has helped me even further to oppose it even stronger because his reasons are based on fear and he would rather like to see an institution which would be a barrier to the progress of any future Government. I think that if that is the motive behind this Motion it was not one to bring at all to this House because I do not think that we should really prejudice any future government by saying that it will be an irresponsible government and as a result there should be a safeguard for minorities. I think that this is not right and it was not even right for the last speaker to have based all his arguments on that.

Now, Mr. Speaker, I do oppose this Motion on two grounds. One is that I think the Mover of

(Mr. Odiga)

the Motion has in mind what has existed in other parliaments and institutions in other countries. But I thought that he had forgotten one thing and that is their history. If he knew of the history of the second chambers or upper houses in those countries he would know they are more a relic of the past and in actual fact their powers are being whittled down every now and then which means that even in those countries they have realized that they are a burden rather than anything which is useful to the people.

I understand one might also think of some new countries which have adopted upper houses, but in those countries where they have modernized the second chambers or upper houses they had the members of those houses elected by popular vote, and, if they are elected by popular vote, that I am not at the present moment objecting to, I say, in that spirit I am persuaded to agree with the hon. Member, the Minister for Legal Affairs, when he says that it is not something which is immediately needed. We should need it for the future, if the future will find that it is really necessary; then I would only support an upper house which is an elected body but not in the manner in which the Mover actually put it here. He had in his head the idea of racial representation. I do not think he will be able to get that in an elected upper house. An elected upper house will have to depend on the popular vote of the citizens and not on the racial composition as he has put it down here.

Therefore, I think that having put that forward, Mr. Speaker, I have already touched on my second ground for opposing it. The first ground is that the upper house in many countries is being realized to be a burden of some sort, although in some very, very big countries they find that it is necessary and they only retain it by popular vote or by elections of some sort. But in these small countries—and I should include Kenya as being a very, very small country—they find that it is not necessary for two reasons. For one thing it is a burden financially and at the same time it is not necessary.

I would also make it known to the Mover that we are at the present moment moving away from this racial thinking to get right into the national thinking; as we are doing that it would be wrong for him to include in any Motion of this nature that we should retain the idea of racial representation. The idea of racial representation is dying away and we would only like to encourage it to die away as quickly as possible. On that ground also I could not actually support him and support the Motion.

With these few remarks, Mr. Speaker, I beg to oppose the Motion.

Mr. Cooke: Mr. Speaker, I was surprised at my hon. friend, the Acting Chief Secretary, and all the other speakers who seemed to failed to grasp the real argument in favour of a second house, and that is the delaying effect on any legislation, or any legislation which might be founded on emotion. It would give the country time for second thoughts and I would have said myself that now is the time, if it is ever going to be ripe. With the young and possibly inexperienced Parliament coming into effect next year it is all the more necessary that this country should have time to think over any legislation. Of course, it would not have any power to stop legislation or any power over any financial arrangements, but it would give us time to think again over any measure which may be passed in this House. For that reason I would strongly support the setting up of a second chamber. I believe in every one of our dominions there is a second chamber and they do not seem to have found any reason for dispensing with it. Even the old House of Lords is still going strong and although abhorred of many of its powers it still has the effect of bringing in a lot of experienced people, experienced not only in English politics but in colonial politics, to give second thoughts over serious matters of government. For that reason, Sir, I strongly support the Motion.

Mr. Bompas: Mr. Speaker, Sir, I formally seconded this Motion without any belief or conviction that it would be carried, and indeed without any great conviction or belief that the phraseology of the Motion was actually ideal. But I seconded it, Sir, because I do believe that in whatever way we may approach it, this country will inevitably require a second chamber. Of that, Sir, I am quite convinced. But I agree with the hon. Acting Chief Secretary that this is not the place to dwell on detail probably, and I do not think that my hon. and gallant friend from Nairobi North meant when he moved this Motion to do very much more than to throw a stone into the bush to see what birds would fly out. Sir, we have seen some very interesting birds fly out of that bush this morning and I believe that if this Motion and this debate does no more than stimulate thought, then the Mover will have achieved his purpose and will have done a great service.

I beg to support, Sir.

Air Commodore Howard-Williams: Mr. Speaker, Sir, I beg to reply. The argument has gone before. No words of mine can add anything further to the debate which resolved itself upon common sense for all races and, I would have thought, for the Colonial Office. After all, Sir, the United States of America and Great Britain have both got Upper Houses and I would have thought

[Mr. Commodore Howard-Williams] that that would commend itself to Kenya. I was surprised that Government support was only limited in that an Upper House is one way to take care of minorities. I was also surprised at our African friends that they did not come behind the Motion because when all is said and done eventually they are going to elect and control the Upper House.

The occasion, as my Second has just made clear, provided the forum which I wanted and I thank the House for their opinions.

I beg leave, Sir, with your permission, to withdraw the Motion with the hope if not the promise that Government will consider the issue in due time.

The Speaker (Mr. Slade): The Motion now being in the possession of the Council can only be withdrawn with the permission of the Council. May I take it that hon. Members agree to its withdrawal?

Motion by leave withdrawn.

MOTION

DEPORTATION OF ELIJAH OMOLO AGAR

Mr. Mullro: Mr. Speaker, Sir, I beg to move that this Council, being aware that the State of Emergency has been ended, deplors the deportation of Elijah Omolo Agar to Lamu Island and calls upon the Government to release him.

Hon. Members will forgive me for having been out for a few minutes but being out does not stop me from moving this Motion.

Now, Sir, the whole idea, Mr. Speaker, and the principle behind the deportation of Elijah Omolo Agar to Lamu Island is the most detestable act that one could ever have thought of.

The reasons that led the Government to deport Elijah Omolo Agar to Lamu Island are actually unknown to us. It was alleged during his trial that Elijah Omolo Agar had some prohibited literature with him and it was also alleged that Omolo Agar was working for the overthrow of the established Government. I challenge the Government to prove how Omolo Agar was actually working to overthrow the Kenya Government as it was. The present Government is a colonial Government and any politician—all of us—is engaged actually in overthrowing that colonial Government; therefore Omolo Agar is no exception from what we are all doing. All politicians in Kenya are engaged in doing that. I think all hon. Members on this side of the House who are here as representatives are engaged in seeing that Kenya gets its own independent Government. If Omolo Agar was contributing towards that, he was doing no harm but what Mr. Blundell, Mr.

Odinga, Ngala and myself are all doing to overthrow this colonial administration and establish a Kenya Government.

The Government claims that Omolo Agar is a Communist but it has failed to look to arrest anyone who was a follower of Omolo Agar because actually this man was so deep and if he was going to overthrow the Kenya Government he should have along with him some of his own staunch followers. We have known of people going into deportation, we have known of people who are restricted people like Elijah Masinde, the former leader of *Dini ya Msambwa*, people like Jomo Kenyatta who is alleged the leader of *Mani Mau*; all these people have got followers. It is only the lonely Elijah Omolo Agar, allegedly a Communist, who has not got a single follower.

Therefore, the Government has other motives that led to their deportation of Elijah Omolo Agar on the accusation that he was a Communist. Mr. Speaker, I would like to say that for the good of this country any restriction of any person is not got to be the answer. In my view I would say that what we want to do in order to avert the Communist infiltration, if there is anything of that nature at all in this country, is to bring about political, social and economic emancipation of the masses of the people in this country. If we cannot do that we are going to have trouble. I have said this many times in this House. I have said this at many public meetings, that the independence we are looking towards might be a very dangerous invention if the future Government are going to think of deporting people in this manner. The answer to Communism seems to be the economic reconstruction of Kenya, social benefits to all the people of this country, and as long as parts of Kenya are kept as human zoos in order to be left where additions who are regarded to be as dangerous are locked up, this will be no answer to Kenya's problems.

Therefore, I would urge the Government that Elijah Omolo Agar who was the breadwinner for his family after he came back from his studies in India should be released right now. I have never known him to be a dangerous man—at least, not more dangerous than any of the politicians who are battling in Kenya politics all the time. He was not even the head of any movement in Kenya at all. We knew him as an organization secretary of the Nairobi Peoples Convention Party which was not even a —(Inaudible.) organization. If he was found with some books, possibly he had those books purely from the interest point of view.

The answer is not to stop people reading communist literature at all. Let them read all that! The answer lies in removing the conditions which

[Mr. Mullro] are the breeding grounds of communist propaganda. Those conditions, Mr. Speaker, are poverty, ignorance, disease and misery, which are quite rife in Kenya; which are even in the same place—Lamu—as he is detained. When you go to Lamu you will see those very conditions very much in the picture in Lamu, where Omolo Agar is now detained.

Mr. Odinga: He is detained at Lokitaung not Lamu.

Mr. Mullro: Yes.—(Inaudible.)—Mandara and all these places, where the politicians regarded as dangerous are sent, are the very grounds where the Kenya Government is sending them to germinate the seeds of dissension. It may have been a good thing in the past to keep these areas backward, but in the future these areas are the ones which are going to be more dangerous for Kenya. They are the areas which are going to cry for dissensions. So having kept these areas as areas for political undesirables is now proving to be a dangerous thing.

I would urge the Government—and I suppose the Minister for Internal Security and Defence will be able to tell us this today—that Omolo Agar be released to go back to his own home. I do not think he is more dangerous than the present Member for South Nyanza. I do not think he is a worse politician than Mr. Mboya who also comes from the same district. I do not think he is more dangerous than Mr. Odinga or myself who come from the same province. Therefore, the best answer for us, Mr. Speaker, is to allow this man to go back to his home as a free person.

With these few words, Mr. Speaker, in order to —(Inaudible.)—the Council, I beg to move.

Mr. Odinga: Mr. Speaker, I rise to second the Motion but I would reserve my right to speak later.

The Speaker (Mr. Slade): Hon. Members who wish to reserve their right to speak should not say a single word in seconding but merely bow. That is only a warning for the next occasion, Mr. Odinga.

Mr. Odinga: Thank you, Mr. Speaker.

Question proposed.

Mr. Ayoda: Mr. Speaker, only about ten days ago I paid a visit to Mr. Agar who is the father of Elijah Omolo Agar and during my visit we discussed quite a number of things relating to Mr. Omolo's life. Both the mother and the father told me something of Omolo's youth, and from what they said and from other contributions the people in the room made it was quite clear to me—I am now leaving aside my own knowledge of Omolo's life—that Mr. Omolo who is now restricted in

Lamu is an innocent person; innocent in the sense that Mr. Omolo cannot do what the Government suspects he would do if he were set free.

Now, just before we ended the talk on Mr. Omolo the mother asked a question. She asked me why the Government has decided not to allow Mr. Omolo to return to them. I told her that I really did not know but that the Government thinks that if he were freed he could or would be a danger to peace in this country. I told her that that was what I thought the reason was, because I really do not know, as the Mover of the Motion has just said, the reason why Mr. Omolo is not allowed to be free.

After answering that question the father asked two questions which I would like the Government to answer for me. Now, the first question was this: does the Government really think that a person or a nationalist like Omolo Agar would be a danger to peace and prosperity in this country now? Now, that is a simple question but one which I think is very, very important because anybody who knows Mr. Omolo as a politician and as a citizen of this country would agree that if he were released now he would certainly work for progress; he would certainly work for peace; and he would most definitely continue towards the building of a strong, peaceful nation. This is my personal conviction because we grew up together and I know what Mr. Omolo is made of. I would like the Government to answer that question for me so that perhaps I could take the answer to the old man.

Now, the second question that Mr. Agar—that is, the father—asked was whether it was possible for him to see those in the Government who are concerned in this matter. He is very, very anxious to know this from the people directly concerned with the restriction of Elijah Agar. The two old people, the mother and the father, are definitely confused about this; they just do not know what is going on.

Another question they raised in the course of asking these three questions I have mentioned was this, that they would like to know why the Government even refused to restrict Omolo in his own location, because some effort was made to that effect. Both the father and the mother asked the Government if, say, they decided to have him restricted and not to allow him to take part in politics, could he be restricted in his own home? This is another question they asked and they just wanted to know why they could not be allowed to have their son back home.

Mr. Speaker, I beg to support the Motion.

The Temporary Minister for Internal Security and Defence (Mr. Ellerton): Mr. Speaker, Sir, in order that I may explain why the Government

[The Temporary Minister for Internal Security and Defence] cannot accept this Motion, and in order that I may answer some of the questions which have been asked of me by hon. Members on the other side, it is necessary that I should take up the time of the Council for a moment to explain something about the background and activities of the person who is the subject of this Motion.

Omolo Agar, Mr. Speaker, after a promising scholastic career in Kenya and Uganda and after early leanings towards the teaching profession, went to India for further studies. While in India he became a controlling figure in a group of extreme student organizations which advocated the adoption and practice of political theories based on racial hatred, contempt for constitutional authority and the condonation of violence. He was prominent in the production and distribution of several publications, some of which were and still are prescribed in this country because they bring into hatred or contempt, or excite disaffection against, the lawful Government of this Colony. In articles in these publications he sought from time to time to justify the violence of *Mau Mau*.

In March, 1957, Agar returned to Kenya, abandoned his previous profession of teaching and went into politics. Now, Mr. Speaker, that may be misguiding, but it is perfectly lawful. It is not, however, lawful to advocate—as Omolo Agar advocated—extreme political action ranging from civil disobedience to open rebellion, or to express keenness to train “action groups” in the manufacture of such weapons as incendiary bombs, and generally to put into practice the lessons which he had acquired in a course of military training while pursuing his further studies overseas.

Agar joined a Nairobi political party and very quickly became its organizing secretary. That again, in itself, was perfectly lawful and proper. It was quite improper and unlawful, however, to organize, as he organized, political *akaris* who were dressed up in a distinctive uniform and who attempted to usurp the functions of the police.

He became the editor of the party's news sheet. That again is a perfectly lawful occupation in itself. But within a very short time the Government were obliged to proscribe this news sheet, because it persistently published material which exacerbated racial hatred and eroded lawful authority.

Shortly after this, Mr. Speaker, Agar was detained under the Emergency Regulations and from the documents that were found in his possession it was quite clear that he had made an extensive study of the organization and methods of underground militant movements and the strategy of secret warfare. Forms of assistance envisaged

and recorded in his own notes included the provision of men trained to wield modern weapons and to commit acts of sabotage, and the sending of Kenya Africans abroad to be trained in these revolutionary techniques. His own notes revealed him as a devout student of the methods of promoting mass uprisings, revolutionary campaigns and guerrilla warfare.

In consequence of the documents that were found to be in his possession, Omolo Agar was sentenced to 14 months' imprisonment. He appealed against his conviction. In dismissing his appeal, the Supreme Court—and I should like to emphasize the Supreme Court—recommended that on his release from prison he should be made the subject of a restriction order. With your permission, Mr. Speaker, I should like to read an extract from the judgment of the Supreme Court. “In our opinion there are circumstances disclosed in this case which show that the appellant was an organizer of a political body which advocated sedition and, indeed, outright revolution. It has been shown that he was a person who had studied the formation of, and underground political cells, their organization and activities. Although much of his activities in this connexion took place while he was a student in India we do not think that they can be dismissed as the rather irresponsible activities sometimes indulged in by youthful students. He was not a youth but was aged about 30 and he had previously been a schoolmaster. It is clear that he had reached an age when his activities cannot be dismissed as merely youthful indiscretion. In a country in which the population as a whole is politically mature, a country in which the political institutions are stable and in which no significant number of people are likely to be swayed by irresponsible ideas of revolution, where in fact lawful constitutional methods are generally accepted as the only feasible method of political change and progress, the very idea of a restriction order of the type envisaged by the Ordinance is abhorrent. In Kenya, however, such a condition of political maturity and stability has unfortunately not yet been attained by everyone. As was shown by the outrages committed by the adherents of *Mau Mau*, there is a very real possibility that the advocates of the worst forms of political subversion, if unchecked, may by devious means including intimidation obtain a substantial following and cause incalculable harm to the whole country. . . . In such circumstances restriction orders become a regrettable necessity.”

Mr. Speaker, I hope I have said enough to make it clear that the Government had to deal here with a man who was obsessed with a desire to implement a plan to form a Colony-wide militant machine prepared and equipped to resort to violence if necessary.

[The Temporary Minister for Internal Security and Defence] the security of the Colony and the Government had no alternative but to accept the recommendation of the Supreme Court.

The difference, Mr. Speaker, between the person who is the subject of this Motion and the hon. Member who moved the Motion, and others who have spoken in support of it, is that while they advocate change in the established order of things, they do not advocate changes by unconstitutional means.

I hope I have said enough, Mr. Speaker, to make clear why the Government cannot accept this Motion, and that I have also answered at the same time the points put to me by the hon. Members opposite.

I would say one thing with regard to a question asked of me by the hon. Member for Nyanza South. If Agar's parents wish to discuss his case with me I shall, of course, be very pleased to see them. These cases, Mr. Speaker, are always subject to continuous and careful review. More than that I cannot say at this stage.

Mr. Speaker, on behalf of the Government I must oppose the Motion.

Mr. Odlinga: Mr. Speaker, Sir, I rise to support the Motion and to deal with some of the replies, which are most unfortunate, as given by the Government, but which are worth commenting on.

The Minister for Defence has attempted to give, briefly, the life history of Omolo Agar as probably related to him, or probably as he read from some of the documents which he might have had with him. But I will tell him and the Council, Mr. Speaker, that I have known Omolo Agar for a very long time and if there is anybody who sponsored Omolo Agar's going to India it was chiefly myself, and I did all I could to see that he went to India because I thought he was a most suitable student and a very fit student for education overseas; and indeed he did benefit from the education which he received overseas.

When he came back he did not lose any time coming into the public life, trying to assist the politicians without receiving any pay or anything like that, but he devoted his time to the service of the people of this country.

Well, Sir, the Temporary Minister for Defence has made some remarks which cannot go unchallenged. He definitely said that among Omolo Agar's documents were found some documents or books talking about subversive activities and some military training which he had when he was

Agar, as any other student, even here—and not only here but in Great Britain, or even in other countries—generally goes for military training at some time: they all go for military training. In military training somebody will be trained in all the tactics of military war. If Omolo Agar joined one of the military training courses I do not think that we could actually expect him not to experience all forms of military techniques which anybody should actually learn; and taking that to be enough reason to convict him, or to regard him as a bad man, is wrong, because that is not enough. Omolo Agar should have known all sorts of tactics, because all wars are evil, and all wars are tricky, and all wars are subversive. There is no one, when he is at war, who will not actually be subversive: they are all subversive when they are at war. Therefore, Sir, if he learnt all those techniques of the war I do not think that it is wrong. I have not had any military training, but I am sure that those people who have had military training will not tell me here today that they will not have learned all sorts of military techniques of war during their military training.

I understand that he says that Omolo Agar had documents or literature which was banned and prohibited from this country. He might have had some of those books which are not needed in this country; but we must at same time understand that these books were printed in Great Britain, and this Government here is the representative of the Government of Great Britain. If anyone can read these books in Great Britain, Sir, I do not see why a man should be indefinitely banned from having them simply because someone does not like these books to be read here, especially if he has actually been convicted and has served his sentence for having those books in this country.

He said that Omolo Agar had some documents which he published in India; but which at the same time were proscribed in this country. I quite agree that those documents or those books about *Mau Mau* and so on might have been proscribed in this country, but those were genuine opinions as students in India. As students in India they were perfectly correct in interpreting to the people in India, and not only the people in India but the people all over the world, their feelings and their convictions about the conduct of affairs in this country, and if some people, or a group of people, in this country disapproved of them then that is not enough for them to be restricted somewhere indefinitely.

