



— COLONY AND PROTECTORATE OF KENYA

LEGISLATIVE COUNCIL  
DEBATES

OFFICIAL REPORT

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11th COUNCIL INAUGURATED  
OCTOBER, 1956

VOLUME LXXXI

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1959

THIRD SESSION

(Continued)

21st July, 1959, to 29th July, 1959

# List of Members of the Legislative Council

## *Speaker:*

THE HON. SIR FERDINAND CAVENDISH-BENTINCK, K.B.E., C.M.G., M.C.

## *Chairman of Committees:*

\*THE HON. D. W. CONROY, O.B.E., T.D., Q.C.

## *Ministers:*

THE ACTING CHIEF SECRETARY (THE HON. E. N. GRIFFITH-JONES, C.M.G., Q.C.).

THE TEMPORARY MINISTER FOR LEGAL AFFAIRS (THE HON. D. W. CONROY, O.B.E., T.D., Q.C.).

THE MINISTER FOR FINANCE AND DEVELOPMENT (THE HON. E. A. VASEY, K.B.E., C.M.G.).

THE MINISTER FOR AFRICAN AFFAIRS (THE HON. C. M. JOHNSTON, C.M.G.).

THE MINISTER FOR AGRICULTURE, ANIMAL HUSBANDRY AND WATER RESOURCES (LT.-COL. THE HON. B. R. MCKENZIE, D.S.O., D.F.C.).

\*THE MINISTER FOR INTERNAL SECURITY AND DEFENCE (THE HON. J. W. CUSACK, C.M.G., O.B.E.).

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (THE HON. W. B. HAVELOCK).

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (THE HON. W. A. C. MATHIESON, C.M.G., M.B.E.).

THE MINISTER FOR FOREST DEVELOPMENT, GAME AND FISHERIES (THE HON. D. L. BLUNT, C.M.G.).

THE MINISTER FOR COMMERCE AND INDUSTRY (THE HON. A. HOPE-JONES, C.M.G.).

THE MINISTER FOR WORKS (THE HON. I. E. NATHOO).

THE EUROPEAN MINISTER WITHOUT PORTFOLIO (THE HON. N. F. HARRIS).

THE ASIAN MINISTER WITHOUT PORTFOLIO (THE HON. C. B. MADAN, Q.C.).

THE MINISTER FOR TOURISM AND COMMON SERVICES (THE HON. W. E. CROSSKILL).

THE MINISTER FOR HOUSING (THE HON. M. S. AMALEMBA).

## *Assistant Ministers:*

ASSISTANT MINISTER FOR EDUCATION, LABOUR AND LANDS (THE HON. WANYUTU WAWERU, M.B.E.).

ASSISTANT MINISTER FOR FOREST DEVELOPMENT, GAME AND FISHERIES (THE HON. SHEIKH MOHAMED ALI SAID EL-MANDRY).

## *Constituency Elected Members*

### *European—*

THE HON. R. S. ALEXANDER (Nairobi West).

THE HON. F. W. G. BOMPAS, E.D. (Kiambu).

GROUP CAPT. THE HON. L. R. BRIGGS (Mount Kenya).

THE HON. S. V. COOK (Coast).

†THE HON. W. E. CROSSKILL (Mau).

MAJOR THE HON. F. W. J. DAY (Aberdare).

MAJOR THE HON. B. P. ROBERTS (Rift Valley).

†THE HON. N. F. HARRIS (Nairobi South).

\*THE HON. E. J. HOLLISTER (Temporary) (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).

THE HON. MRS. A. R. SHAW (Nyanza).

THE HON. C. G. USHER, M.C. (Mombasa).

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

African—

THE HON. F. J. KIAMISI (Mombasa Area).  
 THE HON. D. I. KIAMBA (Machakos).  
 THE HON. J. G. KIAND, PH.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. MUSHI (Kitui).  
 THE HON. M. MUIIRO (Nyanza North).  
 THE HON. R. G. NGALA (Coast Rural).  
 THE HON. J. J. M. NYAGAH (Nyeri and Embu).  
 THE HON. A. ODINGA ODINGA (Nyanza Central).  
 THE HON. L. G. OODUA (Nyanza South).  
 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 MAHFOOD S. MACKAWI.  
 THE HON. SHARIF M. A. SHATRY.