Mr. Speaker, the Temporary Minister for Defence went on to speak of Omolo Agar's conduct or activities when he was the secretary of the People's Convention Party in Nairobi, and he said that he was a very active and a very

[Mr. Odiga] put on uniforms and also to train people for some other subversive activities and militant movements of some kind. I have never heard of a number of people who were arrested with Omolo Agar and tried and convicted with him and who were also restricted with him. Where are Omolo Agar's followers? Where are they? Where are they restricted? Could it be that somebody is only holding the suspicion that Omolo Agar might one day train people for subversive activities? Is he suffering for an offence which he has not himself committed simply because somebody suspects that one day he might commit an offence of that nature? I do not think that we are right here to detain somebody on suspicion simply because he wrote some literature or something in India which was wrong and because therefore he is likely when he is here to train people in the same way. I do not think that this is right, and I do not think that that is enough reason to detain somebody indefinitely.

He went on to quote the Supreme Court judgment and the grounds for detaining Omolo Agar indefinitely by saying that simply because the community here is still immature politically and that as such Omolo Agar, if allowed to be among his people, might create a revolutionary movement of some nature which might upset the Government and which might upset everything. But is it really right for anybody to keep Omolo Agar away simply because he deceives himself that he has actually got rid of a danger and that he is now quite safe? The best thing for him is to find out the root causes of Omolo's activities and try to remedy them. What are the fears that he has got behind him? Probably he knows that he has made some mistakes. What are the reasons which could cause Omolo Agar to do that? There must be others who are as well discontented and Omolo Agar is not the only man who should be victimized for it. If there are some mistakes which might some day help Omolo Agar to upset the Government or to bring revolution then it is only those mistakes which must be rectified. Those are the things which must be uprooted in order to be safe. It is no good keeping Omolo Agar indefinitely in detention because he is not the only one. You cannot actually uproot the knowledge by detention when the knowledge is already in somebody's mind.

[Mr. Speaker (Mr. Slade) left the Chair]

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

You cannot do that unless you destroy him or kill him. The knowledge is there. How many people here know how to make bombs? Is Omolo

Agar the only one who knows how to make bombs in this country? How many people in this country know how to make guns tomorrow? They can make the guns tomorrow. It is the knowledge which is known, and you cannot even stop it because people know it. Therefore I do not think you can stop it by detention. There are so many people in this country who could make guns and bombs tomorrow, but they have never used them. They knew all those things when they were in the war. Many Africans who were in the military service know how to make these things. They have not used them and they have not been subversive about them; and I do not think that Omolo Agar is the only one exception who will do that. In actual fact there is one very important thing, which is that Omolo Agar has not actually done it. He is only being victimized on suspicion, and only for suspicion, and at the same time he is kept away indefinitely because one believes that the public here is politically immature.

Well, Sir, what about the revolutions which are happening in those countries which you call civilized countries? They have had revolution after revolution, and revolutions are happening even now. Why are they happening in those countries if they are politically mature? We have never had them in Africa. Recently there was a revolution in Turkey. Everywhere you get revolutions happening and those are very, very old countries. Why are they having revolutions? I have never heard of a revolution in Africa yet; or perhaps someone could tell me about a revolution in Africa because we have never heard of it. That means that if the absence of revolutionary men and revolutions is your way of thinking of political maturity then every country in Africa is politically mature. If political immaturity is linked with revolution or by safeguarding yourself from revolution then Africa has never had those revolutions which are happening in all other countries every now and then.

I am sure that by your conduct and by your ways of behaviour you are going to produce revolution in Africa without our actually wanting it to be in Africa. You are dragging it in because when you stop a child from looking at something you are only asking him to look more, to be more inquisitive and to look more into it. When you tell him to stop doing something you are only inviting his attention to look at it and to do it.

I have told Members in this House many times, Mr. Deputy Speaker, that it is not right for someone always to judge the African public in this country and to say that they are politically immature. The man who says that is himself politically immature and is inexperienced, and he does not know what he is talking about because these people, you will find, Sir, are fully mature; they

[Mr. Odiga] are fully mature in their own way and they are fully mature in their own minds; they can manage all their own affairs in their own way. If you go on doubting their own power of judgment and their own sense of managing their own affairs you are pitifully deceiving yourself and at the same time you are being stupid.

I would only say, Mr. Deputy Speaker, that to go on speaking of development, to go on speaking of racial harmony in this country, with all these grievances, with all these grudges, keeping the leader of this country Mr. Jomo Kenyatta away, and keeping people like Mr. Omolo Agar away, keeping all those people away, you cannot even pretend that Africans will ever come along with you in anything. We can never come along with you. How can I come along with you when I feel that you are still victimizing some of the people who I feel are innocent in this country by keeping them outside this country. How can I do it when Omolo Agar's parents come to me every day and remind me that he is well enough to be back: "We want him to come back; we want him to marry; we want him to do all these things" when he is away and when somebody here tells me, "Let us co-operate to build Kenya and work together to build racial harmony, and to be happy in all these things," that is just a fallacy and mere talking. Mere talk will not do. You must show me by your deeds and by your change of heart that you want us to co-operate together. Whether the Government like it or not I will say, "Keep all these people away, Jomo Kenyatta, Omolo Agar and all of them," but you will find that the struggle will continue and that racial harmony which you talk about will never, never be achieved in this country: there will only be a struggle until we get independence and until all these people come among us into this country, and then we will work together.

Mr. Deputy Speaker, I beg to support.

The Temporary Minister for Legal Affairs (Mr. Conroy): Mr. Deputy Speaker, Sir, the hon. Member for Central Nyanza has with his usual ability completely ignored the facts of this case.

Sir, it has been put forward that this man Agar has been victimized on suspicion; it has been put forward that he is an innocent person—those were the words used—and it has been put forward that he is suffering for an offence he has not committed.

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

[Mr. Speaker (Mr. Slade) resumed the Chair]

It has been put forward that there may be some suspicion that he wrote something in India but

that that should not be held against him now. It has been put forward that he is a person just like many others who have had military training and who knew how to make bombs and so on. It has been put forward that he is really no different from any other African leader, in particular the hon. Member for Central Nyanza and from the hon. Member for Nairobi Area.

Sir, this is a man who was convicted of sedition, and, Sir, he appealed and his appeal was dismissed.

Mr. Odiga: As usual

The Temporary Minister for Legal Affairs (Mr. Conroy): Did I hear the hon. Member right—did he say, "As usual"? Did he?

Hon. Members: Yes.

The Temporary Minister for Legal Affairs (Mr. Conroy): Mr. Speaker, on a point of order, is it right for the hon. Member to criticize the Supreme Court in such a way?

The Speaker (Mr. Slade): It is certainly not correct to criticize in any way the conduct of Her Majesty's Judges except on a substantive Motion for that purpose. Standing Order 58 (1) states, "The conduct of Her Majesty, Members of the Royal Family, the Governor, Judges or other persons performing judicial functions shall not be referred to except upon a specific substantive Motion moved for that purpose."

It is of course a fact that the hon. Member who interjected did not initiate the reference, but the implication of the Standing Order is quite clear: that there should not be even incidental criticism of judges except on a substantive Motion for that purpose.

Mr. Odiga: Mr. Speaker, what I meant was that the hon. gentleman who was speaking always likes to defend himself in that particular manner; that is what I meant.

The Speaker (Mr. Slade): When I have spoken on a point of order, Mr. Odiga, the matter is finished: it is not in order for any other Member to speak afterwards.

The Temporary Minister for Legal Affairs (Mr. Conroy): Mr. Speaker, unlike the hon. Member, I shall refer to some of the facts of this case, and so far from being merely suspicious that Agar might have written something, that he is an innocent person, and so on, it is interesting to see what documents were actually found in the possession of this accused person, Sir, there were a large number of copies of the *World Marxist Review*, which would quite possibly explain the interest shown by the hon. Members who spoke last. Sir, there was a copy of a letter addressed to Marshall Bulganin and Mr. Krushchev written by the accused on behalf of the Africa Bureau; there

[The Temporary Minister for Legal Affairs] was an exercise book containing handwritten notes on the establishment of revolutionary centres. I do not know how that could quite be called normal military training. I did a considerable amount of military training in my time but I was never taught how to establish underground cells, which is what appears in the next notebook found in the accused's possession. Sir, there were manifestoes of the Communist Party; there were handwritten notes for the establishment of an African Liberation Committee, there was a typewritten letter addressed to a couple of comrades in China; there was a pocket-book containing handwritten notes and tactical diagrams. I give that to the hon. gentleman; that might be genuine military training. But then one wonders why these were hidden in the accused's mattress and were not on his bookshelf if they were normal things kept from his normal military training. That of course was found as a fact in the Supreme Court and in the court below. Then, Sir, there were various codes and a large number of letters written in code, and so on, Sir.

Now the Supreme Court, dealing with the matter, said that possession of these documents by itself would not have proved, in their view, the offence. In this case, they said, however, the evidence of the circumstances showed a great deal more than mere retention. During the six months immediately preceding the institution of the prosecution, if the appellant had done no more than merely to add the last issue of *African News* and some issues of the *World Marxist Review* to his collection we do not think that the court would have been established. but in our opinion, the evidence showed that the appellant did more than that during the period in question. It goes on to say that when his house was searched, it is most important of all that the exercise book, to which I have referred, was found hidden between the mattresses on the bed in that house. "In our opinion, it was clearly established that the appellant was using at least the publications which were found in his house at Ziwan within the six months preceding the prosecution." That is to say, these were not just things he had in India and just brought back with him and kept, but the Court found as a fact that he was using them, and that he was making preparation for the dissemination with seditious intent of these publications at least.

Then it goes on to deal with the recommendations by the Supreme Court that this man should be restricted, and the Court says this:—"The issue of a certificate constituting the appellant a convicted person and of a recommendation for a restriction order is a matter of great importance, since it would enable the Governor in Council, if

he thought fit, to make an order which could seriously affect the appellant's liberty, and might make it virtually impossible, or extremely difficult, for him to continue in active politics. It is not the course which should be adopted without very grave reasons. Quite clearly the mere conviction of an offence or offences punishable with imprisonment, though a condition precedent, would not alone be sufficient to justify a recommendation. Had it merely been proved that the appellant had been in possession of prohibited and seditious documents without any further additional incriminating circumstances, we would not make the recommendation, but in our opinion there are circumstances disclosed in this case which show that the appellant was an organizer of a political body which advocated secession and, indeed, outright revolution. It has been shown that he was a person who had studied the formation of underground political cells, their organization and activities. Although much of his activities in this connexion took place while he was a student in India, we do not think that they can be dismissed as the rather irresponsible activities sometime indulged in by youthful students. He was not a youth, but was a man aged about 30, and he had previously been a schoolmaster. It is clear that he had reached an age when his activities cannot be dismissed as merely youthful indiscretion."

Now, Sir, it is said that he is no worse than hon. Members in this House who are striving for independence too. Sir, there is a fundamental difference between a man who strives for what he wants through constitutional means, and a man who strives for what he wants through violence. Sir, it is the duty of the Government to maintain law and order, and to prevent people obtaining what they want by violence. It was found by the Supreme Court, and by the resident magistrate in this case, that this man was seeking to attain his political ends by violence. In those circumstances the Government would be abandoning its duty had they not restricted him.

Sir, for those reasons, I must oppose this Motion.

Mr. Muliro: Mr. Speaker, Sir, I am very disappointed that the Government has not seen fit to say that Elijah Omolo Agar should be released. I would still urge the Government that, in my view, there is no real case to restrict Omolo Agar outside his own area. Indeed, the Government maintains that there is case for his detention outside South Nyanza; but as Mr. Odinga pointed out before, a crime was never committed. However, both the Minister for Defence and the Solicitor-General have stated that this man was an organizer of a political movement which was dedicated to subversion. The facts are that this person

[Mr. Muliro]

is an organizer of the Nairobi People's Convention. The Nairobi People's Convention was never proscribed as a movement which aimed at subversive activity. Furthermore, Mr. Speaker, this person is alleged to be the leader of a subversive activity, yet there are no followers of his. In other words, if he was the organizer of the Nairobi People's Convention, a man of his ability to organize should have had followers already in his subversive activities, and therefore he would never have been the subject of restriction alone, and on the day of arrest a number of his followers, with whom he was planning the activity of overthrowing the established authority, would have been arrested with him. Therefore, because no one was arrested with Omolo Agar and judging by the same case, I say this man had no followers at all in the Nairobi People's Convention. If the Nairobi People's Convention Party had been a subversive organization, which this man was leading, then all its leaders should have been arrested and charged too. Omolo Agar was Organizing Secretary, and the President of that organization was Mr. Mboya and others. All should have been prosecuted in courts of law, but only one person was singled out; a person with no followers at all. The truth about this, Mr. Speaker, as far as the Government is concerned, is that the Government have some reason besides the ones they have given to hon. Members of this House today. I do submit that Omolo Agar should be released, and if the Government is interested in restricting him, let them restrict him in his own area, South Nyanza, in his own location. I ask the Government to do that now, because as long as these detained persons remain in detention, next year when we have an Elected African majority in this House it is going to be the subject, which is going to create more confusion in this country than anything else. There will be Motions moved in this House with bitter feeling because these people are in restriction and, Mr. Speaker, I would urge the Government to see now that all these people who are restricted are returned, or restricted in their own areas before the formation of the next Government. I appeal to the Government to do that, because we do not want all we are trying to do in this country in order to bring about a spirit of independence which will bring material benefits to the people of this country to be marred next year because the Government is (inaudible). . . .

I feel, Mr. Speaker and I appeal to the Government to let the have (inaudible). . . . and let these people, Omolo Agar and all the others be released.

I beg to move.

The question was put and negatived.

ADJOURNMENT MOTION

The Speaker (Mr. Slide): That concludes the business on the Order Paper, and I will now call on Mr. Alexander to move the Adjournment Motion.

ADJOURNMENT: TEMPORARY TERMS OF SERVICE FOR CIVIL SERVANTS

Mr. Alexander: Mr. Speaker, Sir, in accordance with Standing Order No. 12 I wish to move the adjournment of the Council for the purpose of discussing a definite matter of urgent public importance, namely, Sir, the questions arising out of this morning's business on Circular 51.

Sir, dealing with the Minister's substantive reply, he said, and I quote: "And the cases of the majority of officers affected by the Circular have, during the last 22 months, been dealt with." Mr. Speaker, I question the reliability of that statement. But what is most important is that in respect of teachers, and this issue does very largely concern teachers, certainly not the majority of teachers have been dealt with in the last 22 months.

The Government, Sir, in respect of teachers—in respect of nurses and the like—are taking advantage of specialists who have no other outlet for their abilities. They are bound to continue until such time as they can find other remunerative work, as, for example, receptionists in offices. But I think it is grossly unfair of Government to take advantage of this specialist feature amongst teachers and nurses and the like. On this, Mr. Speaker, could I ask if it is not a fact that some teachers should have had three months' notice and they have only been given one month?

The Minister then went on to say, "If any increase in these basic salaries should result." This is quite amusing, Mr. Speaker, after the debate concerning the police the other day the Government so readily accepted the proposition for increasing police pay.

The Acting Chief Secretary (Mr. Griffith-Jones): Considering.

Mr. Alexander: Considering. Knowing very well that means, in the mind of Government, action. Of course it does, Mr. Speaker. When they consider, they are acting. We are always told this. But this means that the Government either know, or have every reason to believe, that the police will, in fact, get their increases, and rather smugly they are able to accept a Motion of that kind. But when it comes to people like teachers, oh, no! We will take advantage of their specialist qualifications.

Now, Sir, he said, and I quote again, "So far as temporary staff are concerned they will have

[Mr. Alexander] the opportunity, if their services are still required, of accepting engagements on the basic scale." Now this goes to the fundamental of this question. What will happen if, in fact, many of these temporary officers do leave Government between now and the end of the year? If the Salaries Commission come out with enhanced terms of service the chances are that those people will be lost to Government, and we do know already, Mr. Speaker, that many schools are likely to suffer in the January term of next year from a lack of teaching staff as a result of this decision of Government. For example, and I could quote many more if this debate were longer, Kilimani School as at now is likely to have seven teachers short at the beginning of next year.

Now considering this question of arbitration, the Minister said Government does not accept in this, or for that matter, in other issues affecting the service in public funds, that it would be appropriate to submit it to arbitration. Mr. Speaker, here again Government are taking an unfair advantage against the Civil Service of the law that allows Government to prevent arbitration if it is in the public interest. Now what is it the Civil Service have asked for in this demand that there should be arbitration? It is merely that this decision should be deferred for three months, and, Mr. Speaker, if the Government take advantage of their position in this matter, all I can say is that they are going the quickest way about losing the sympathy of their civil servants. It is a technicality, and I do not think it is worthy of a Government that should be deserving of Kenya.

I referred this morning, Mr. Speaker, to one type of circular that is going out. It is one issued by the Ministry of Education, and in paragraph 4 it says, "You will be liable to instant dismissal for incompetence, misconduct or insubordination". What a disgraceful example of man management. Mr. Speaker, people who have served the Government as teachers for 15 years and in many other spheres being given this after that time. Surely they could have been singled out and given a separate circular that did not draw attention to this particular proviso, which in any case is common law, I believe, and need not have ever really been stated. Mr. Speaker, my information is that all or most of the Permanent Secretaries in Government have asked, or did ask, that this matter should be deferred for six months. Therefore, it is clear that this is upon the heads of the Ministers of our Government, and I wonder, Mr. Speaker, whether all is well on this question within the Council of Ministers of our Government. Here, Mr. Speaker, is a chance for Government with dignity to modify their attitude, and the purpose of raising this matter if we are

not meeting again until 6th December, and it is urgent, the purpose of raising it is to ask Government just to mellow quietly on this one, and let us go ahead with a contented Civil Service that we are all trying to build.

I beg to move.

Mrs. Shaw: Mr. Speaker, Sir, I should like to take up the point made by the Acting Chief Secretary that Government—and I think his exact words were that Government does not see any grounds for back-peddling on this Circular—by referring the House to the HANSARD of 28th April this year when the Chief Secretary, Mr. Coutts, said in reply to my Motion: "As the hon. and gracious lady has said, certain adjustments were then made. Such adjustments appeared to be necessary as she, herself, has said for teachers, certain adjustments were made in the stenographer/secretary category to which she herself has personally referred." It is my belief, Mr. Speaker, that since the introduction of Circular 51, Government realizing the serious repercussions that might affect certain categories of staff, have had to upgrade certain posts, and in regard to others make certain concessions as well. They are special concessions in respect of certain classes of trained staff who have a market value, for unless this was done, Mr. Speaker, Government would have lost the services of these married women to the commercial world, and this is borne out by Circular 10, which was sent after Circular 51—I think it was in July, or maybe December of the same year—I cannot quite recollect. Anyway, to quote Circular 10, it says: "It is appreciated, however, that it might be necessary to consider special reassessments outside the normal conversion rates referred to in (1) above for certain categories of staff, to whom market value considerations apply." In fact, I would draw the attention of hon. Members to the fact that these concessions have been made in respect of certain posts; certain posts, as I say again, of trained staff who have a market value, for unless this had been done Government realized that they would have lost this trained and experienced staff to the commercial world.

Is it fair, Mr. Speaker, that concessions should only be made to certain categories of Government staff against the very harsh provisions of Circular 51? I should like to ask Government, in the light of the fact they are in danger of losing, as I say, many of their senior women personal secretaries and stenographers, the value of whose work in the past 10, 15 and even 20 years has been so great in Government departments, to reconsider their attitude on this whole question; and to grant that this Circular 51 should not be implemented for a further six months to give the Salaries Commission time to report.