*Specially Elected Members:*

THE HON. M. BLUNDELL, M.B.E.  
 †THE HON. W. B. HAVELOCK.  
 †LT.-COL. THE HON. B. R. MCKENZIE, D.S.O., D.F.C.  
 THE HON. H. SLADE.  
 †THE HON. M. S. AMALEMBA.  
 THE HON. J. M. MUCIURA.  
 THE HON. J. M. NDOMIE.  
 †THE HON. WANYUTU WAWERU, M.B.E.  
 †THE HON. SHEIKH MOHAMMED ALI SAID EL-MANDRY.  
 †THE HON. I. E. WATROO.  
 †THE HON. C. B. MADAN, Q.C.  
 THE HON. N. S. MANGAT, Q.C.

*Nominated Members:*

THE HON. K. V. ADALJA.  
 †THE HON. C. F. ATKINS.  
 †THE HON. D. L. BLUNT, C.M.G.  
 THE HON. I. H. BROWN (Acting Director of Agriculture).  
 †THE HON. T. C. COLCHESTER, C.M.G.  
 THE HON. M. H. COWIE, E.D. (Director of the Royal National Parks).  
 THE HON. AHMED FARAH, B.E.M. (Northern Province).  
 THE HON. MRS. J. T. GECAGA.  
 CHIEF. THE HON. A. B. GOORD, D.S.C., R.I.N. (Rtd.).  
 CAPT. THE HON. C. V. G. HANLEY, O.B.E.; R.N.  
 THE HON. H. G. S. HARRISON, M.B.E.  
 THE HON. SHEIKH MBRAK ALI HINAWAY, O.B.E.  
 †THE HON. K. L. HUNTER.  
 THE HON. A. H. ISMAIL, M.R.C.S.  
 COL. THE HON. H. R. JACKMAN.  
 THE HON. J. K. KEBASO.  
 THE HON. J. A. R. KING, A.F.C.

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

*Nominated Members—(Contd.)*

THE HON. R. E. LUYT, D.C.M.,  
 THE HON. J. A. W. S. MACKENZIE, C.M.G. (Secretary to the Treasury).  
 THE HON. BALDEV SAHAI MOHINDRA, O.B.E.  
 THE HON. W. OLE NITAMIA.  
 THE HON. ABDUL HUSSEIN NURMOHAMMED.  
 THE HON. JONATHAN NZIOKA.  
 THE HON. KIRPAL SINGH SAGOO.  
 THE HON. SHERIFF A. SALIM.  
 THE HON. P. H. SMITH.  
 THE HON. G. A. TYSON, C.M.G.  
 †THE HON. E. A. VASEY, K.B.E., C.M.G.  
 †THE HON. A. J. WALKER, M.D., M.R.C.P. (Director of Medical Services).  
 THE HON. A. M. F. WEBB (Acting Solicitor General).  
 †THE HON. C. H. WILLIAMS C.M.G., O.B.E.  
 THE HON. THE EARL OF PORTSMOUTH.  
 THE HON. SIR ALFRED VINCENT.

*Acting Clerk of the Council:*

H. THOMAS

*Sergeant-at-Arms:*

MAJOR M. G. ELLIOT

*Assistant Sergeant-at-Arms:*

J. H. KIRK

*Reporters:*

D. BUCK

MISS J. M. ATKINS

MISS M. P. GUNTER

*Hansard Editor:*

MRS. J. FRYER

*\*Deputy Speaker and Chairman of Committees.*

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

- †THE HON. J. W. CUSACK, C.M.G., O.B.E., relinquished duties as Minister for Internal Security and Defence as from 27th July, 1959, pending retirement. The Hon. A. C. C. Swann appointed as Minister for Internal Security and Defence as from 28th July, 1959.
- †THE HON. E. J. HOLLISTER, Temporary Member for Nairobi North as from 21st July, 1959.
- †THE HON. C. F. ATKINS, Temporary Nominated Member as from 21st July, 1959.
- †THE HON. T. C. COLCHESTER, C.M.G., Temporary Nominated Member as from 21st July, 1959.
- †THE HON. K. L. HUNTER, Temporary Nominated Member as from 21st July, 1959.
- †THE HON. R. E. LUYT, D.C.M., Temporary Nominated Member, as from 21st July, 1959.
- †THE HON. C. H. WILLIAMS, C.M.G., O.B.E., Temporary Nominated Member as from 21st July, 1959.