Mrs. Hughes: Mr. Speaker, Sir, I would like to bring up one or two points very briefly, and I would like to quote from what the Acting Chief Secretary said in reply to the Question this morning, when he said, "I can only say that the Government does not accept the hon. and gracious lady's assumption that we will lose the services of many experienced women, and it is believed that it will be able to continue satisfactorily to staff the services." It is my information that the Staff Association is advising its members not to accept these new terms until 31st December or else until they know the results of the Salaries Commission and how their recommendations are going to affect the staff.

Now, Sir, the Acting Chief Secretary went on to say that the Government was attempting to rationalize salary scales, and to quote again from HANSARD he said this: "I cannot believe that with the possibility and prospect of participating in the increase in the basic scale staff concerned will be suffering any hardship."

Sir, surely it is not the basic scales but the total emoluments that affect the staff. It is those total emoluments which really mean equal pay for equal work and I do not see it can be judged on basic salary at all.

Sir, there is another point I would like to make and that is to urge very strongly indeed that the marriage bar be abolished. It is this marriage bar which is such an unreasonable condition and causes considerable hardship to the many married women who have given many, many years of service to Government. It prevents them from accepting permanent contracts. Sir, I do feel that there is discrimination of the worst kind possible and when we come down to special categories such as teachers who have specialized knowledge which is very hard indeed, because of the fact that the majority of schools are Government schools here, to accept positions in private schools. It is very difficult, indeed, for them to refuse the new terms that have been offered to them. Not only that, Sir, I do feel that teachers are in a category that are devoted to their work. Their sense of duty and sense of duty to their students, I think, also makes them in many cases rather chary of giving up their work in these Government schools and accepting other work. I think it is wrong that they should be penalized by these very onerous terms because of that sense of duty.

Sir, one last point. To the many teachers who may, possibly, find it necessary because of these terms to leave their work and look for employment elsewhere, how are the Government going to recruit them once again when they find that they are, indeed, looking for teachers and nurses to take on these jobs again later on? Particularly in

view of what the Member for Nairobi West has just said that many of our schools, and I believe this applies to the schools in my constituency, are at the moment understaffed.

The Acting Chief Secretary (Mr. Griffith-Jones): Mr. Speaker, Sir, I understand from the information which is available to me, but I make it quite clear that I am not speaking from any precise census, I understand from the information available to me that more than half of the total number of officers affected by the Circular have, in fact, been converted to the basic scales.

Mr. Alexander's Interjection.

The Acting Chief Secretary (Mr. Griffith-Jones): Whether or not the hon. gentleman has already spoken—the majority of any particular category, whether it be teachers or any other category, has already been converted I am not in a position to say.

As the hon. and gracious lady from Nyanza has mentioned, in certain categories affected by the Circular, where it appeared equitable to the Government to do so, it made adjustments in the conversion to the basic scale to the advantage of the officers in those categories. It is, perhaps, ironical that that should be now one of the sticks which the hon. and gracious lady raises to beat the back of the Government with. Those adjustments and concessions as she calls them were made from a sense of equity, but the fact that they were made surely is not a ground for criticizing the Government, neither, of course, is it any logical ground for suggesting that the principle of the Circular is wrong. The fact the Government has abandoned certain temporary and contract enhanced scales and proposes to convert all its affected staff to certain basic scales is not in any way—that principle is not in any way affected by the fact that there may be the need for adjustments within those basic scales. And if those adjustments are founded on market value, what is wrong with that? Is Government with its responsibility for public funds to pay more than market value, merely because these officers were on previous enhanced scales? Surely this is a most misconceived attack on the Government. Those adjustments, and concessions will apply to the remaining officers affected in the categories concerned. Now it is true that a very few officers in these categories have not obtained any advantage from those adjustments by reason of the fact that the basic scales, of course, have lower maximum points than the inflated scales which were in operation. Also it is true that adjustments have not been applied, for instance, in the clerical grades and this points the argument because Government with all the information it could obtain at its disposal was satisfied

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that no such adjustment in their cases would be justified on the basis of market value comparisons. Again, it is suggested that Government, despite those market value comparisons, should pay out of public funds salaries in excess of what is just and equitable?

Which is precisely what has been suggested. To date—again, I am informed, I am not speaking from figures derived from a precise census—as I am informed, losses by resignation due to the application of the circular have been negligible. The figure, I understand, is two officers out of, I believe, a total of something over 2,000.

Now if any officers remained on the enhanced scales after 1st January it is unlikely, to put it no higher, that they would participate in any benefits or increases in salary that may result from the Salaries Commission. To this extent it is to their interest that they should be on the basic scales.

Now I would like to re-emphasize, Mr. Speaker, that in dealing with these matters Government is conscious of its responsibility for the expenditure of public funds. It considered that the Circular was a proper and necessary reform of its salary structure, reducing the plurality of scales to basic scales and giving due consideration both to the market value of officers in the grades in which temporary and contract staff were serving, and also to the comparative interests of its permanent and pensionable staff.

During the last two years, the period during which the Circular has been in operation, I am informed that recruitment of new temporary and contract staff on basic scales has not been appreciably affected by the abandonment of the enhanced scales. Staff which is affected by the Circular, when it is on basic scales, enjoys improved superannuation prospects after the qualifying period of service. In this connexion I might mention that the Government has offered to reduce the qualifying period for gratuity to 10 years from 15 years' service and to introduce pensionability after 20 years' service, provided of course the officer retires in circumstances which would be pensionable in the context of permanent and pensionable service. This offer was made, I am informed, about a year ago. It has not yet been decided upon by the staff side of Whitley Council; negotiations are still incomplete.

Now the hon. Member for Nairobi West has referred to the question of arbitration. It would appear that his information is more up to date than mine, which perhaps in the circumstances in which he asked his question and in which this debate has arisen is not surprising. But I, until

he mentioned it this morning, had not been accorded the courtesy of being informed by anyone that arbitration had been suggested.

Apart from the general issue of arbitration in regard to Government employment at these levels sustained by public funds, Government is satisfied that at this late stage it would be quite inappropriate and contrary to the public interest to take this issue to arbitration. I will revert to that point in a moment.

As regards teachers and, indeed, other officers affected by the Circular, Government does not foresee or anticipate a large-scale exodus. For if there were such an exodus, the officers concerned would, of course, exclude themselves from any benefits that may result from the Salaries Commission. Moreover, Government is satisfied that the salaries to which these officers were converted and are being converted under the Circular do not suffer by comparison with salaries outside Government service. That is Government's opinion.

Now, Sir, there were one or two points raised by the hon. Members who have spoken which I will attempt to deal with in the time available. The hon. Member for Nairobi West suggested that Government was taking advantage of specialists. I just do not follow this argument. Because it converts persons in those grades together with other persons in comparable and similar grades to basic scales, Government is accused of taking advantage of specialists. Is it suggested that their salaries should remain static if it should appear that they are excessive? Should their salaries remain static if they are found to be inadequate? How is Government taking advantage of these specialists? Government is attempting, as I said earlier today, to rationalize its salary structure and, as I have already pointed out, it has made and does make adjustments and concessions within the scales on which it has its staff serving.

In regard to the point which the hon. gentleman made when he said some teachers should have had three months' notice and they had had only one, in fact where three months' notice is appropriate of course the officers must receive those three months' notice. I understand that in some cases there was an initial mistake which is being corrected. There are relatively few officers concerned, in regard to three months' notice; most of the appointments concerned provided for one month's notice.

I mentioned the question of arbitration. I do not accept the hon. gentleman's point in any degree, that Government is taking an unfair advantage. As I said, the arbitration question is a new one; but I adhere to the opinion which I have already expressed that to take an issue to

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arbitration when it is almost complete—in other words, when it is in its final stages of implementation and when a considerable number of officers have already been dealt with of all those affected—is neither appropriate, equitable nor in the public interest in those circumstances.

I do not propose to refer to the hon. gentleman's references to opinions held in the Government service. I can only say that if those opinions have reached him from officers of the standing of Permanent Secretaries it is a very grave disappointment to me that they should have been guilty of a breach of official confidence.

Finally, I would like to come to the point raised by the hon. and gracious lady, the Member for Uasin Gishu, about the abolition of the marriage bar. I should like to place on record not only Government's appreciation but my own personal appreciation of the great service which Government has received from married women in the posts which she has in mind. The issue of permanent and pensionable terms for married women is a difficult one and one which I fear I cannot dilate on in this context. It is one which has exercised the concern and consideration of the Government, which the hon. lady I think knows, for some years. It is fraught with many difficulties. There has been no purpose or intention to place married women under any disadvantage. However, Government has not found it possible to deal with them on precisely the same lines as other officers. That, I think, she will realize if I mention that one of the difficulties if married women were permitted to enter the permanent and pensionable establishment would be that there would be a succession of hard cases, both in regard to leave, transfer ability and the like. Indeed, possibly the hard cases and the compassionate solutions would exceed those dealt with under the normal orthodox treatment.

Mr. Speaker, Sir, I beg to oppose.

Mr. Bompass: Mr. Speaker, Sir, from this side I can only say that we regard the reply given as totally unsatisfactory, illogical and unacceptable. We, Sir, will have to try to pursue this matter in some other manner as best we may. I suggest Government has done no more than try to blind us with science this morning with a smoke screen of verbiage from the Acting Chief Secretary.

Sir, what is the market value of a Minister? If they become two a penny are they going to be adjusted downwards? I suggest it might be a very good idea. Sir, in the meantime Government's flatfootedness in this matter is merely subjecting a large number of civil servants—their own employees—to inequity and exposing Kenya to the danger of some partial breakdown in our efficiency. Now, if there are only two resignations

from Government to date I suggest that is because we are in the face of unemployment and Government in fact is taking advantage. I suggest, of that situation. We have not asked Government, Sir, to pay more than market value for anyone. We have asked Government to defer action until their own Salaries Commission has examined this matter. And if Circular No. 51 was the answer and Government was so satisfied with it, why did they refer it at all to the Salaries Commission?

The question was put and carried.

ADJOURNMENT

The Speaker (Mr. Slade): I therefore adjourn Council until Tuesday, 6th December, at 2.15 p.m.

The House rose at forty-three minutes past Eleven o'clock.

Tuesday, 6th December, 1960

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

[Mr. Speaker (Mr. Slade) in the Chair]

PRAYERS

COMMUNICATION FROM THE CHAIR

ASSENT TO BILLS

The Speaker (Mr. Slade): I have to inform hon. Members that His Excellency the Governor has assented to the following Bills which were passed by the Legislative Council in October, 1960.

No.	Title	Passed Third Reading	Date of Assent
33.	The Prisons (Amendment) Ordinance, 1960	27-10-60	11-11-60
34.	The National Loans Ordinance, 1960	27-10-60	11-11-60
35.	The Diplomatic Privileges (Extension) (Amendment) Ordinance, 1960	27-10-60	11-11-60
36.	The African Courts (Validation) Ordinance, 1960	27-10-60	11-11-60
37.	The Education (Amendment) Ordinance, 1960	27-10-60	11-11-60

Also Her Majesty the Queen has been pleased to assent to the King's African Rifles (Reserve of Officers) Ordinance, 1960, which was passed by the Legislative Council on the 1st day of June, 1960.

PAPERS LAID

The following Papers were laid on the Table:—
East African Industrial Research Organization Annual Report, 1959/60.

East African Income Tax Department: Report for period 1st July, 1959, to 30th June, 1960.

Department of Community Development Annual Report, 1959.

(By the Chief Secretary (Mr. Courts))

1960/61 Supplementary Estimate No. 1.

1960/61 Development Supplementary Estimate (No. 1).

The Price Control (East African Flour) (Amendment) (No. 2) Order, 1960.

The Price Control (Maize and Maize meal) (No. 2) (Amendment) (No. 3) Order, 1960.

(By the Minister for Finance and Development (Mr. MacKenzie))

Treatment of Offenders Annual Report, 1959.

(By the Temporary Minister for Internal Security and Defence (Mr. Ellerton))

The Education (Classification and Nomenclature of Schools) Regulations, 1960.

(By the temporary Minister for Education (Mr. Miller))

The Plant Protection Rules.

The Dairy Industry (Cess) (Amendment) Regulations, 1960.

The Cashew Nut Marketing Rules, 1960.

(By the Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie))

The Methylated Spirits (Amendment) Rules, 1960.

(By the Minister for Finance and Development (Mr. MacKenzie) on behalf of the Minister for Commerce and Industry (Dr. Kiiano))

Sessional Paper No. 8 of 1959/60: Report of the Committee appointed to consider the Role of Medical Services rendered by the Missions in relation to those provided by Central and Local Government.

(By the Minister for Health and Welfare (Mr. Muinini))

The African District Councils (Oaths) (Amendment No. 2) Rules, 1960.

The Public Roads and Roads of Access (Forms and Fees) Rules, 1960.

The Crown Lands (Forms) Rules, 1960.

The Crown Lands (Fees) Rules, 1960.

The Land Titles (Forms) Rules, 1960.

The Land Titles (Fees) Rules, 1960.

The Registration of Documents (Fees) Rules, 1960.

The Registration of Documents (Forms) Rules, 1960.

The Registration of Titles (Forms) Rules, 1960.

The Registration of Titles (Fees) Rules, 1960.

The Land (Perpetual Succession) Rules, 1960.

(By the Minister for Local Government and Lands (Mr. Havelock))

The Forest Areas (Controlled Entry) (Amendment) (No. 2) Rules, 1960.

(By the Minister for Tourism, Game, Forests and Fisheries (Mr. Crosskill))

Supplement to the Report of the Public Accounts Committee on the Colony's Accounts for the year ending 30th June, 1959.

(By the Chairman of the Public Accounts Committee (the Hon. R. S. Alexander))

NOTICES OF MOTION

MIXED COMMISSION ON FREE AND PRIMARY EDUCATION FOR ALL

Mr. TRAVIS: Mr. Speaker, Sir, I beg to give notice of the following two Motions:—

THAT this Council recommends that a beginning shall be made in the direction of making primary education free and compulsory throughout the country and that a mixed commission of officials and non-officials be appointed at an early date to frame proposals with a view to their implementation with effect from the 1961/62 Budget and onwards.

REDUCTION IN STAPLE DIET OF ASIAN PRISONERS

THAT this Council views with alarm the recent reduction in the staple diet of Asian prisoners, and urges Government to appoint a committee of enquiry to investigate their grievances.

THE COTTON LINT AND SEED MARKETING BOARD

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): I beg to give notice of the following Motions:—

THAT, in accordance with the provisions of paragraph (c) of subsection (3) of section 9 of the Cotton Lint and Seed Marketing Ordinance (No. 50 of 1954) and of paragraph (d) of subsection (1) of section 10 of the said Ordinance, this Council, application having been made by the Cotton Lint and Seed Marketing Board in that behalf, approves the allocation to the ordinary funds and resources of the Board of a sum of £440,000 out of the Cotton Price Assistance Fund.

RATE OF INTEREST ON GOVERNMENT LOAN TO MOMBASA PIPELINE BOARD

THAT this Council notes that Government proposes that the rate of interest on £1,500,000 of the existing Government loan to the Mombasa Pipeline Board shall bear interest at the rate of 4 per cent per annum from 1st January, 1959, until 31st December, 1968.

SUPPLEMENTARY ESTIMATE (No. 1) 1960/61—COLONY

The Minister for Finance and Development (Mr. MacKenzie): Mr. Speaker, Sir, I beg to give notice of the following Motion:—

THAT a sum not exceeding £263,261 be granted to the Governor on account for, or towards, defraying the charges of Supplementary Estimates No. 1 of 1960/61:

and the following notice:—

SUPPLEMENTARY ESTIMATE (No. 1) 1960/61—DEVELOPMENT

THAT a sum not exceeding £469,310 be granted to the Governor on account for, or towards, defraying the charges of Development Supplementary Estimates No. 1 of 1960/61.

ORAL ANSWERS TO QUESTIONS

QUESTION No. 150

Mr. Muliro asked the Minister for Internal Security and Defence, would the Minister please state why detachments of the General Service Unit were sent to North Nyanza District in the month of October, 1960?

The Temporary Minister for Internal Security and Defence (Mr. Ellerton): In September, 1960, Government was concerned at the increasing disregard for law and order manifested in the southern areas of the North Nyanza District, which culminated in the murder of one police constable and an assault on two more. Two platoons of the General Service Unit were accordingly posted to North Nyanza for a period of two weeks to assist the local police force in carrying out their duties.

QUESTION No. 152

Air Commodore Howard-Williams asked the Minister for Labour, Social Security and Adult Education, would the Minister please state why Mr. Waititu Waweru, who applied for a trade test in August, has been requested by the Labour Commissioner to wait until next year?

The Minister for Labour, Social Security and Adult Education (Mr. Ngala): Rule 4 of the Trade Testing Rules, 1951, provides that "an employee wishing to undergo a trade test shall submit his name . . . to the (Labour) Commissioner not less than four months prior to the date, which shall be notified, on which such trade test is due to take place. Mr. Waititu Waweru's application for a trade test was made on 10th August, 1960."

The "four months notice" provision is necessary to arrange the most economic travelling and work programme of trade testing officers in dealing with country-wide applications. Frequently, however, tests can be offered in less than four months, but when the demand is heavy or when the officer doing the bulk of the testing in a particular trade is on leave, as happened in the case of the hon. Member's employee, the waiting period may be longer.

Air Commodore Howard-Williams: Mr. Speaker, Sir, does the Minister consider that a fair answer to the question?

The Minister for Labour, Social Security and Adult Education (Mr. Ngala): Yes, Sir.

Mr. Mboya: Mr. Speaker, Sir, would the Minister state if steps are being taken to ensure that the period is expedited for those who wish to hurry.

The Minister for Labour, Social Security and Adult Education (Mr. Ngala): Mr. Speaker, Sir, I think that the section that deals with the tests is at the moment adequate and are dealing with the tests adequately. To meet the current demand for the tests provided a slight delay is expected during periods of heavy demand or an absence of officers due to leave or other causes.

Mr. Mboya: Mr. Speaker, Sir, the question was, and it has not been answered, would the Minister state what, if any, steps are being taken to expedite trade testing and reduce the period? The Minister cannot tell us that four months' waiting is not too long.

The Minister for Labour, Social Security and Adult Education (Mr. Ngala): Mr. Speaker, Sir, that is another question.

BILL

FIRST READING

The Crown Lands (Amendment) Bill

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

MINISTERIAL STATEMENT

AMENDMENT TO VOTES AND PROCEEDINGS

The Minister for Agriculture, Animal Husbandry and Water Resources (Mr. McKenzie): Mr. Speaker, I beg to draw the attention of the House to a typographical error which appeared in the Votes and Proceedings for the 17th November on the Committee stage of the Agriculture (Amendment) Bill, 1960. According to HANSARD I moved that clause 56 of the Bill be further amended by inserting in the new section 176x, thereby introduced immediately after the word "may", the words "after consultation with the Board of Scheduled Areas and the Board (Non-Scheduled) Areas, and after giving thirty days' notice in the Gazette of the intention so to do". This was inserted in the Votes and Proceedings with the omission of the words "the Board (Non-Scheduled) Areas, and". I understand that the effect of my statement today, Mr. Speaker, when it is recorded in today's Votes and Proceedings will be to correct the Votes and Proceedings for the 17th November, and I apologize for it.

BILLS

FIRST READINGS

The Control of Imports and Exports (Amendment) Bill

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

The Egerton Agricultural College (Amendment) Bill

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

The Police Bill

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

The Public Order (Amendment) Bill

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

The Guarantee (High Commission Railways and Harbours Loan) Bill

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

MOTION

LIMITATION OF DEBATE

The Chief Secretary (Mr. Coutts): Mr. Speaker, Sir, I beg to move:—

THAT this Council limits the time during which Members may speak on Mr. Nyagahi's Motion on capital punishment as follows:—

The Mover and Seconder to be allowed 40 minutes each to introduce the Motion.

One Government Member to be allowed 40 minutes in which to reply.

All other speakers to be allowed 15 minutes.

The Mover to be allowed 20 minutes to reply.

Mr. Speaker, Sir, I am sure all Members realize that this Motion which is put forward by the hon. Member is a most important one, and one on which I have no doubt every individual Member will have his own individual view, and therefore the Government does not intend to limit the extent of this debate, but in view of the amount of business which this House will have to complete before this House is dissolved towards the end of the year, it was considered

[The Chief Secretary]

advisable by the Sessional Committee that individual speeches should be limited, and that is the reason for this Motion, Mr. Speaker, and I therefore beg to move.

The Minister for Legal Affairs (Mr. Griffith-Jones) seconded.

Question proposed.

Mr. Cooke: I would have thought, Sir, that this Motion was either important or not important. I think that my hon. friend said that it was a very important Motion. In that case I would have thought that Members should have been allowed to develop their own arguments to the fullest possible extent. Personally I have views which will not take more than about two minutes to express, but there must be Members, certainly on this side of the House, who might have a lot of arguments which they could not express in one quarter of an hour. I do not think that my hon. friend is being quite logical when he says that this is an important Motion but at the same time restricts the speeches to one quarter of an hour. It might take very much longer to develop our arguments in favour of the abolition of capital punishment.

The Minister for Legal Affairs (Mr. Griffith-Jones): Mr. Speaker, I do not know whether the hon. Member who has just spoken has read the Motion but it urges the Government to review the law of capital punishment. That is the Motion before the House, and whilst the subject is of course extremely important, this is merely the setting in motion of the procedure for review.

The Chief Secretary (Mr. Coutts): Sir, I beg to move.

The question was put and carried.

MOTION

REVIEW LAW OF CAPITAL PUNISHMENT

Mr. Nyagahi: Mr. Speaker, Sir, I beg to move that this Council urges Government to review the law of capital punishment to see whether it would be possible to abolish the death penalty in the interest of humanity.

Mr. Speaker, Sir, I would like, right from the beginning of moving this Motion, to criticize the argument that is often advanced for the continuation of capital punishment, that it is an unnecessary deterrent to the would-be murderers.

Arguments which can be produced by way of statistics, which I am not going to put, are that capital punishment, as such, is no deterrent. In the interests of humanity one would like to see capital punishment or the death penalty removed from

our law books because not only does this punishment affect the condemned man but it also affects others. It involves more than one man or one person. It involves the condemned man's friends and relatives; it involves the condemned man himself; and it also places a terrible mental strain on those who are responsible for the administration of our justice; also, no less, the public executioner himself, no doubt, and also the prison staff.

I am sure, Sir, that it is right to say here that this is a Christian country; it is a Christian Government; and at any rate our Government is being founded on Christian principles, which stress the points of reformation, restoration, and forgiveness, rather than the theory of vengeance. I cannot therefore see any reason why Christian Governments should continue with the death penalty which, once it has been executed, leaves no room for correction. After all, it is not a punishment at all, for a punishment must have the corrective effect on the wrongdoers. I cannot see how capital punishment, as such, could have that effect.

Mr. Speaker, capital punishment, in 1960, is absolutely out of date; it is a vestige of the past which should be done away with. It is true that some 100 years ago the types of offence which used to be punishable by death are today considered and regarded as being very trivial. We have it on record somewhere that at one time in the United Kingdom a person was hanged for cutting down a tree—just imagine, cutting down a tree! One hundred years after the development of our conscience and our outlook on life has limited the number of offences, of crimes, punishable by death, to just three or so. I would like to appeal to this House and to the Government that in this age of Sputniks and what-have-you we should have yet further development in our outlook towards this punishment. It is a most inhumane and most unchristian form of punishment, and this country, being dependent today as it is on the United Kingdom, could take a lead and do away with it. The United Kingdom has on several occasions tried to review or abolish the death penalty. In most cases, or in all cases, they have not been able to get it quite done away with. In 1930 a Select Committee went thoroughly into the question of seeing whether the death penalty could be abolished or not, and later it was followed by a Royal Commission. Although the Royal Commission was limited in its terms of reference, Sir, the ultimate recommendation of their report was that they recommended a certain measure of the abolition of this sentence. Often, Sir, those who are devoted to the maintenance of keeping the death penalty, argue that if the death penalty was done away with the rate

[Mr. Nyagah] of crime or murder would increase. Evidence and statistics from those countries which have abolished the death penalty do not confirm this at all: in fact, if one were to look at the countries in Europe that have abolished the death penalty one would get the impression that crime of this nature was on the decline: in fact, it has decreased.

Also in the United States of America this law is not uniform. Some states have abolished the death sentence, others have not. I understand that those states which have abolished the death sentence or death penalty, although bordering on some states which still keep it, are no worse off than those which keep it, as far as crime is concerned. In fact, if anything, it is the reverse.

The trouble is that in Britain and in the dependent countries like ours, we seem to have felt that if we abolish the death penalty, other crimes committed by people—perhaps carrying firearms and pangas—will increase. After all, why should we fear in this country? We have an order—I do not know whether it is an order or a law—which prohibits people carrying pangas in the townships at certain times. Why do we not have a more restricting law for the licensing of firearms?

The select committee, Sir, found from evidence from eminent lawyers and from those countries which have since abolished the death sentence, that by 53 per cent for as against 47 per cent, there should be no fear at all from abolishing this most inhumane death penalty. They recommended a five-year experimental period; they also recommended that the death sentence should be commuted, all of them, and that the penalty so substituted should be as for those who are reprieved.

It is difficult, Sir, to have unanimity on a subject like this, but at any rate all social reforms are not always met with unanimity. Even the reform of what is today looked upon as great degradation was very much objected to by some of the Parliamentarians and some of the public in Britain when they tried to abolish public executions some hundred years ago. Nonetheless, although public executions were abolished by 53 per cent for and 42 per cent against, things have not been any worse for abolishing that kind of exhibition.

Mr. Speaker, Sir, the report, if I may just quote, of the Royal Commission on this subject which was limited in its terms of reference also supported the idea of the select committee that the country would be no worse by getting rid of this punishment. One is therefore forced to ask if capital punishment is really a necessary deter-

rent. I would emphatically say that "No" is the answer. However, let me not be misunderstood. The issue here is not between punishment of death being done away with and no punishment at all. The issue is between doing away with the death penalty and substituting other suitable penalties which would be considered by our standards today as being more humane and more Christian. After all, this is 1960 when we should have and do have a scientific outlook. We like conducting experiments and then seeing the concrete results. Who could say today that the so-called death sentence, death penalty, is a deterrent? Does it stop anyone from murdering another? What evidence have we? All those people who would provide us with a suitable answer are no longer with us today. They have been done away with with a rope round their necks.

One is perhaps apt to classify the types of murderers. There are some who commit murder just because of passion or emotion. A very few think that they would look better off or that they would get more publicity if they defied the law. A fair number, not many, have premeditated the murder for gain or other reasons. However, even that type does not have regard at the time of committing the crime for what the consequences may be. Why then do we assume that the death penalty is a deterrent? We have no practical or scientific proof before us. Even the select committee were very strict on this issue when they said in their report: "Our prolonged examination of the situation in foreign countries has increasingly confirmed us in the assurances that capital punishment may be abolished in this country"—that is, the United Kingdom and, I presume, its dependent countries—"without endangering life or property or impairing the security of the society." That same view was also confirmed by the Royal Commission that followed when they said: "There is no clear evidence in any of the figures we have examined"—and they examined many from a variety of sources of information—"that the abolition of capital punishment has led to an increase in the homicide rate or that its introduction has led to a fall." Therefore, keeping it does not have any effect at all.

Some people would like to argue that differences in race, culture, or even social differences, are enough arguments for maintaining the death sentence. It would be a pity if anybody tried to say the same, that this was a valid argument for Kenya. After all, Africans have held human life to be very sacred. They had a form of capital punishment which today we look upon with horror. We do not like it. They used to execute people by burning or by rolling them down a steep valley or into the waterfalls, or by having

[Mr. Nyagah] them locked into a beehive. That shows that they were against the crime of murder. Although perhaps some people may like to argue that the differences of race, culture, or social differences, would make this Kenya Government continue with the death penalty, I would prove that that is not a valid argument.

The real danger in continuing with the death penalty lies in the famous belief and theory that "to err is human". There is always a possibility—and here I am not inferring any bad motive at all by the people responsible for the carrying out of justice and the interpretation of our laws, or by the courts of this country or any other country—of a miscarriage of justice. Even people well versed in law have had this to say. Here I quote a report from solicitors in their journal who said this: "Justice, being human, must sometimes err. It is a solid argument that when all that is possible has been done to minimize error we must boldly act with the sorrow that we cannot be infallible but with a fixed will to do right according to our light. If it is essential to the case in favour of capital punishment that no mistake can possibly be made, capital punishment stands condemned." It is condemned by those people whom we torture by continuing to have in our law books this most horrible form of punishment.

One could, perhaps, cite cases which happened not so very long ago in Britain. Here again, I do not want to cast any slur on the Home Secretary there. Here was the case of one, Evans, and another, Christie, Christie, a famous and well-known murderer according to the sentence passed on him in 1953, was the chief witness in a case in which one, Evans, was supposed to have murdered his wife and child. But what do we see? Three years later the man faced a charge of murder, of murdering six, presumably innocent, human beings. Sometimes, the murder had been committed ten years before the time he came into court to face a charge of murder. Yet within that period when he had committed these murders, he was made chief witness to come and give evidence—considered responsible evidence—to convict a man. His confession to the responsibility of a murder in 1950 was refused and yet Evans had been hanged for it. Often we have had people who appeal to the highest courts of appeal against their convictions. Sometimes some of these cases have gone through and the theory of the fallibility of the human being has been proved. But once hanged, who would keep up agitation for years to try and vindicate a man already dead? And what use would it be?

One famous Englishman had this to say about it: "I do not think that you can ever say that no innocent man has been executed for murder in

the past; nor can we have an absolute assurance that no innocent man will be convicted and executed in the future. The odds are 1,000 to 1 against it—but that is no consolation for the one." That was evidence given by an eminent Englishman to the Select Committee.

Mr. Speaker, Sir, one would like to say that a murderer should be hanged because of his responsibility in removing the life of his victim. After all, we should consider—and I do not say that the Judges do not consider—but we should consider very seriously, with the knowledge we have of psychology today, the reasons and motives which prompt some people to murder. Some people argue that these murderers must be done away with. What is the use of keeping them, even if they are abnormal, and even if they are mad they should be done away with for what they have done. Who are we to take away the life of anyone? That would be the Christian view. Leave it to the Maker of life to judge him in His good time. Some people have spoken of a murderer taking his responsibility and being hanged, and would perhaps consider that as being a mercy killing in some cases. They would consider they were doing their duty to society, but I wonder whether that would be in keeping with Christian principle and doctrine? There are others, indeed, who would like to see the types of murders graded in such a way that capital punishment would only be inflicted on a few, but one of the greatest English lawyers had this to say about it, and here, Sir, I quote: "The difficulties of working degrees of murder out in detail and of applying such a distinct practice are likely to be and to prove insurmountable." That was in a memorandum of evidence given by no other than an eminent English Chief Justice of Attorney-General—I do not know what they called him—Lord Simon. And the Royal Commission endorsed that view by saying this, and here I quote again, Sir: "It is impracticable to find out a certain method of limiting the scope of capital punishment by dividing murder into degrees." It is impossible. It has been found impossible by those people responsible for the administration of justice. It was true when they said it in 1930, and it is still true today, some 30 years later.

Sometimes, Sir, we fail to appreciate the suffering we cause to the innocent, for capital punishment inflicts terrible suffering upon the innocent relatives and loyal friends of the condemned man, and, again, if I may be allowed to quote a cutting from *The Evening Standard* of 1st February, 1928, this is what was said, and it should be a big lesson to us and a challenge: "Have you ever tried to visualize the feelings of a mother on the night before her boy is to be hanged—and no crime is

Mr. Nyagah] entering to kill maternal love—rather it will make a wrong claim on the protective instinct. The agony and horror which you and I, representing the State, must inflict upon a perfectly innocent woman must be more terrible than any pain the murderer can inflict upon his victim, and as with a mother, so may it be with a wife, lover, a sister, a father, a brother, the children, and even a loyal friend. To all those people life must become numbed and meaningless at that time, and live for ever after a hollow wilderness where the demands of revenge for ever lurk." This is a challenge to us who today sit here making laws capable of amending them or repealing them. This Motion is asking the Government to do precisely that. To review the law of capital punishment with a view to possible abolition of that most detestable form of penalty known as the gall. After all, why are we here? We are here because we want to look after the interests of other people. We are entrusted to look after their interests, after their lives. Why should not we take interest in even the simplest man who may find himself unfortunately in the condemned cell? We sometimes look at the question from the angle only—that is the angle of the murderer—but what about the relatives of the murdered one? Whilst we read in the papers sometimes sensational stories of how the murder was committed, we hardly pause or give sufficient thought to what happens to the relatives of the victim. Why do we not have a form of punishment that would perhaps get the condemned man a chance to reform and to do some constructive work in prison, and perhaps look for a method in which prison efforts could be used to at least help the relatives of the dead man? Perhaps here it is the right and appropriate time for me to try and suggest that other people have suggested before that the alternative would be a long period of imprisonment. But in saying this I do not mean that the judges should lose their right to give a shorter period than what should be envisaged in a long period of imprisonment.

Finally, Sir, in order to give more hon. Members time to clear their convictions on this one, I would like to consider the responsibility that we, as legislators, have in this House—everyone of us—on this subject, for we have the power to make laws, to amend them and to repeal them. The laws we make and amend we have no doubt are implemented and obediently carried out to the letter by the hon. and learned judges of our courts. They interpret them—that is the laws of the land—as best and as justly as they can. I am sure, Sir, there are many judges who have felt morally troubled to pass a judgment of "guilty of murder" on a man, and also

for a jury to enter such a verdict. Do we need, in Kenya, therefore, to torture these gentlemen morally any more and any longer? Is it in keeping with Christian doctrine to do so? And what is more, is it in keeping in a country that has its Government founded on Christian principles? Mr. Speaker, Sir, there are those people who like to say, "After all, when you murder, you must receive the same punishment for it was so taught by Moses"; but Moses lived years ago, and we do not even remember when he lived. When he taught the simple Israelites then an "eye for an eye", I believe he did not really mean you should take the eye, but it was the limit to which you could go. If somebody removed an eye they should not remove two. If it was a tooth, it must be one and no more. I do not suppose he taught people that every time an eye was taken, you must take another one. In any case, if we take that very seriously—if we take the teaching of Moses very seriously—why do we not take the teaching of modern Israel similarly, who have since abolished that penalty? They were the people for whom this law was made and as the years passed we read that they went on changing, and today they have done away with it. It is no longer valid. I think, Sir, it should not be any more valid to us who profess to be Christians.

Therefore, Sir, in sympathy with those people who have to administer justice and interpret the laws of the land, and who prepare the gallows for execution, and last but not least, for the loyal friends and relatives of the man in the condemned cell, and for the condemned man himself who may have been there in such a state of mental agony for months awaiting the result of his appeal, and in keeping with the times, let the hon. Members in this House urge the Government to review the law of capital punishment to see whether it would be possible to abolish the death penalty. Mr. Speaker, Sir, I beg to move.

Sir Charles Markham: In rising to second the Motion so ably moved by my hon. friend I would like, first of all, Sir, to congratulate him for the very moderate terms in which he moved this Motion. There was none of the emotional exaggeration we hear from other people, and Sir, it was a speech which I believe all sides of this Council had to listen to with attention.

Now, Sir, I have the honour to second this Motion, but the House will be aware that at the same time my hon. friend gave notice of a Motion on this subject. I gave one too, which was in slightly different terms, and therefore, to save the time of the House, I agreed to second this Motion, reserving the fact that I have different views on some of the detail and some of the principle to those of my hon. friend, the Mover of this Motion. That, Sir, I believe is a healthy

[Sir Charles Markham] aspect because it does allow the House to wander over the whole field of this subject, which is one of the most controversial in the world today. As my hon. friend said in his speech in moving this Motion, there was a Royal Commission in England on this subject, and prior to that a Parliamentary Select Committee, but Sir, capital punishment is a subject on which almost every man and woman has definite views. We are either in favour of it or you are against it. I find myself in a difficult position, and I am not thinking now, Sir, of the future elections, but I cannot support in entirety the complete abolition, although I want the present law amended. But when you talk about the law being amended the last thing I want to see introduced into Kenya are the anomalies which exist in England today on the law of capital punishment. For example, Sir, if I was so unwise as to perhaps shoot my wife in England they can hang me for doing so; if I poison her to death with the most ghastly strychnine poisoning all I achieve is life imprisonment; if I happen to kill a policeman by knocking him on the head with a hammer I get hanged; if I do the same to a field-marshal all I achieve is life imprisonment—and quite frankly, Sir, looking at some of the field-marshal's I think there is something wrong with the law. Similarly, Sir, if I knock an old woman on the head and rob her of Sh. 2 I can be hanged for capital murder—if I knock her on the head, and she has not got Sh. 2 on her and they cannot prove either attempted robbery or robbery I only get life imprisonment. Now, Sir, the last thing we want in Kenya is a law as silly as that, with respect, Sir, to my sister's father-in-law who is now a Lord of Appeal. Luckily, Sir, I do not think he will ever read the HANSARD of the Kenya Legislative Council. But in all seriousness, Sir, we do not want that sort of law introduced into Kenya because it does make a mockery of the whole law as it stands, and a recent decision by the House of Lords—of a murderer by the name of Smith—has just achieved a very wide coverage even down to as far as a leading article in *The Times* which has said the law has now become quite incomprehensible for even a layman, let alone a judge.

Now, Sir, in this Motion today we have got to find a solution which can make it perfectly clear to everybody what we are trying to achieve.

I was glad, Sir, that my hon. friend talked about statistics. I can prove by figures quoted from all over the world where capital punishment has been abolished, that the death penalty, if enforced, is no deterrent to murder. It is no deterrent to the number of murders, and what is interesting is that in many countries the rate of murders has gone down after abolition, com-

pared to previous years. In case, Sir, people query this fact, let me quote, for the benefit of those who like statistics, two particular countries, Germany—which has been very much in the news with the Minister for Finance and the Minister for Agriculture—before abolition had an average for various states, which are published here and are too long to read. Since abolition in 1949, with every exception, every except one, the State figures produced a lower average per month. Other countries, too, which have abolished the death penalty have proved equally that particular figure, and let me, Sir, quote one example of America—and if I may quote, Sir, from a book which is well worth reading because it is so biased that it has made its mind up on the first page—it is called "Reflections on Hanging" by a gentleman called Arthur Koestler, but his figures are proved by actual extracts from books, so he is not making his own conclusions on statistics—it does say this much—talking about America, now—"Kansas abolished the death penalty in 1887 and reintroduced it in 1935, but that did not make any difference either. The murder rate declined after 1935 in all three states, but in spite of the novelty of a deterrent in Kansas—the improvement of the murder rate in Kansas after the restoration of capital punishment was not greater than the improvement in the other two states". Now, the reason I have quoted these figures—and I could quote many more if people wanted them, but time is limited in this debate—is that I do believe the House should analyse the problem as to what are the categories of murders. In my view, Sir, and based on various books I have read and statistics which I have managed to glean, only a small percentage are the organized and planned killing—a very small percentage—under 10 per cent was the figure given for the Western world and for the Eastern world statistics are not available.