COLONY AND PROTECTORATE OF KENYA

LEGISLATIVE COUNCIL DEBATES

ELEVENTH COUNCIL

THIRD SESSION (Continued)

Tuesday, 21st July, 1959

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

Kenneth Leggatt Hunter.  
Richard Edmonds Luyt.  
Cyril Herbert Williams.

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

COMMUNICATIONS FROM THE  
CHAIR

PRAYERS

ADMINISTRATION OF OATH

The Oath of Allegiance was admini-  
stered to the following Members:—

Charles Farquhar Atkins.  
Trevor Charles Colchester.  
Edward Jackson Hollister.

ASSENT TO BILLS

THE SPEAKER (Sir Ferdinand Caven-  
dish-Bentinck): Hon. Members, I am  
directed to inform you that His Excel-  
lency the Governor has assented to the  
following Bills, which were passed by the  
Legislative Council in April/May/June  
this year:—

|  | Passed<br>3rd Reading | Date of<br>Assent |
|--|-----------------------|-------------------|
| No. 10—The Personal Tax (Amendment) Ordinance, 1959 ..   | 21-4-59               | 30-4-59           |
| No. 11—The Income Tax (Rates and Allowances) Ordinance,<br>1959 ..                                     | 21-4-59               | 30-4-59           |
| No. 12—The Affiliation Ordinance, 1959 ..  | 28-4-59               | 13-5-59           |
| No. 13—The Hospital Treatment Relief (European) (Amend-<br>ment and Validation) Ordinance, 1959 ..     | 22-5-59               | 9-6-59            |
| No. 14—The Appropriation Ordinance, 1959 ..  | 9-6-59                | 13-6-59           |
| No. 15—The Consolidated Fund Ordinance, 1959 ..  | 10-6-59               | 13-6-59           |
| No. 16—The Customs Tariff (Amendment) Ordinance, 1959 ..   | 16-6-59               | 22-6-59           |
| No. 17—The Excise Tariff (Amendment) Ordinance, 1959 ..  | 11-6-59               | 30-6-59           |
| No. 18—The Income Tax (Rates and Allowances) (Surcharge)<br>(Validation and Repeat) Ordinance, 1959 .. | 11-6-59               | 30-6-59           |
| No. 19—The Registration of Documents (Amendment)<br>Ordinance, 1959 ..                                 | 11-6-59               | 30-6-59           |
| No. 20—The Tribal Police (Amendment) Ordinance, 1959 ..  | 11-6-59               | 30-6-59           |
| No. 21—The Accountants (Designations) (Amendment)<br>Ordinance, 1959 ..                                | 11-6-59               | 30-6-59           |
| No. 22—The Criminal Procedure (Amendment) Ordinance,<br>1959 ..  | 9-6-59                | 1-7-59            |
| No. 23—The Registration of Titles (Amendment) Ordinance,<br>1959 ..                                    | 16-6-59               | 1-7-59            |
| No. 24—The Land Titles (Amendment) Ordinance, 1959 ..  | 16-6-59               | 1-7-59            |
| No. 25—The Land (Perpetual Succession) (Amendment)<br>Ordinance, 1959 ..                               | 16-6-59               | 1-7-59            |
| No. 26—The Scrap Metal Ordinance, 1959 ..  | 18-6-59               | 1-7-59            |
| No. 28—The Land Control (Native Lands) Ordinance, 1959 ..  | 29-5-59               | 1-7-59            |

## REPORT FROM THE COUNCIL OF STATE.

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): Hon. Members will remember that on Friday, 29th May, 1959, I informed them that I had received from the Council of State a Preliminary Statement in regard to the Legislative Council (Constituency Elected Members) Bill.

I have now received a further communication from the Chairman of the Council of State which, in accordance with the requirements of Standing Order 95 (a), subsection (2), I convey to the House. It is as follows:—

"Mr. Speaker, I have the honour to inform you that at its meeting in public held on 24th June, 1959, the Council of State resolved to lay before the Legislative Council, under the provisions of subparagraph (a) of paragraph (2) of section 56 of the Kenya (Constitution) Order in Council, 1958, a report on the Legislative Council (Constituency Elected Members) Bill, 1959, which was published in the *Kenya Gazette Supplement No. 25* (Bills No. 10) of 14th April, 1959. The report, of which two copies are enclosed, sets out the reasons the Council of State's objections to what are in its opinion the differentiating nature and effect of certain provisions of the Bill. The report also contains recommendations for the amendment of the Bill which, if adopted, would, in the opinion of the Council of State, remove the grounds of its objections."

The report was duly circulated to Members on 25th June, 1959.

## PAPERS LAID

The following Papers were laid on the Table:—

Department of Information Annual Report, 1958.  
(BY THE ACTING CHIEF SECRETARY (Mr. Griffith-Jones))

Development Estimates for the year 1959/60, as passed by this Council on 4th June, 1959.

1959/60 Estimates of Expenditure of the Colony and Protectorate of Kenya for the year ending 30th

June, 1960, as passed by this Council on 4th June, 1959.

The Annual Report 1958—Land and Agricultural Bank of Kenya.

The Agricultural Land Rehabilitation Fund, Balance Sheet as at 31st December, 1958.

(BY THE MINISTER FOR FINANCE AND DEVELOPMENT (Mr. Vasey))

The Forest (General) Rules, 1958.

The Forest (General) (Amendment) Rules, 1958.

The Wild Animals Protection (Dealers Permit) Regulations, 1958.

The Forest (General) (Amendment) Rules, 1959.

The Forest (General) (Amendment) (No. 2) Rules, 1959.

The Forest Areas (Controlled Entry) (Amendment) Rules, 1959.

The Forest (General) (Amendment) (No. 3) Rules, 1959.

(BY THE MINISTER FOR FINANCE AND DEVELOPMENT (Mr. Vasey) on behalf of the Minister for Forest Development, Game and Fisheries (Mr. Blunt))

Transfer of Powers (Variation) (No. 2) Draft Order.

Transfer of Powers (Variation) (No. 3) Draft Order.

(BY THE MINISTER FOR INTERNAL SECURITY AND DEFENCE (Mr. Cusack) on behalf of the Minister for African Affairs (Mr. Johnston))

Kenya Regiment Territorial Force Annual Report, 1958.

(BY THE MINISTER FOR INTERNAL SECURITY AND DEFENCE (Mr. Cusack))

Transfer of Powers (Agriculture) Order, 1959.

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

The African District Councils (Suspension of Members) (Amendment) Rules, 1959.

The African District Councils (Staff) Rules, 1959.

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

Higher Education Loans Fund Annual Report for 1958.

Survey of Kenya Administration Report, 1958.

The Education (Scale of fees in African Grant-aided Schools) (Amendment) Regulations, 1959.

The Education (Health and Safety) (Amendment) Regulations, 1959.

(BY THE TEMPORARY MINISTER FOR LEGAL AFFAIRS (Mr. Conroy) on behalf of the Minister for Education, Labour and Lands (Mr. Mathieson))

The Weights and Measures Department Annual Report, 1958.

The Kenya Survey of Industrial Production, 1957.

(BY THE MINISTER FOR COMMERCE AND INDUSTRY (Mr. Hope-Jones))

## ORAL ANSWERS TO QUESTIONS

QUESTION No. 144

MR. KHAMISI asked the Acting Chief Secretary:—

(1) At what expense to Kenya Government is Mr. Michael Blundell visiting the United Kingdom?

(2) Is the visit sponsored by the Kenya Government, and if so in what capacity and on what specific duties is he engaged?

THE ACTING CHIEF SECRETARY (Mr. Griffith-Jones): (1) Mr. Blundell went to the United Kingdom on Kenya Government business in his capacity as Minister for Agriculture, and visited Geneva on his return journey to the Colony also on Kenya Government business. The Government of Kenya therefore bore the cost of his return air fair amounting to Sh. 7,131. While in the United Kingdom Mr. Blundell, with Government's approval, took 26 days of the accrued leave to which he is entitled by virtue of his service as Minister for Agriculture.