I do not believe, Mr. Speaker, that any murderer is sane, although some murderers are more insane than others, but the law works under what is known as the McNaghten rules, which cannot accept that particular fact. But we, I believe, in debating this problem, should accept the fact that nobody kills another person except in war, when it is legal, unless there is some streak of insanity in that person? Whether he is legally insane does not concern the argument.

I have been interrupted behind me, Sir, by the Member for the Coast, but I do not know what category he goes in either. Nevertheless, I believe we should accept that nobody kills another person who is completely sane at that moment, and again, as I said a moment ago before I was interrupted behind me, I am not discussing the legal aspect of that sanity, but just talking about the mental ability of the person concerned.

Mr. Cooke: Interjection.

Sir Charles Markham: Sir, at long last, Sir, the hon. Member for the Coast has spoken loud enough. Normally, his whisper drowns most people's speeches, but now he has spoken loud enough and long enough and talks about justified homicide. Sir, we are talking in this debate on the question of capital punishment and it does not concern justifiable homicide as far as this debate is concerned. If he wants a Motion on that I feel quite certain I can speak to it later on.

Now, Sir, what then is the answer? This is where I start disagreeing with my hon. friend. My main objection, Mr. Speaker, is the question of the various methods adopted in the civilized and uncivilized world of execution. Why, for example, hanging—the electric chair—the gas chamber—the guillotine—the firing squad? Despite many people who have written books saying how humane such methods of execution are, the fact remains, the origin of most of those methods, with the exception of the firing squad which was a military exercise, was because there was a certain sensationalism about the methods which, after all, in England only a short time ago were equivalent sport to going to the cinema on a Saturday afternoon. One of the largest crowds ever seen in England in the nineteenth century was a crowd of about 100,000 who turned up *en masse* to witness the hanging of four or five criminals. The same applies equally with other methods of execution where the victims appear in the sensational press, and where we have the scenes where films and books and other media are put over to the public often to show the ghastly scenes of the final moments of the victim before he reaches his Maker.

Hanging, Mr. Speaker, has become in England and Scotland and Wales—for the benefit of the Minister for Legal Affairs—a sort of tradition which cannot be broken even though now they have altered their law to make only certain murder cases capital murder cases. I wonder—if hon. Members would like to read this book I will lend it quite willingly provided they let me have it back—how many realize that only as recently as 34 years ago a dog was hanged in Switzerland having taken part in an armed robbery. And yet we, from the laughter I have heard, consider that so stupid and so inhuman that we consider there is something very uncivilized about Switzerland. If we think it is so bad for a dog why do we not consider it so bad for a human being? It is, Sir, only described as "disgusting" in the case of an animal, but when it comes down to the good old British we can only refer to it as tradition. If a man or woman has to be punished by the ultimate punishment, which must be death, then why should we inflict upon the relatives of the

individual concerned the mental torture which we do at the moment? I support in entirety my hon. friend who moved this Motion when he described his feelings on this subject. I think as well, Sir, of the agony that must be inflicted upon the prison officials and those who are with the condemned man for that very long period in prison prior to the execution when the day of the execution is known and the hour fixed. What sort of punishment is that, Sir? It is a punishment which must reflect the most dreadful agony against those who are involved, where quite often the condemned man himself has lost all hope and is resigned to his fate. I know that in the course of this debate we may well get speakers on either side of this Council talking about the feeling of the victim, and why is our sympathy not going to him, Sir, all my sympathy goes to the victim—the murdered person and his family and relatives—but I do not believe necessarily another life being taken will kill the wounds of the relatives or family of the murdered person, and after all, another death will not bring back the already dead.

It was interesting to read in the paper not long ago of a person, the widowed mother of a murdered man—it is only very recently over the last few months—publicly saying she hoped that the murderer of her son would not be hanged and she hoped somehow a method could be found to get him redeemed into ordinary society. There is a lot of talk—as my hon. friend said in his speech—about "an eye for an eye" of the Old Testament gospel which is preached so often to us—or extracts which are so conveniently raised on occasions. I find, Sir, the whole law at the moment represents a sort of ambiguity which I cannot justify in my mind. Regardless of the class of murder the judge has no alternative but to pass sentence of death if the accused is found guilty, and then, after the various stages of appeal, the question of whether the accused suffers the ultimate penalty rests in Kenya with His Excellency, who is advised by a small committee. In England it is, of course, the Home Secretary and in Scotland, the Secretary of State for Scotland.

That, Sir, in my view, places an intolerable burden upon one man, quite intolerable, and I thank God that I shall never have to be in that position, having to make a decision when a man or a woman's life is either saved or taken. I would like to put on record now, Sir, that I believe that both His Excellency and the previous Governor have exercised their jurisdiction in this matter with the utmost regard for all the circumstances. But again, and this is where I start once again to disagree with the Mover of this Motion, only a very small, Mr. Speaker, percentage of murderers are those who are or could be described as being beyond the pale. If I may

[Sir Charles Markham] again quote from this book, Sir, figures which are perhaps of interest to this House, it is this much: that if, you accept, as I do, that there are a small percentage of people who cannot ever be redeemed in society then a method must be found either to lock them away in an institution or a prison or, alternatively, to eliminate them from the world altogether. I have said in my speech that I dislike the various methods of execution because of their public appeal and because of the play on the emotions of both the accused, the relatives, and the officials, and I have always thought—and I have said this publicly before—that the method of lethal injection should be adopted. My own approach from this book is, and it says here, "The Royal Commission . . ."—and this is the one referred to by my hon. friend the Mover—" . . . considered that the condemned man should be 'offered this' as an alternative pleasanter method of execution, but rejected it for a number of reasons. One of these was 'the vaccination' that might be evoked in a prisoner for having to make so crucial a decision and the need to have a hangman waiting in the background in case his services should be required after all, gradually perhaps losing his skill from disuse." Irony is a rare feature of a Royal Commission report. I have never known anywhere in my life—and I have even got a copy of this Royal Commission report—such an amazing remark from an experienced body of people, saying you must keep a person practised in his work so that he knows his job. Mr. Speaker, in other words, if by chance there are no murders committed in England at all then what would you do in five or six years' time if there is nobody capable of executing him?

Therefore, Sir, I was interested to hear in the speech by the hon. Mover when he gave the quote from this Royal Commission Report about the degrees in murder, or the degrees of murder. I can find no experienced jurist who could explain to me why it is not possible to have a system of degrees in murder. I cannot, at the moment, for the life of me see the point of charging a woman with the murder of her imbecile son knowing very well that in no case will the Home Secretary not exercise his prerogative of mercy, and making the judge in that particular case go through all the paraphernalia of the black cap and condemning to death. I would have thought, Sir, that despite our objections, we could, on occasion, learn something from the Americans. I am not suggesting we should adopt their system of law because from, anyhow, what we see in the films there would be most amusing court scenes, and I think my hon. friends, especially on this side, who are learned in the law, would certainly enjoy the informality perhaps of the American courts.

Mr. Mboya: Hear, hear! Sir Charles Markham: I do not somehow believe that the hon. Member is yet qualified to be a counsel, but perhaps he is talking about his visit to the courts in another capacity.

If my system of degrees is accepted as being worthy of consideration there are three categories of people, however, who I would have always placed in the first degree, or whatever you like to call it, of murderer, and I would show no mercy on them at all. Such people would be those who have murdered by poison, which I have always believed to be one of the most painful and horrid deaths to inflict on any human being. Again, those who have murdered for personal gain, such as people who have taken out large insurance policies on a relative or friend and then caused their death either by, as happened in America, a bomb in an aeroplane or other methods equally horrible. In my final category of murderer, Sir, would be those who I can describe perhaps in polite terms as the sex murderers, people who have raped—I must use that word in this context—small girls and then killed them, or even elderly women, and then killed them, in order to avoid the person complaining to the police. I do not mean what he knows as the *crime passionnel*, the murder on the spur of the moment, but I mean those who have proved by their actions that they are unfit to remain in this world. What about the others?—I will not be much longer, for the benefit of this House. Sir—I would say, about the other murderers, that they should be imprisoned for no fixed period. Again, I disagree with my hon. friend. They should not be imprisoned for any fixed period by a judge but sentenced to a term of imprisonment which would depend entirely on the authorities, the prison commissioners and the equivalent of the Home Office in Kenya, who would only release the person when they were quite certain that the individual concerned was capable of resuming his normal place in society.

Now, Sir, I realize, as hon. Members in this House do equally, I feel sure, that this problem is something which is too complicated to be decided during the course of a debate in an afternoon. That is one of the reasons that when I gave notice of my Motion, which I subsequently withdrew in favour of that of my hon. friend, I did advocate that the Government should request the appointment of a Royal Commission. I know, Sir, there are great difficulties over the amending of the law because of the possibility that it should be the jury or the judge who should decide whether a man should die or live. That, I believe, is quite impossible. I, Sir, would like to recommend that the Governor should consider this question of degrees of murder and that the

[Sir Charles Markham] prosecution would be responsible, when they made their indictment against the accused, of stating, if it was a first degree murder for the want of a better word, that they were going to accuse the prisoner of a first degree or capital murder. It would then be up to the jury and judge, if they thought the evidence or facts were wrong, to bring in a lesser verdict if they wished to. I know that that has been discussed at great length in England by the Law Society who are opposed to the scheme, but I do believe, in this instance, that it is worthy of consideration.

Finally, Mr. Speaker—and I apologize to the House for having kept them for so long—let me say here and now that none of my remarks this afternoon have been based on any personality at all. I am thinking, Sir, of the future, not on the political side but just on the whole question of how we can make progress in the world. For those people who would query the aspect of abolishing capital punishment as being a good thing, I would urge upon them to read the various books which are available in the country and which can be obtained, if not otherwise, from various libraries.

Nothing, Mr. Speaker, will convince me that abolition or partial abolition will lead to an increase in murders. Government, be it the Government of today or the Government of tomorrow, will always have powers to reintroduce capital punishment should the necessity arise. Should there be outbreaks of violence on which the Kenya Government of the day require further powers, Sir, that Government will have sufficient authority to reintroduce such legislation as they feel fit. Therefore, to those who say, "You are taking a risk," I would say that all steps to progress in the march towards civilization are always a risk. Therefore, Sir, I hope that if the Government will accept the Motion moved by my hon. friend then my arguments become invalid and I would withdraw them. If the Government cannot accept what my hon. friend has said in its entirety, then I beg of them to look at my arguments and consider them because I believe this is a subject which knows of no race, no colour, and I hope, Sir, of no Government Whip, because we have been given the privilege today of having this in Government time, for which I am very grateful to the Leader of the House for so doing. I hope we can have the free expression of opinion which can guide the Council of Ministers as to their future policy.

I beg to second.

Question proposed.

Mr. Conroy: Mr. Speaker, Sir, capital punishment is a matter on which all hon. Members feel very deeply. They hold their views with great

conviction, but those views differ from one Member to another. Therefore the Government welcomes this Motion, this opportunity, to hear the views of all Members and hopes that those views will be expressed as responsibly and as calmly and as logically as they have been expressed by the Mover and Seconder of this Motion.

The question of capital punishment really involves two issues. The first is whether you should abolish capital punishment absolutely, and the second is, if you do not abolish capital punishment then should you amend the law of murder so as to reduce the number of cases in which capital punishment is imposed. I use the word "murder" because, of course, although there are other capital sentences, for all practical purposes we are only concerned with murder; we are not concerned with piracy, invasion, treason and so on in the present context.

Now, Sir, the Motion here is: "That this Council urges Government to review the law of capital punishment to see whether it would be possible to abolish the death penalty in the interest of humanity." It seems to me that the latter part of the Motion limits us to discussing only the question of abolition. I think it narrows the field too much because the Government wants to hear the views of all Members not only on the question of abolition but also on the question of the variation of the law of murder with a view possibly to reducing the number of cases in which the capital sentence can be passed. Therefore Sir, I propose to move an amendment to delete all the words after the words "capital punishment". That would leave the Motion, if the amendment were accepted, to read: "That this Council urges Government to review the law of capital punishment." Now, Sir, that would allow us to discuss here the subject which the hon. baronet discussed, I think possibly slightly out of order—

Sir Charles Markham: Shame, shame!

Mr. Conroy: Sir, I am giving him the opportunity now to discuss it in order, that is, the question of the amendment of the law of murder as opposed to the question of the complete abolition of the capital sentence.

I might deal first of all with the question of abolition. The most useful book to which one could possibly refer is the report of the Royal Commission on Capital Punishment. That is not a book written by an interested person like Mr. Koestler, who forms his view and then writes his book to convince everybody else that they should agree with him; this is a document which took four years to produce. The Royal Commission was composed of very distinguished persons from all walks of life; they listened to evidence and they took evidence from everyone

[Mr. Conroy] from the Archbishop of Canterbury down to the common hangman. They took evidence from doctors, lawyers, prison officers, persons interested in penal reform, judges, and, at the end of that, they formed an objective view. Therefore, Sir, if I quote on a number of occasions from the Royal Commission report I hope that I shall be forgiven because it does contain views that were reached after careful consideration of evidence from distinguished people who knew what they were talking about, and the second reason why I would like to quote it is that the Commissioners used language much happier than I could use, which expressed their views so much better.

Now, Sir, the Royal Commission's views are fairly clear. My own personal view, which I have reached after a good deal of worry and thought and even of anguish at times, and the views of the Government for the purposes of this Motion, if my amended Motion is accepted, are immaterial, because the purpose of this Motion, as I hope it will be amended, will be to allow all hon. Members to put their views so that the Government may subsequently consider them.

Now, Sir, dealing with abolition, what are the purposes of punishment? I think it is generally agreed that there are three purposes of punishment. The first is reformation; the second is deterrence; and the third is retribution. In respect of capital punishment it is quite clear that reformation does not enter into the argument. I will therefore pass straight away to the question of deterrence. Here we find that all the abolitionists cry that capital punishment is not deterrent. Sir, the retentionists say, on the other hand, that the statistics prove absolutely that the ultimate deterrent is capital punishment. Sir, the Royal Commission's view is this, and this is after three years of evidence: "Prima facie, the death sentence is likely to have a stronger effect as a deterrent to normal human beings than any other form of punishment." There is some evidence, though no statistical evidence, that this is in fact so, and also that abolition may be followed for a short time by an increase in homicides and crimes of violence; but there is no clear evidence of any lasting increase, and there are many offenders on whom the deterrent effect is limited and may often be negligible." It is therefore important to view the question in a just perspective and not to base a penal policy in relation to murder on exaggerated estimates of the uniquely deterrent force of the death penalty." In other words, Sir, the Royal Commission is saying that the statistics support neither the abolitionist nor the retentionist. It may be that they slightly support the retentionist. That is what they say. "Prima facie the death sentence is likely to have a stronger effect as a deterrent to normal human beings than any other form

of punishment. There is some evidence, though no statistical evidence, that this is in fact so." Those are the Royal Commission's words, even though the hon. Member for Ukamba said, "I can prove from figures from countries all over the world where the death penalty has been abolished that there is no increase, in fact often the reverse." The Royal Commission came to the conclusion that the evidence showed that there was for the time being an increase.

Sir Charles Markham: Not the Law Society.

Mr. Conroy: Sir, the Law Society are not nearly so well qualified to comment on this as the Royal Commission on Capital Punishment.

Sir, I am also interested to see that the hon. Member, who objected to the hon. Member for the Coast making interjections while he was making his speech, is constantly interjecting during mine.

Sir Charles Markham: Only once.

Mr. Conroy: That is the fourth time; I have been counting. I would also point out, Sir, that the hon. Member ought to know by now that Members like to make their speeches by themselves.

Sir, he chose to quote the Law Society at me. I will read a little bit to him now, and this is what Sir James Fitzgales Stephens, a very great lawyer indeed, said: "No other punishment deters men so effectively from committing crimes as the punishment of death. This is one of those propositions which it is difficult to prove simply because they are in themselves more obvious than any proof can make them. It is possible to display ingenuity in arguing against it; that is all. The whole experience of mankind is in the other direction. The threat of instant death is the one to which resort has always been made when there is absolute necessity for producing some result. No one goes to certain inevitable death except by compulsion. Put the matter the other way. Was there ever yet a criminal who, when sentenced to death and brought out to die, would refuse the offer of a commutation of his sentence for the severest secondary punishment? Surely not. Why is this? It can only be because all that a man has to give is his life. In a secondary punishment, however terrible, there is hope. But death is death: its terrors cannot be described more forcibly." Sir, I found support for that statement in the speeches of the hon. Mover and the hon. Seconder. The hon. Mover used an expression "the ultimate punishment which must be death". That is what he said. The hon. Seconder said "It is the most detestable form of punishment". Now, Sir, James Aggrey, apparently, with Sir James Fitzgales Stephens,

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The hon. Member also said that statistics could not prove that capital punishment was a deterrent because we had no examples. Sir, it is quite true that we have examples of the failure of capital punishment as a deterrent, but from the very nature of things we cannot prove the cases in which it has been successful as a deterrent. The Royal Commission on Capital Punishment said this: "We can number its failures, but we cannot number its successes. No one can ever know how many people have refrained from murder because of the fear of being hanged. For that we have to rely on indirect and inconclusive evidence. We have been told that the first thing that a murderer says when he is arrested is, often, 'Shall I be hanged?' or 'I did it and I am ready to swing for it.' What is the inference to be drawn from this? Clearly not that the death penalty is an effective deterrent, for he has not been deterred, nor that he consciously considered the risk of the death penalty and accepted it—still less that the death penalty was not so effective a deterrent as some other form of punishment. The true inference seems to us to be that there is a strong association between murder and the death penalty in the popular imagination. We think it is reasonable to suppose that the deterrent force of capital punishment operates not only by affecting the conscious thoughts of individuals tempted to commit murder, but also by building up in the community over a long period of time a deep feeling of peculiar abhorrence to the crime of murder. The fact that men are hung for murder is one great reason why murder is considered so dreadful a crime. This widely diffused effect on the moral consciousness of society is impossible to assess but it must at least be as important as any direct part which the death penalty may play as a deterrent in the calculations of potential murderers." Now, Sir, that seems to me to be a strong argument. There must be a strong association, in fact there is a strong association, in the public mind between the death penalty and murder, that the death penalty stigmatizes murder as the worst of all crimes. If we did away with capital punishment would not the converse effect take place? Would not the general public say "Oh, the Government does not regard murder as such a very serious offence".

Another argument which seems to me to have some cogency is that there are a number of offences which already carry a life sentence. You remember, in 1955, I think it was, we did away with the death penalty for rape, and one of the most cogent arguments for that abolition was that a man who had raped a woman, when it was a capital offence, had every temptation and would enjoy every advantage if he then went on and

strangled the woman because he could not be punished any more. Now, Sir, your burglar, your shop-breaker, if he breaks into a man's house at night, if he breaks into a shop, and knocks out the housekeeper to render him unconscious while he commits his burglary, or ties up the shopkeeper in order that he can rob his *duka*, Sir, if capital punishment has been abolished for murder, that man has every temptation to say "I will go a little further; I will kill the housekeeper, the house-owner; I will kill the *duka*-owner because I remove the principal witness for the prosecution, and the sentence which can be imposed upon me for the murder is no greater than the sentence which can be imposed upon me for burgling the house and for breaking into the shop".

"I think the simple question is 'would abolition mean more murders?' During the last 50 years in England the law has been pruned and pruned and pruned; it has become more and more lenient in the punishments which are imposed. I read in *The Times* the other day that in 1899 there were 8,000 indictable offences committed for every 1,000,000 of the population in England. Now, Sir, that was at a time when there was great poverty, when there was great lack of opportunity for the poorer classes, when there was a very wide division between the very rich and the very poor; and then there were 8,000 indictable offences committed per 1,000,000 of the population. In 1959, Sir, 50 years later, when England was enjoying a Welfare State, when wealth was much more evenly divided, when a man had great opportunities for advancement, the number of indictable offences per 1,000,000 of the population had increased three times and had gone up from 8,000 to 24,000 per 1,000,000 of the population. That was over a period, Sir, when the law has been pruned and become more lenient.

Is not the issue which faces the Government, Sir—and this is my own personal view—that we are responsible for law and order. Can we take the risk of abolishing capital punishment? Would we not be running away from our duty? Would we not be in breach of duty if, without any equally effective deterrent available to us, we were on no known basis of evidence or fact or statistic to abolish capital punishment now? Sir, that is my opinion. Whether the Government will accept it or not is another matter. I am convinced that on human factors the death penalty must inevitably be the ultimate deterrent.

Passing from deterrence to retribution, this is not retribution in the sense of "an eye for an eye". Retribution, Sir, is dealt with again, if I may quote from the Royal Commission's Report, by a man who recently visited us in East Africa. To everyone who knows him he is one of the most humane

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and kind and wise men. I refer to Lord Denning. This is what Lord Denning said when he gave evidence before the Royal Commission: "The punishment inflicted for grave crimes should adequately reflect the revulsion felt by the great majority of citizens for them. It is a mistake to consider the objects of punishment as being a deterrent or reformative or preventative and nothing else. The ultimate justification of any punishment is not that it is a deterrent but that it is the emphatic denunciation by the community of a crime. From that point of view there are some murders which in the present state of public opinion demand the most emphatic denunciation of all, namely, the death penalty." Now, in case someone should say, "Well, that is the kind of thing that lawyers say", the next sentence in this Report contains what the Archbishop of Canterbury had to say about it. The Archbishop of Canterbury, while expressing no opinion about the ethics of capital punishment, agreed with Lord Justice Denning's view about the ultimate justification of any punishment. "By reserving the penalty for murder the criminal law stigmatizes the gravest crime by the gravest punishment and it may be argued that by so doing the law helps to foster in the community a special abhorrence of murder as the crime of crimes."

We have Lord Denning as he now is and the Archbishop of Canterbury expressing their views on the retributive aspect of capital punishment. This takes us back to the view which I have ultimately come to hold, that capital punishment is the final and most cogent deterrent of all. Sir, it seems to me that this has been the law for hundreds of years not only in England but virtually throughout the world. Sir, it was the law held by Africans in their African customary law, that murder merits the death penalty. Sir, would we be right to alter this now? Is not the onus of satisfying us that abolition is right, on the abolitionists? And have they succeeded? Sir, I have read the Report on capital punishment with very great care and I can find nothing in it which convinces me that the abolitionists are right.

I should be delighted if we could abolish capital punishment. During the last 25 years I have taken part in literally scores of capital cases. I have defended and prosecuted; I have advised Governors in Executive Council and, in this Colony, in the Council of Ministers. Sir, when you are appearing in the case it is an interesting job and you are doing your best to help the court to arrive at the right decision. You tend to forget that there is a miserable man behind you in the dock who is possibly going to be executed. But when at the end of the case the judge pronounces

the sentence of death, it is a horrifying moment. You are suddenly brought face to face with reality; that there is a fellow human being who is going to be sent to meet his Maker. Sir, if we could do away with it, then I am sure that lawyers who have to practice in the criminal courts would be delighted. But, Sir, the lawyers and the judges who practice in the criminal courts are the first to argue that the time is not yet ripe to abolish capital punishment.

Sir, I think it is necessary for me to say no more on the first part of this Motion, that is, the question of abolition. The Government wants to use this Motion as a sounding board from which it can hear the views of hon. Members. Sir, I have after most anxious consideration over many, many years reached the personal conclusions which I have put before the Council this afternoon. With regard to the second part of the Motion which is, if my amendment is accepted, should the law of murder be amended, the Royal Commission had various recommendations to make on that. I think it would be useful if I used their recommendations as a framework for my argument.

The first thing that they said was that the outstanding defect of the law of murder was that it provides a single punishment for a crime widely varying in culpability. They went on to say, Sir, that this is mitigated in England by the exercise of the Royal prerogative of mercy. Sir, it is so mitigated too in Kenya. I think it might help hon. Members, and possibly be a relief to those Members who are worrying about this, if I were to describe as briefly as possible the steps which are taken after a man is sentenced to death in order that the Governor can reach a just decision.

The first thing that happens is that the judge who has sentenced the man to death is required by law to send the full record of the case and his own personal report to the Governor. Now, Sir, you may say, "Why is it necessary to have the judge's report?" The answer is that when he is trying the case the judge is limited by the facts and by the law. However, there are many *extra* judicial factors which come into play when deciding whether the sentence should be carried out and the judge very often expresses views based upon *extra* judicial matters in his report.

Sir, the second thing that is done is that the district commissioner of the district from which the accused, the convict, has come makes a very full report indeed to the Governor. There are a whole list of things on which he must report. He must deal with the man's past history, his employment, his family, his degree of education, where he received it, what kind of a person he was, his character, his mental condition, the circumstances

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surrounding the act, the motive, whether there exist any extenuating circumstances, the popular opinion in the man's village on the gravity of the crime, justification in native law and custom for the killing and any other points of native law and custom, whether witchcraft enters into the crime, and general remarks by the district commissioner. Now, Sir, can anyone doubt that in such a case if any of us had to write such a report that we would not err on the side of mercy for the man who is now facing an execution? Of course, Sir, the district commissioner makes sure that every factor which can be said in favour of the man is said.

Then, Sir, there are at least two doctors' statements on the file as to whether the man displays any form of mental illness. If there is the slightest suspicion, then he is examined by a psychiatrist and there is a full psychiatric report on the file.

Sir, all those papers are then considered by the Capital Cases Committee, over which the Governor presides. The Capital Cases Committee consist of the Chief Secretary, the Minister for Legal Affairs, the Minister for Defence, the Minister for Housing, the Minister for Information, the Minister for Labour and the Minister without Portfolio. Sir, it is the Governor's ultimate decision; it is his personal decision and we have to advise.

I thought hon. Members might be interested to know the statistics over the last five years of capital cases, and I exclude from these Emergency cases—the possession of firearms and so on. These are murders, although they may well have been murders which were committed during the course of the Emergency. Sir, during the five years 1955 to 1959 inclusive the figures are that 269 persons were condemned to death. Of those 83, i.e. 31 per cent, had their sentences commuted; 186, i.e. 69 per cent were hanged.

Sir, capital punishment arouses emotions in us all. It is interesting to note that during the same period 1,433 people were killed on the roads, and they were innocent people. Sir, I leave that thought in hon. Members' minds.

Sir, these statistics are slightly different from England. In England 45 per cent were reprieved and 55 per cent were hanged.

Sir Charles Markham: Of all murders?

Mr. Conroy: No, of the ones condemned. Sir, those are the figures in the Royal Commission's report and I take it that if the hon. Member for Ukamba has better statistics that he will perhaps tell us about them.

Sir Charles Markham: I will indeed!

Mr. Conroy: It is also relevant to note that in Kenya the law of manslaughter is wider than the law of manslaughter in England over the same period. Therefore, in the persons condemned to death for murder and probably commuted in England were persons who would have been convicted only of manslaughter in Kenya.

Now, Sir, the second point that the Royal Commission made was that they recommended that the doctrine of constructive malice should be abolished. Sir, murder, as everyone knows, is unlawful killing with malice aforethought. The expression—the words—malice aforethought do not mean what they normally mean when you use those two words in their ordinary sense. They really come to mean in law a comprehensive expression for a number of different states of mind which have been defined judicially to make killing murder. Sir, they are defined in our Penal Code here in four ways: the first is an intention to kill or do grievous bodily harm. Well, that is clearly malice aforethought in the true sense of those words. The second is "knowledge" that the act is likely to kill or do grievous bodily harm". Well, I do not think anyone would quarrel with that for being murder. The third is "an intention to commit a felony" and the fourth is killing someone by an act done by a prisoner escaping or attempting to assist a prisoner to escape.

Now, Sir, it is the third one that worries me and has always worried me: "an intention to commit a felony. In theory it would be possible—and this is the kind of thing that is quoted in text books and examination papers—for a man to fire at a pheasant and hit someone behind the hedge and kill them. That would be murder because he is stealing a pheasant; it is committing a felony. The type of case in which it has arisen is a case of rape where a man puts his hand on a woman's mouth, not intending to kill her at all, but just to keep her quiet, and she dies. Now, there is no intention to murder there at all. Should he be convicted of murder? Sir, another one is burglary. I, myself, prosecuted in this type of case where the shopkeeper was tied up and he died of a heart attack. Now, technically, that is murder. Should a man be convicted of murder for that? He never intended to murder; he never intended to kill. Sir, the third one was where a young man held up a cashier at a petrol station and the revolver went off accidentally and killed her. Now, he was committing a felony and he killed accidentally. Should he be convicted of murder? Sir, another one is a recent one of a man who was subnormal intellectually and he was a very nervous person. His child kept on crying and he put his hand over the child's mouth to keep it quiet and it died; and he was convicted of murder. Of course, the act he did was of the kind which would be likely to cause death or

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serious harm. Although he did not know it, the ordinary person would know it. The most recent case—which was the case of Smith—that the hon. Member for Ukamba mentioned—was one of a man who was driving a car along containing stolen goods when he was stopped by a policeman. He then drove the car off violently with the policeman hanging on it and he veered about for the policeman to be thrown off and the policeman was thrown off and run over by another car and killed. Now, he had no intention to kill there. Should he be convicted for murder?

Sir Charles Markham: What do you say?

Mr. Conroy: Well, Sir, it is a thing that worries me. What I do say is this, that I do not think it is right that a man should be convicted and sentenced to death for a murder that he never intended doing. He should never be convicted for a killing where he never intended to kill, and where by a technical rule of law he is imputed to have had malice aforethought.

Sir, another test I would apply to decide what is right and wrong is that sometimes a man is sentenced to death when the judge knows and the prosecuting counsel knows and the defending counsel knows that that man will not hang. Now, Sir, that is wrong. If it is one of those cases which falls within the general rule where a death sentence is commuted, to my mind it is wholly wrong that the ghastly tragedy of having to sentence a man to death should be gone through. My own personal view is that I should like to see the law of murder altered so that that situation does not arise. I think I am in agreement here with the hon. Member of this Motion.

Now, Sir, Government in fact, did consider this problem. We discussed it in the Law Revision Committee. Then there was a meeting of East African Attorneys-General that discussed it and we actually drafted a provision similar to that in the English Homicide Act of 1957 which abolished the law, the doctrine, of constructive malice. However, Sir, at that time crimes of violence were on the increase; at that time men were killing for the purpose of committing other crimes; men were killing for the purpose of evading arrest. It seemed to the Government to be wrong to give to the general public the impression that Government did not view such crimes of violence with the greatest severity. Therefore, we decided that we would not go ahead with that revision of the law.

Another recommendation of the Royal Commission was that the law of provocation should be amended to make it wider. Here, Sir, I am happy to tell you that England lagged behind Kenya and that our law was already largely in accordance

with the recommendations of the Royal Commission on provocation which would reduce murder to manslaughter.

Then, Sir, there was a recommendation with regard to suicide pacts which hon. Members will find we have drafted in as clause 26 of the Penal Code (Amendment) Bill which has already, I think, had its First Reading in this House.

Then, Sir, there is the law of diminished responsibility. I agree with the theory of the English law of diminished responsibility, that is, that where a person suffers from mental disease and diminished responsibility—not enough to make him insane—then he should not be hanged; he should be convicted of manslaughter and sentenced to imprisonment. The trouble is that no one knows how to draft such a law. They have drafted it in England and the judges simply do not know what it means. They have been unable to explain it to juries. They just read it to a jury and I would ask any hon. Member to read it themselves to see whether a jury could understand it. A classic case of where it went wrong was that man who cut the girl's head off in a hostel up in Birmingham—Birmingham or Manchester—about this time last year. There the judge said that nobody has yet been able to discover what this section means. In the Court of Criminal Appeal the judges said that they could not understand it either. Sir, we had drafted on these lines before we knew how impracticable the English law was. However, the Chief Justice of Kenya said he wanted to have another look at this, so the provision which we had drafted to go into the Penal Code (Amendment) Bill has been taken out so that we can have another look at it.

Sir, before just sitting down there is one matter which has neither anything to do with the abolition nor the law of murder, and that is the passage which the hon. Member referred to on the question of lethal injections for the purpose of execution. Sir, I do not think Mr. Koestler's criticism of the Royal Commission's report was fair because what in fact the Royal Commission said was this—not what Mr. Koestler said the Royal Commission said: "If we could have been satisfied that executions could be carried out in this way quickly, painlessly and decently in all cases, we should recommend its adoption unambiguously. But we are bound to conclude from our expert evidence that there is not at present a reasonable certainty of this. We do however recommend unambiguously and emphatically that the question should be periodically re-examined." If the science of anaesthetics improves, then this might be properly accepted.

Sir, my time is very nearly up, but I might just recapitulate what I fear I have rather longwindedly said. On abolition, it is the Government's

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to maintain law and order and to protect individuals in the enjoyment of their life and property. It is not possible to prove that the death penalty is a deterrent but it almost certainly is. Sir, until an effective alternative deterrent is proved to be available, then it would be a dereliction of the Government's duty to abolish capital punishment in Kenya now.

With regard to the law of murder, I think that this could be improved. It is easy to say how the law of constructive malice should in theory be improved so that accidental killings are not murder. In practice it is very hard to say, how you can draft your amendment.

On the whole of this Motion, the Government is willing to look at the question of abolition and to look at the law of murder. We are anxious to hear the views of Members and I accordingly beg to move that the Motion be amended by leaving out all words after the words "capital punishment".

The Speaker (Mr. Slade): Have you submitted this amendment in writing?

Mr. Conroy: I sent it to the Clerk in writing about ten days ago.

The Speaker (Mr. Slade): I will assume that it is in the possession of the Council.

The Minister for Finance and Development (Mr. MacKenzie): Mr. Speaker, Sir, I beg to second the amendment. Sir, I do not propose to speak at length in doing so. I think, however, that the advantage of the amendment is that it would give the Government equal scope for considering the merits of what is a very important question which is one that as all hon. Members who have spoken recognize, is a question on which people have varying views, which they generally tend to hold very strongly. It gives every opportunity for looking at the whole issue and all the questions raised by both hon. Members opposite, but it does so without necessarily in any way prejudging the issue and raising questions of what is in the interests of humanity in general and humanity in particular. I hope, Sir, that the amendment will, in fact, commend itself to the House and, in particular, to the hon. Mover and Second since I am quite sure that it does enable the Government to give full effect to their wishes in this matter.

Sir, I beg to second the amendment.

Question proposed.

The Speaker (Mr. Slade): I think it is in the interests of Council if we dispose of this amendment as quickly as possible. Debate will therefore be confined to the amendment.

Sir Charles Markham: Very briefly—and it will take me exactly 30 seconds, Sir—as Second of this Motion I accept this amendment. Sir, I have got to go to a speech day of a school for prize giving and I want to apologize to the House that I shall be absent, Sir, for at least an hour, I personally, Sir, accept the amendment.

Mr. Kap Moli: Mr. Speaker, Sir, I would like to join myself with the Attorney-General who said that this matter is a matter which does not involve emotion at all. I think, Mr. Speaker, it is a matter that deserves greater thought. In my view, Sir, far too much attention has been paid to the murderer and not enough to the victim. I feel—

The Speaker (Mr. Slade): I do not think you have quite understood that the debate on this amendment has to be confined to the amendment. That is to say, that at this stage you are only discussing whether the words referring to the "interest of humanity" should be left out of the Motion or not. If you do not want to speak on that, you will have an opportunity to speak on the main Motion after we have disposed of the amendment. At present, we are only speaking to the particular question as to whether or not we amend the Motion.

Mr. Kap Moli: Thank you, Mr. Speaker, Sir. I think I would rather wait until the main Motion comes up.

Mr. Nyagah: Mr. Speaker, Sir, I would just like to say a few words on this amendment. I feel it does not go far enough. The Government should give us an indication at least of the direction in which they are moving. Are they going to urge that the number of offences punishable by death is going to be increased or reduced? They simply say that this Council is urging Government to undertake a review of the law of capital punishment. I think the amendment as it stands is incomplete. It is not clear.

The question was put and carried.

Mr. Travadi: Mr. Speaker, Sir, it was a sort of dilemma to me when the hon. Mover moved this Motion whether I should support or oppose—to take Shakespeare's words "to be or not to be", but the hon. Solicitor-General gave a lesson to this House when he talked about the Royal Commission Report. He even dwelt upon the present law of Kenya on murder—a very nice lesson indeed to this House on the law of murder.

The amended Motion as it now stands actually embraces the variations that have been proposed and also acted upon in England and that should be adopted here, but one big omission which I would like to draw the attention of this House to, is that of Chessman's case in the U.S.A. which lasted for nearly 12 years, and I would like to

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have a time limit placed on proceedings or the duration of proceedings, that once a prosecution has been lodged it must not last as long as 12 years—a most detestable thing to a condemned man. I would draw the attention of the House, and particularly that of the Attorney-General, to this, and ask that this does not happen in Kenya as well.

Mr. Speaker, when we talk of the abolition of capital punishment here in Kenya, it strikes me that Mahatma Gandhi, the apostle of love and peace, who preached to the Indians for a quarter of a century the gospel of non-violence, fell at the hands of an assassin and died. I distinctly remember, and everybody knows as a fact, that that assassin was hanged. Now, if that is the case in India, I do not think the time is right or our society is sufficiently advanced or civilized, that we here in Kenya can abolish entirely capital punishment. From a humane point of view, no doubt, and I feel indeed from the bottom of my heart, that the faster this nasty thing disappears in Kenya the better, but here, in Kenya, our society is a multi-racial society comprised of four nationalities—Europeans, Africans, Asians and, even, Arabs.

Now, Europeans have a jury system. I think throughout the history of Kenya, during half a century, only one or two have been hanged—only recently one has been hanged. It may be a dozen or so in the case of the Asians and there may be scores hanged amongst the Africans, but taking everything together, as a multi-racial society, are we justified at this particular moment in abolishing capital punishment? Let us face facts, but let us not be hasty for the sake of sentiment and find that tomorrow, because there is an emergency, it has again to be imposed. I think these are not the things to be played with lightly. I am not convinced that it should be retained or abolished, but I think the time has not yet arrived to abolish the death penalty. Society has to be protected and the State itself has got to be satisfied that the subjects over which it rules have sufficient respect for its administration of justice when there is a cold-blooded murder which is pre-meditated. When a man goes without any punishment whatever, may not the family of the victim take revenge, if not today, a year or two after, or even after five years, and again commit murder as an indication of their feelings, and kill the accused or a member of his family? There are other things to be taken into consideration by the committee or commission, whichever may be the case. We should not hastily abolish capital punishment. The Royal Commission, if I am right, was presided over by Sir Ernest Gowers, and the report, which was a very full document, deals

with every aspect of the matter and we should rely upon the recommendations made therein rather than the sort of small piecemeal recommendations made here when we are hardly out of our infancy.

Mr. Speaker, I beg to sit down, but I do not know whether to support or oppose.

Mr. Ngome: Mr. Speaker, Sir, I rise to support the amended Motion. In doing so, Mr. Speaker, I am not happy to see the death penalty abolished. I was thinking, Mr. Speaker, it is very easy to make a law here and then tomorrow if a man is attacked he comes back here and puts forward an amendment to the Motion that such law should be amended because always it is said that the law-makers become the law-breakers. I would be surprised if the Mover of the original Motion had a relative murdered and then walked to the police station and told the police officer, "Well, I have good news, do not worry about it—it is all right". I would not agree if that happened, Mr. Speaker. If a man is not affected by something of this sort I think it is very easy to talk like this, and if we allow the original Motion, Mr. Speaker—I am not arguing about the original Motion—but my argument is on the amended Motion. I think if this matter is approved by the Government the Law Office could be closed and the lawyers would have nothing to do in this country. This country, Sir, consists of an estimated 6,000,000 African people, and I do not know how many Europeans and how many Asians, but I would suggest to the Government that what is needed in this country much more is to bring the African people to civilization by way of education and development of social and other things.

[The Speaker (Mr. Slade) left the Chair.]

[The Deputy Speaker (Mr. Conroy) took the Chair.]

If we are to bring Western ideas into this country to uncivilized people I think we are just putting a stumbling block in the way of civilization.

The judges of the Supreme Court, to my mind, are the right people to deal with cases of murder and manslaughter and all the other things and if we argue the point that a murderer should go free I think there should be no punishment for the housebreakers and burglars and thieves if a murderer is set free or goes to a life sentence of imprisonment. Why should a thief go to prison or an ordinary housebreaker go to prison if the capital sentence for a murderer is washed out? Let the country be without judges and police and

[Mr. Ngome] the district commissioners and all the officials of the country who see that people live in peace. They should be dismissed and their offices closed, but their job is to see that innocent people live in peace and those who are law-breakers should be dealt with.

It has also been said, Mr. Speaker, that a Christian forgives his fellow Christian if they are together, but a man who is not a Christian is different. They cannot sit together, they do not know anything about forgiveness, and if we require this country to have more of Western civilization, it has been said, Mr. Speaker, that the moving of this Motion at this stage is too early. It requires many years before it can come—50 or 100 years—until the African people are fully educated and able to realize what is the law that is applied in this country.

I am not in favour, Sir, of the law of capital punishment being thrown out. The criminals in this country will enjoy killing other people because the court will have nothing to do with them. I think if Government is going to approve this Motion they will have letters of congratulation from the criminals of this country saying, "Thank you very much. Parliament Buildings has passed a good Motion, and we are all right" and then innocent people will suffer and criminals will celebrate their holiday that the law in this country is no longer law and one can kill another person and there is no court to deal with such people.

Mr. Deputy Speaker, with those few remarks I support the amended Motion.

Mr. Khamisi, Mr. Deputy Speaker, I rise to oppose very, very strongly the Motion before the House as well as the amendment. I do not see the reason why there should be any variation of the existing procedure in which the people who have been convicted of murder are given every opportunity, and in fact I should say from the explanations that you have given us, they are treated far more leniently than they would be in normal circumstances. I feel it is a matter which the general public will have serious misgivings about if a man can commit murder and kill another person and then go free to enjoy his life.

Sir, if we ask the Government to review the law, I do not see what profit we can get and I do not see what conclusions we can arrive at which are better, or perhaps would be much better, than the conclusions which were arrived at by the Royal Commission. I think that the Royal Commission gave the matter very careful consideration and they came to the only conclusion which is the right one—that the law of

capital punishment must be maintained. Sir, I feel very strongly that if capital punishment is removed the thought which comes into my mind and will come into the minds of the ordinary people is, "What is wrong if I go and murder such and such a person? I do not like such and such a person, or such and such a person has offended me, and what is there wrong if I murder him. After all, if I have to go to prison for even 20 or 30 years I will be fed there and have free accommodation". And that fellow has been murdered. "I am quite happy, and after all even in prison I can do the same. If the warden offends me I can kill him." I do not understand how the Mover of this Motion—knowing him as I do—could have thought of bringing a Motion of this nature to this House at this stage of our development. If even in the highly developed and civilized countries of the world capital punishment still exists, who are we here, with only 60 years of education and civilization, to demand that at this stage, knowing well the standards of our people, that capital punishment should be abolished or reviewed or revised? I feel, Sir, we are wasting our time at this time in discussing this problem. We shall be discussing this in 50 years time when our children and great-grandchildren have advanced far beyond where our people are today. They will have completely altered their outlook of life and at that time, perhaps, it will be the proper time for talking of the abolition of capital punishment.

With these few words, I very strongly oppose the Motion and the amendment.

The Minister for Legal Affairs (Mr. Griffith-Jones): Mr. Deputy Speaker, Sir, I have only a little to add in this debate to what my hon. colleague, the learned Solicitor General, said in explaining the Government attitude and his own personal views earlier in the debate.

I think that one would probably be less than human if one did not detest capital punishment as such. It is, in a sense, a most terrible presumption for one human being to take the life or cause the life of another to be taken. But, Sir, the society of man as it has developed over the ages has not found it possible to dispense entirely with capital punishment—that is to say the collective wisdom of humanity—and I use the word "humanity" advisedly—the collective wisdom of humanity over the years of existence of human life in this world to date has not yet been able to dispense entirely with this ultimate and terrible punishment. It has not been possible to dispense with it because it has been found, human nature being what it is, that capital punishment for the extreme crime is a necessity for the protection of man himself.

[The Minister for Legal Affairs]

There can be, I concede, no question really that the death penalty is a deterrent; it is intended to deter humans, and it is of human nature to be deterred by the thought of being put to death. I am very conscious, as I believe I have already said in this House, of the terrible responsibility that rests upon the Governor primarily and on his advisers secondarily in the most unenviable task which they have to perform all too frequently of deciding whether one or more persons' human lives are to be taken. But again, Sir, the society of man, as it has evolved, imposes responsibilities on society, and on certain members of society to discharge on behalf and in the interests of society, and one must not be deterred from accepting and discharging that responsibility however great, if it is necessary, by the thought that one is deciding the fate of a human being. It is a ghastly responsibility, but if it is necessary to society then it must be faced. I personally know, having had considerable experience both in the courts in murder cases and other types of cases involving capital punishment over a period of many years, as an adviser to the ultimate executive authority in this country and in another country on whether or not the capital sentence in any particular case should be carried out, having had that experience, Sir, I know only too well how exacting that task is. But at the same time I am convinced in my own mind that at any rate for the time being and until human nature develops further we must retain capital punishment. That is my personal view. In the present stage of this country's advance I think it is more important for the protection of society than it may be in more highly developed communities that we should retain this ultimate sanction.

In a sense I think the hon. Member who spoke last made a good point in that he said that the present system was, broadly speaking, as satisfactory as it could be. I am not quite sure what he had in mind but knowing the present system fairly intimately I know what I have in my mind, and that is that when one is dealing in terms of capital punishment one cannot frame a law with that precision which would be necessary to differentiate precisely between the infinitely varying circumstances and considerations of each case. I believe therefore that in so far as one applies capital punishment as one of the ultimate sanctions of the law it is essential that there should be an administrative or executive authority beyond the courts, beyond the strict rules of evidence and the compulsive force of the procedural technicalities of the law, able to collate all possible information, factual and perhaps expert, which bears on the issue in that particular case, and therefore, able to make the final

decision in the fullest possible possession of all the facts and factors which could possibly affect that decision. But that is not to say that the incidence of capital punishment for crime is necessarily right or perfect as it stands in our law today. We have heard already in this debate how the great wisdom of the United Kingdom, having examined this issue at length and in detail, and from all its aspects, and having reached certain conclusions and made certain recommendations, and legislation having followed thereon, Great Britain is still in a state of imperfection in regard to the incidence of capital punishment as a sanction of the law. We may be no more successful than they have been. But certainly we have in our law those defects which were recognized by the Royal Commission and which in Britain they have attempted to repair; that they have not wholly succeeded yet is irrelevant; that they have not succeeded does not necessarily debar us from trying to reach the same objective. I believe that we are right therefore, without in any way committing ourselves, as I would not be prepared to do, to abolition, to examine the law of capital punishment to see whether we can rationalize its incidence; and that, if this Motion is accepted, we will undertake.

I think there are one or two points that, in the few minutes left to me, I might make. I believe that I am right in saying that psychologists have some evidentiary support for the proposition that a man who has once murdered is more likely, in the sense that he is more capable, to commit murder again. I think it is probably true that the majority of men and women in this world are not capable of committing murder as we understand it in the colloquial sense, that is to say, the cold-blooded and deliberate killing of another person. But there is a minority which is capable of it. Of that minority there is a proportion that is only capable of it in extreme circumstances, but I believe that proportion, once having broken free of the restraint and having committed murder, is potentially more likely to commit murder again.

The second point is somewhat related. I did for a number of years in this country sit as Chairman of a Committee which considered the cases of special category criminal lunatics, that is to say, people who had killed, who had been found insane, and who were in prison, detention, and awaiting either death, when it eventually came, because they could not be released, or, if they were found by the psychiatrists to be fully restored to mental stability, release. Now, Sir, for the years that I sat on that Committee I found that, too, a most terrifying responsibility. I think this point has its significance in relation to the issue of abolition. There was—I think there probably still is—one old man who had committed

The Minister for Legal Affairs
 murder, who had not been hanged but who had been eventually released, had committed another murder, and who was in prison again, he had not been hanged. I felt, rightly or wrongly, that in the position which I held as chairman of that Committee, and bearing in mind the interests of the society into which that man had to go if he were released, he could never again be set free. One has got in these issues, which tend to become emotional, to remember that it is not only, in a sense, the individual that has to be considered, the individual convicted murderer. It is not, in a sense, so importantly the victim which he has killed. But it is society generally and his potential future victims of whom he should ever be restored to that society. That means that one faces, if one abolishes the death penalty, in any rate, a very large number of cases, probably the large majority of cases, the prospect of keeping the individual incarcerated for the term of his natural life, in prison until he dies. Now, there are some who may say that that is a more humane punishment of the murderer. There are others who might say that it would be less humane.

I beg to support.

Mr. Deputy Speaker (Mr. Conroy) left the Chair

(Mr. Speaker (Mr. Slade) resumed the Chair)

Mr. arup Moli: I will only speak for a few minutes. Mr. Speaker, Sir, I should like to point out that the Motion, as it has been amended, gave me some thoughts. In the first place, I should like to congratulate the Solicitor-General and also the Minister for Legal Affairs in their lucid and clear-cut explanation as far as law is concerned. I am not well versed in law and technology, nor am I a member of the legal profession, but I am entirely in agreement with certain aspects of what they have stated. Now, Sir, the Motion of the hon. Member, Mover was that, in the interests of humanity, there was a reality that the penalty—the death penalty—should be abolished. But now, Sir, we must take both sides and argue. It is logical that when you consider humanity you must take into consideration the victim as well as the murderer, both being human beings. Our attention has been, of course, focused on the miserable murderer so far as the Mover is concerned and too little attention was given in support of the victim. The dependents and relatives of the murdered man have also suffered. The murderer, of course, is causing a good deal of pain to the relatives and dependents because he is kept for quite a long period without being tried or without being executed, that makes people too sympathetic about it. Now, Sir, in our African tradition, previously, if a man committed murder there were certain

forms of penalties which were different from the Western law, and I am not in a position, Sir, to support them for many reasons. I am a Christian and I know how deep it is for a family which lost one of their relatives, but, Sir, the hon. Mover advanced an argument of who are we to take a life. We might as well say who are we to send people to fight in a war, to kill or murder others. That is a very important and relevant matter. Secondly, if human beings were of one mind, of course they would have restrained themselves and stand as good citizens: who would not commit offences such as might make others destitute and miserable.

Now, Sir, what would be the effect if capital punishment or the death penalty were removed? It would be contrary to what the hon. Mover suggested. It would be a mass killing. The interpretation would be very simple: it would not be as the Minister for Legal Affairs or the hon. Solicitor-General have stated in the definition of the law or the offences committed by the murderer, or the differentiation of specific cases, but taking it in the simplest way, that wherever one commits a murder it is not an offence. Here in Kenya we are in a stage in which such a move is not possible. England has for many centuries been trying to improve the law and yet they have not perfected the law there. Secondly, here in Kenya, we have our own ways of life and I think, even as far as the statements made, by the Solicitor-General were concerned, that it is fair to say that it is very important that a grave matter of this nature is not taken lightly, but it is taken with due care throughout the courts of law. So I am content to say that capital punishment should be retained and I do not think that the hon. Mover would be in a position to refrain or to make his alternative so effective that mischief would be restrained.

Now, Sir, I do not have much more to say except to say that there were a few matters which were suggested by the Minister for Legal Affairs. I think that we have a jury system and I think the time has come when the jury system should be extended to everyone. The time is not ripe to consider abolition of the death penalty when the jury system has not been extended to Africans as well: when the time comes these things will be reviewed and considered in the light of the circumstances of the day. And, therefore, Sir, after listening to the points advanced by various Members who have stood and defended the Motion, I think I can say that I cannot support the hon. Mover's Motion and the Government amendment seems to be very vague. No one knows whether capital punishment is going to be reviewed, to be added above what it is at the moment—or reduced. That is why it is a bit vague.

Mr. Speaker, Sir, I beg to oppose.

Capt. Hamley: Mr. Speaker, Sir, there seem to be so many congratulations flying about this afternoon among hon. Members that emotion has been kept out of this debate, but I do not think that emotion should be entirely kept out of this subject, because there are some, to me at any rate, appalling emotional issues in capital punishment which I think should be brought out. In the first case, Mr. Speaker, there is the impudence of capital punishment. Grotius said "Lordship over human life belongs to God alone" and yet man has usurped that lordship and has the arrogance to put out flames that he cannot relight. Secondly, Sir, there is the bestiality, in my opinion, of capital punishment. A man is shut up over the space of three Sundays in a little room, then in due course led out and slaughtered. In England, Sir, if you did that to a dog, the blast of public opinion would pretty well raze the walls of Jericho. And then there is the bestiality of the other party to the drama: the man who has to go in and pinion a man, and lead him out, and put him on a trap-door, and put a rope round his neck, and pull a lever, and jerk another man into a piece of stinking clay. Emotion cannot be kept out of this.

The next appalling thing to me is the element of chance in the whole thing. If a man could be tried by putting all the irrefutable evidence and all the known circumstances on a punched card and putting it into a machine which said "Live" or "Die", that would be one thing, but the way it is done is far from that and chance, in my opinion, enters into every angle of it. I feel, Sir, that my hon. and learned friends in this Chamber will forgive me and know that I am not shooting at their profession, but go to the top, Sir, and take the judge. Many judges have been known as hanging judges, a fearsome appellation, but cutting out all the frills and all the drama. What does it mean? It means that one judge is more merciful than another and what a tragedy to think that some unfortunate individual picks the merciful one, and another man picks the merciful one. And then there is the jury—there are the 12 good men and true, like you and I. But are they like you and I? Are all men alike? How do we know that a man's life does not depend on one of those people being some sort of a fanatic? How do we know it may not depend on one of them having some sort of a bee in his bonnet, or having just read a book? How do we know in fact, Sir, bringing it down to the farcical, that a man's life may not depend on one of those people having a raging toothache? It is appalling when one thinks of it, Sir. Then you come to the learned counsel, Sir, I do apologize and repeat that I am not getting at my learned legal friends, but we hear of successful criminal lawyers. It is a popular phrase. A criminal lawyer

makes a good income out of being a successful criminal lawyer. What does this mean in the last essence? Does it not mean that he has been more successful than other people in either getting men convicted or in getting men off?

There, again, Sir, what an unfortunate thing that is, what a thought, that the poor wretched man being tried for his life may have been unfortunate and got the least successful lawyer, whereas the successful lawyer is on the other side and has success in getting a man led away and slaughtered. The chance of this happening is appalling, and I will not go through, in the short time I have available to me, the question of appeal courts and people getting off on technicalities, and that sort of thing, but I will come to the people who have my greatest sympathy, and those people are the Governors of people and their advisers; and it comes to the time when they have on their desks a little white card with a name and a date. The Governor in question has to look at it every day and has to think to himself, "Do I get that man turned off or do I not?" He has to give no reason. He listens to all the advice; but the decision is his. He does not have to say, "I am reviving this man because . . .". All he has to say is, "This man dies" or "This man lives." What terrible mental agony to put on any man that he should have to do that, Sir; that is the emotional part of capital punishment; here is the sorrow one has to feel for all sorts of people, for all the people involved in the case, for all the relatives and, not the least, the victim. But, Sir, legislators are not legislators in order to be sorry for people; they are legislators governing by emotion. They are legislators, Sir, to do the greatest good to the greatest number and that is, to govern the Colony and keep down crime.

Therefore, Sir, I welcome very much the Motion as it now stands, that the laws of capital punishment are going to be reviewed. However, Sir, I hope that they are going to be reviewed by people with their feet on the ground and not too much stuck into the volumes of the law. The Attorney-General, very ably indeed, told you some of the results of the deliberations of the Royal Commission. He could have simplified it, I feel, and he could have made it much more vivid. If I may be forgiven a certain amount of repetition, Sir, I would like to tell you about— to give the case of—the law as it now stands in England. A man may deliberately premeditate over months the poisoning—the slow poisoning—of his mother-in-law, if you like. He can go about it absolutely callously, cold-bloodedly, by poison mixed in small quantities, taking his time over it, watching the wretched woman in agony and eventually killing her. But, Sir, he does not hang

[Capt. Hamley]

But take another man, who rushes round the corner of the Motor Mart building. He sees a woman with a bag under her arm and, in snatching it, accidentally knocks the woman on to the curb. She knocks her head on the curbstone and is accidentally killed. Mr. Speaker, he is hanged. Is there any sense in that? There appears to me to be no sense at all. As I was reading myself only a couple of days ago, this law of diminished responsibility is completely unintelligible to almost everyone, including the lawyers.

Sir, I hope when they review this law it will be reviewed by a body of people who will have among them not only the lawyers to look at the purely legal side of the affair, but it will have people there who have got their feet on the ground and will make quite sure that that sort of thing which is, unfortunately perpetrated in England will not be perpetrated here.

Sir, I support the Motion.

The Minister for Information and Broadcasting (Mr. Harris): Mr. Speaker, as has been said before, I did not intend to intervene in this debate. However, I would hate it to go on record undisputed that the law in this country is entirely dependent on a naval gamble, as would seem to appear from the remarks of the hon. Nominated and gallant Captain. Sir, the jurymen with toothache does not convict a murderer. A hanging judge acts after a "guilty" verdict by a jury. That in turn is subject to appeal and ultimately to Her Majesty's prerogative. Listening to the hon. Member, Sir, one would think that from the moment a person commits murder his life or death depends entirely on a series of chances.

Capt. Hamley: Will you give way?

The Minister for Information and Broadcasting (Mr. Harris): I would say, Sir, having dealt for some time with making recommendations to the Governor in this matter, that the chance invariably acts to the advantage of the accused. If there is any element of chance, Sir, then the greatest chance is that the person convicted will not be hanged.

Again, Sir, I say I do not wish to take part in the rights or wrongs of the Motion, but I would not like it to be thought that people are hanged in this country—or any other country—by chance.

Capt. Hamley: Mr. Speaker, Sir, on a point of explanation, I did not say that anybody was hanged by chance. I said there was an element of chance in every murder trial.

Mr. Hassan: Sir, I rise to support the amendment to the Motion. I am not in favour of remov-

ing capital punishment altogether. We know, Sir, that capital punishment was introduced into this world according to our faith by the order of God Almighty. The Old Testament says so; the New Testament says so; and our Koran in which the Muslims believe, 1,300 years ago gave us the same message. That message is "A life for a life". Of course, in this world there are different types of human beings, people with different temperaments. Some people are very nervous; others are phlegmatic; others are liverish. Due to differences in their temperaments, they are liable, some of them, to get excited and in their excitement to take the life of, maybe, their brother, a comrade, a friend, or any other person. Execution is the best deterrent to prevent one person taking another person's life. The Muslim law advocates that in all cases the near and dear relatives of the deceased, or his family or—in the absence of any of those—his community are given the privilege by the Judge of allowing the murderer to compensate them for his life. I was informed last month that in Arabia the son of the King of Arabia very rashly drove a car at excessive speed—and it was found out during the case that it was deliberate—and he killed a young man on the road. The Judge, according to the law, ordered hanging. This went for confirmation to the king, and he confirmed it. The mother of that young boy—he was not married—on hearing that, appeals, saying that she would like to have compensation because her only son who used to help her towards her maintenance was dead and compensation would help her, and that she would like to forgive the young boy. The King ordered that if she was not influenced by anybody because he happened to be his son, she might do so. However, he ordered his son, in addition to the compensation, the maximum compensation, he must pay the mother, to go and remain at her house for three years to do the work her son used to do to help her, Sir, that is the sort of justice that is done in some of the Muslim countries.

I must say that it is not done in Pakistan yet. Pakistan is following the same law that we have in this country. British law has been there for the best part of a hundred years and people are so used to it that the authorities have found that the administration of that law has not caused any disaster in the country; and that an immediate change of this law, unless a complete change to the Muslim law were introduced, is not advisable.

At the moment, Sir, in this country the circumstances are not such that we should consider the removal of capital punishment in any way. We have people at different stages and with different standards of development. We still have people among us in this country who do not care much for the lives of their comrades and others, and

[Mr. Hassan]

although there are some very highly civilized people in this country, we should never think of the removal of capital punishment here. Yet it is necessary to add one thing. It is quite evident in the amended Motion that the Council urges the Government to review the law of capital punishment according to the opportunities that arise. If any person deliberately and intentionally takes life, there should be no such thing as any mercy for that gentleman. He must give his life for the life he has taken intentionally. The present law in the country to deal with accidents during thefts, and so on, which are not intentional, is being very justly administered in this country to the satisfaction of all.

I would like, in concluding, Sir, to support the amended Motion.

Mr. Kirpal Singh Sagoo: Mr. Speaker, Sir, "Crime does not pay!" That, Sir, is the title of a series of pictures produced from the actual files of Scotland Yard, where the murderer after a small slip has without exception, invariably wound up on the gallows. Those pictures, Sir, along with other propaganda material to overcome this increase in crime, have been screened in theatres and cinemas throughout Britain. Yet, Sir, the appalling situation is that crime has been on the increase, especially in times of prosperity. All this leads me to believe, Sir, that crime does in fact pay.

For instance, Sir, I can readily understand the case of a wealthy mother-in-law who mentions her daughter in her will and that turns out to be a tremendous temptation for the son-in-law. Again, Sir, there is the case of highway and bank robberies with violence, the objective again being the money at the other end. The third sort, Sir, are those horrid assassins who can be hired for a lump sum.

Sir, those are conditions which prevail in a sophisticated society. Let us return to our country of Kenya. I think, Sir, the situation can be summed up in one question only, which I would like to ask both sides of this House in all sincerity. Bearing in mind the highly unsophisticated society in which we live, can anyone say with all honesty if the abolition of capital punishment would lead to an increase in capital crime or a decrease? If, Sir, the answer is that it will lead to an increase in capital crime, then, Sir, we cannot advocate its abolition. If we did, the Government would, firstly, be accused of having abdicated its right of exercising capital punishment; and, secondly, it would be accused of not safeguarding the life and security of its subjects.

If, on the other hand, Sir, some crystal-gazer can give me the answer that the abolition of

capital punishment would lead to a decrease in capital crime, then, Sir, I would like to join the abolitionists and appeal for the capital penalty to be done away with.

However, Sir, there is one thing that we cannot do. We cannot deal with abolition on a trial and error basis. We cannot, for instance, suggest even for a moment that as from 1st January, 1961, for the next five years we shall abolish the death penalty and see how it works. That in itself, Sir, would be fatal.

The hon. Member of the amendment, whom I would like to congratulate on a most reasoned speech, has referred time and again to the Royal Commission, Sir, the findings of that Commission are largely based upon evidence received in England. We cannot, therefore, strictly speaking, adopt that as a guide to regulate our penalties in this country. May I, therefore, most humbly suggest—and I feel that it is within the purview of the Motion as amended—since the Motion calls for a review—that it might be possible to institute a commission of enquiry to go into the whole system of capital punishment and its modification. That may take some time, Sir, but I am convinced in my own mind that the day to abolish capital punishment in this country will be the day when every citizen of this country is made to realize that "Crime does not pay".

Mr. Speaker, Sir, I beg to support the amendment.

Mr. Usher: Mr. Speaker, Sir, I rise to support the amendment very shortly, and very largely because I was quite unable to understand what appeared to be qualifying words at the end of the original Motion. I refer to the words "in the interest of humanity" and I failed to understand what that meant. I think perhaps what was meant was "in conformity with present day humanitarianism" which is a very different thing. As we know, Sir, there are views held by people interested in penological matters which perhaps do not accord with the old views. I believe that it is a common view nowadays that the best thing to do with an abominable little teddy boy is to send him to hospital and let him feel the influence of a cool hand on his fevered brow and all will be well. There are others who do not hold that view.

I was, if I may say so, in such complete agreement with what was said by the hon. and learned Solicitor-General—apart from his exposition of the law, and I have no qualification to comment upon that—that I have very little comment to make upon what he said, except that I think he did say earlier on that the death penalty was not reformatory. I think perhaps he said that the

[Mr. Uboi] Royal Commission had noted that it was in no sense reformatory, it made me think, Sir, and I still wonder, I do not wish to introduce any note of levity into a subject of this nature, and I share the horror which has been expressed by hon. Members at this terrible end for any man. However, Sir, it has been said that if you know you are going to hang tomorrow you are apt to concentrate extraordinarily. We must remember, Sir, that in many countries in which the death penalty has been abolished there has been a growing lack of faith in any future life. Of course then, Sir, this life becomes everything and to deprive a man of it is to deprive him of everything. Most of us, Sir, I believe, do not hold any such views but we do know that the time before the execution whether it be long or short, may not matter. Betwixt the air and the ground there is mercy, Sir. In that period, there is mercy; and the gates of mercy are never closed upon mankind.

The Minister for Housing, Common Services, Probation and Approved Schools (Mr. Amalamba): Mr. Speaker, Sir, first of all I would like to congratulate you on your appointment. I was away at the time and I hope that we shall have very good relationships with you in your chair as Speaker, as well as with your Deputy Speaker, Sir.

On this question of capital punishment, I feel that it is a very emotional subject which must be treated seriously. A murderer is a murderer whether he is a university graduate or a thug or a rogue, a husband or even a wife. Murder is murder, whatever the quality of the person. It is very easy for one to say in threatening language, or using threatening words, "I will kill you!" If behind his thinking there is nothing that will shake his senses; if he did not remember that if he killed he would be hanged, it is most probable that he could do the killing on the spot. It is therefore important to know what the reaction of the individual is when the mention of killing is made, in a party or even at an entertainment, in a group at some entertainment, or even while travelling.

In Kenya I think we have got to consider the individuals who fall victims to these murderers. Tribally, there were conditions, tribal laws, whereby a murderer was punished in this or that way in one or other of the tribes in Kenya. Blood money, if there was a relative involved, was paid if it was accidental. There were, very few cases where there was no revenge from the party or the family that had been affected. They pretended either to be hunting or something like that and somehow they tried to get revenge. I think that would come back if we decided to abolish the death sentence. People would try to carry on

revengeing themselves, even if the actual murderer was in gaol.

The other point, Sir, is that if a killer realized that there was nothing more to it than going to gaol, I think he would make the best job of the killing and if he did one murder he would try to commit as many as possible so that his 15 or 20 years imprisonment would be worth it. I do not know how you could stop that, but by the provision of capital punishment.

As you know, once blood has been spilt, it very easily goes to one's head and one tends to commit more. One finds oneself doing it almost automatically. Those who have been in the army know what happens after you have put your bayonet through an enemy. You get so mad and excited that you want to kill everyone you see. It is the same with murderers. I do not know how we could stop that, if they did not have back in their minds the feeling that they would also hang.

The feeling about or the interpretation of imprisonment in Kenya by a large number of people, particularly by Africans, differs. Some of our people who go to prison do not regard it as a punishment at all. It is a place where you go and are well fed; you have a good place to sleep; and you are very well looked after. It is only a matter of time before you come out again. Keeping a person—a murderer—in prison will therefore not mean very much.

Some people may perhaps think that hanging is not a deterrent. That is true for some convicted murderers, but to other intending murderers it is a real deterrent. You think twice when you know that the consequence will be loss of life. We only have one life. There is no garage, no hospital, where one could buy or renew life; it is valuable. There are cases where people may feel like exercising their manhood, their strength, trying their guns or their *simis* on poor victims, people who cannot defend themselves very well. They are mostly those who live in remote areas. If murderers knew that the consequences would not be very much they would attack these lonely individuals putting fear into the public, which would not be to the good of the future of this country.

I feel, Sir, that the review of capital punishment should not bring about the abolition of capital punishment for the reasons I have given. The Governor in Council has these cases brought to him, and with very good advice, he decides whether to commute the sentence or whether the sentence should be carried out. Therefore, the unfortunate accidental murderers are taken care of by the Governor assisted by the Capital Cases Committee.

[The Minister for Housing, Common Services, Probation and Approved Schools]

It is important to note that life on this earth now is becoming more and more expensive and more and more valuable. Therefore proper care must be taken to guard against unscrupulous gentlemen—or murderers who may find it so easy to do away with other people's lives.

I would oppose the abolition of capital punishment on those grounds but would support the possibilities of review. There may be things which can be changed or modified without actually abolishing capital punishment.

Mr. Nyagah: Mr. Speaker, Sir, before I become very destructive of the Government I must thank them for allowing everybody here in this House, including Members on the Government side, to express their real feelings on this Motion.

I must also take this opportunity to thank the public for the interest they have shown of late in the Press on this particular subject.

The hon. and noble Seconder of this Motion tried to place the responsibility of recommending who should come out and when he should come out of prison on those people in daily contact with the convicted man. I have no quarrel with that and I would gladly agree with him on that one.

The hon. Solicitor-General gave us a very staggering high percentage of numbers executed in Kenya, but the hon. Seconder raised a point, which ought to be noted here, that the figure is exactly ten times greater than that in the period he referred to in Great Britain.

It is very strange, Sir, but human beings are queer and peculiar. They try to justify their actions. Human beings as such teach and preach that murder is bad but we justify ourselves when killing people in battles, in emergencies, in wars, and what-have-you. We teach that murder is bad, but concerning legally taking away of human life, Sir, we do not say anything. The Government has not said anything about the miscarriage, or the possibility of the miscarriage, of justice, so far as I could see.

I thank the Government for the exposition by the Solicitor-General and by the Minister for Legal Affairs on what happens in the last days of the man in the condemned cell before his fate is decided one way or the other. I would have quite a lot of points to pick up concerning the remarks of the hon. Solicitor-General. I can only believe and hope that he was only defending the Government line, rather than that that was what he believes.

He raised the point about killing the *daka* owner, and his assistants, and so on. That is an assumption which has been carried through by

most speakers, but they have found no substance at all to support such an assumption.

It has been said that capital punishment must be kept and that other countries have kept it. I would say that other countries have not kept it, except for so far, Britain, France and a few other countries which we know today as great, are concerned. But for how long are we going to go on with this? Will it be for ever and a day, as a nation going blindly, and as a country remaining conservative? The hon. Minister for Finance, who supported him, failed to show why he supported this contention and why he supported the amendment: He did not say whether the Government was going to reduce the list of offences or to increase them; but this is just a review, which really means nothing, as it is just one afternoon spent talking things over.

My hon. and learned friend, Mr. Travadi, has got one fear based on race, social status, or culture, and there were others like him. I said, when I moved the Motion, that this should be taken out of consideration. It has been proved that this is not the primary factor which encourages people to murder others. He talks of premeditated murder, and, in his own words, the man goes without any punishment whatsoever. In moving the Motion I did not say that the man was going to go unpunished. All that I said was that the issue was between the death penalty and another alternative form of punishment. Perhaps he did not quite understand that when I was moving the Motion.

My hon. friend, the Specially Elected Member, Mr. Ngome, seemed to invite me to return once again to my old profession of schoolmastering. I would like to sit with him and have a word with him as to what the duties of the policemen and the judiciary are to the best of my knowledge. He seems to advocate that they should be dismissed, the law offices closed, and the courts done away with. I have not suggested that at all. He also seems to ignore, or perhaps overlook, the Christian doctrine of forgiveness. There are many other things. He said that you cannot forgive a man who is not a Christian like yourself. "Forgive your enemies!" I believe, is one of the precepts which is so well known, and which is a cardinal point of the Christian faith. He too, like many others, made an unfortunate assumption as to what would happen if the death penalty were to be done away with.

The hon. Member for Mombasa Area, Mr. Khamisi, is not here also. I have nothing to say except to thank him for his love of clinging to an outmoded and conservative outlook on life. He would like to have "As it was in the beginning is now..." and whether he would continue to finish that prayer, "and ever shall be." I do not

[Mr. Nyagah] know. If I were to take him in the spirit in which he has opposed this Motion this afternoon, Sir, I would see him withdrawing all that he has said here about the ten-mile coastal strip and perhaps retaining the Lyttelton Constitution and all the other constitutions we have been opposed to. Mistakenly, Sir, he thinks that jail could be a happy place. If anybody thinks that jail could be a happy place then he must be abnormal. I can tell him that the other civilized countries in Europe and in Asia have since abandoned the death sentence. I am glad that the Minister for Legal Affairs agrees that the death penalty is a ghastly responsibility on those deciding what the fate of the man should be. He talks about human nature, which has got to be developed. I would say that human nature today is fully developed. They can put things in the air, controlled from the ground, which go right round the earth. The mind is so developed that one can only expect the nature of the human being to be conditioned to the present-day development. 1960 wonders and discoveries are enough to support this. We should not imagine that human nature has lagged behind the human mind in these fields.

He also said that there were few potential murderers or criminals. I would say that the few murderers should just, as well be put away in prison, away from society. Sir, without any cause for society to worry. What I think should worry society is the taking away of the life of any one of its members who may be unfortunate or who are often unfortunate because of the state of their minds, and find themselves committing murder.

My hon. friend Mr. arap Moi, who is also away, opposed the Motion but seems to advocate that if anything at all should be done to a murderer it should be done in a hurry so that you get it all over. He considers it to be mercy. I do not. It is unfortunate that both he and the Solicitor-General have dragged in the little point I tried to keep out, namely, the responsibility in war and in emergencies. The Minister for Housing did likewise. I wanted to keep that completely out of the picture, but they have brought it in; and there it is. If I were to judge the wars and the emergencies then, Sir, I would say that it is unfortunate that we should take away life by guns, bombs or whatever method we use.

He also suggested that I should be responsible for suggesting an effective alternative. However, it is not for me to be responsible for seeing that the alternative is an effective one, or is used. I would suggest, and go further, that prison reforms and public opinion will be the judge and the promoter of this alternative suggestion.

I fully support the words of the hon. and gallant Member, Capt. Hamley.

I did not understand what the hon. Minister without Portfolio, Mr. Harris, had to say, or why he feels it an advantage to retain the death penalty. I think he said something about the recommendations being to the advantage of the condemned man. If he is always at an advantage, then why retain the death penalty. Why not do away with it so that he can have the full advantage?

The hon. Dr. Hassan quotes, wrongly, I believe, the New Testament, when he says, "A life for a life." If this is so, then I believe it must be out of context. I see no reason why Muslim law should not be modernized just as the Jewish mosaic law was modernized, and I was thrilled and interested to hear what that State in Arabia has done.

Mr. Hassan: It needs no modernization until the end of the world.

Mr. Nyagah: He went on to say that those who take life intentionally deserve no mercy.

The hon. Mr. Sagoo has something to say, but I think he was rather unfortunate in his assumption about what would happen. He assumes that an increase of crime of this nature would be the outcome, Sir, if the death penalty were to be removed. I can assure him that I do not think that the Government could be accused of abandoning its responsibility; rather, this Motion was simply asking the Government to try to formalize and put right what is considered by some people to be morally wrong.

I was interested in the remarks of the hon. Mr. Usher, Sir, when he said, towards the end of his speech, that the gates of mercy are never closed, Sir, on human beings. I also believe that the quality of mercy is never strained. But what we have done this evening is that we have lacked "Daniels".

The hon. Minister for Housing suggested that this punishment has deterrent effects. He suggested the wrong places where this should be discussed—social occasions, parties, and so on—but I would support him if he says that blood price should be paid as an alternative. That is probably more tolerable than putting the rope round anybody's neck.

He also said that imprisonment has a different meaning in Kenya. One wonders whether it will remain so. Are we not envisaging any prison reforms and public opinion growing to the standard where people will abhor going to prison?

This Motion, Sir, was just trying to ask us to remove the mental tension that is often experienced by all the parties concerned in the administration of this law.

[Mr. Nyagah]

Mr. Speaker, if possible, I would ask to be allowed just a few minutes in which to finish. I will not be very long.

The Speaker (Mr. Slade): You have just two minutes.

Mr. Nyagah: Yes, Sir.

I would just say this. I would remind hon. Members that it is not by the destruction of sacred life, and it is not by exacting revenge that we can hope to generate virtuous conduct in those who are entrusted to our care.

I would like to end by saying this. I must confess that I am neither surprised nor dismayed by the outcome of this debate or the Government amendment. What I feared might happen has happened. My aim was to try to introduce one good remedy for this existing error, but regrettably, Sir, I am forced to imitate the concluding words of a famous British Parliamentarian who, finding himself in a rather similar state to the one I am in this afternoon, at the conclusion of a similar debate, said something like this: "No resistance; no vote this afternoon, shall prevent my again appealing to the good sense and good feeling of the legislature and of this country. If I survive to live yet another night of this Council I will renew this Motion for repealing the punishment of death, and whatever may be my fate, Mr. Speaker, I do hope that the seed which is scattered has not fallen upon stony ground."

The question was put and carried.

ADJOURNMENT

The Speaker (Mr. Slade): That brings us to the end of business, and I adjourn Council until 2.45 p.m. tomorrow, Wednesday, 7th December.

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

KENYA GOVERNMENT ARCHIVES
PHOTOGRAPHIC SERVICE

SECTION 7

CONTINUED ON
REEL No.

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KENYA GOVERNMENT ARCHIVES
PHOTOGRAPHIC SERVICE

SECTION 7.

END

OF REEL NO.....26.....