(2) For that period of his absence during which he was engaged on Kenya Government business (namely 14 days out of a total absence of 40 days) the Government has paid him the sum of Sh. 1,400, in respect of his expenses, in accordance with Government regulations.

The Kenya Government business to which Mr. Blundell attended during his absence related exclusively to matters within the Portfolio of Agriculture.

## QUESTION No. 159

MR. NYAGAH asked the Minister for African Affairs:—

(a) Is it a fact that the members of the Tribal Police Force, Kenya Police Force and Kenya Reserve Police Force are exempt from paying personal tax—if so, why?

(b) Will the same facilities be extended to the Tribal Police Reserve Force when reconstituted or set up?

(c) By how much do these exemptions (from paying personal tax) affect the general revenue of Kenya?

THE MINISTER FOR INTERNAL SECURITY AND DEFENCE (Mr. Cusack, on behalf of the Minister for African Affairs): (a) Africans recruited before 1st January, 1958, whilst serving as police officers in the Kenya Police and as Tribal Police Officers are exempt from personal tax. Officers of the Kenya Police Reserve are not exempt.

Africans serving in the Kenya Police and Tribal Police were exempt from poll tax under the African Poll Tax Ordinance (now repealed), and this privilege was part of their conditions on enlistment. Consequently the Government had to honour this undertaking when the Personal Tax Ordinance was introduced on 1st January, 1958.

(b) No.

(c) By about £20,000.

## QUESTION No. 161

MR. ALEXANDER asked the Minister for Finance and Development what is the approximate amount of taxable profits in respect of either increases in livestock values or of livestock trading in the Masai Reserve?

THE MINISTER FOR FINANCE AND DEVELOPMENT (Mr. Vasey): I regret that the information is not available.

## QUESTION No. 174

MR. OLE TIPIS (on behalf of Mr. arap Moi) asked the Minister for Forest Development, Game and Fisheries if the Government prepared to lay on the Table of this Council a White Paper on the Game Policy Committee Report?

**THE MINISTER FOR FINANCE AND DEVELOPMENT** (Mr. Vasey on behalf of the Minister for Forest Development, Game and Fisheries): No Sir, The general and financial implications of the Report are still under examination, but the report is to be reconsidered by the Government in the near future.

## BILLS

## FIRST READINGS

*The Companies Bill*

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

*The Registration of Documents (Photostatic Copies) (Repeal) Bill*

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

*The Money-Lenders (Amendment) Bill*

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

*The Price Control (Amendment) Bill*

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

*The Rent Restriction Bill*

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

*The Cerents Finance Corporation (Amendment) Bill*

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

*The Loans (United Kingdom Government) Bill*

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

*The African Courts (Amendment) Bill*

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

*The Protected Areas (Amendment) Bill*

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

*The Municipalities (Amendment and Miscellaneous Provisions) Bill*

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

## MOTION

## SUSPENSION OF STANDING ORDER NO. 83

**THE ACTING CHIEF SECRETARY** (Mr. Griffith-Jones): Mr. Speaker, I beg to move that under the provisions of Standing Order 32 (c) Standing Order No. 83 be suspended in so far as it is necessary to enable Council to proceed today with the Second Readings of the Loans (United Kingdom Government) Bill, the Companies Bill and the Rent Restriction Bill in that order.

Mr. Speaker, the Sessional Committee felt, and their representations were placed before you, Sir, that rather than waste a parliamentary day by reason of the restriction of business to the purely formal business which we have so far taken, it would be to the convenience of all if we could proceed with the Second Readings of the three Bills mentioned in the Motion.

Mr. Speaker, on behalf of the House I am grateful to you for your concurrence, and I beg to move.

**THE TEMPORARY MINISTER FOR LEGAL AFFAIRS** (Mr. Controy) seconded.

**THE SPEAKER** (Sir Ferdinand Caven-dish-Bentick): Before putting this Motion I would again ask the leaders of the House and of the Sessional Committee to arrange business in such a way so that it does not entail the suspension of Standing Order No. 83. Strictly speaking, we would like to give Members a chance of hearing the First Readings of Bills taking place one day and the Second Readings taking place in due course, and not to rush the First and Second Readings through in one day. However, I have agreed to these three Bills being taken today.

*Question proposed.*

The question was put and carried.

## BILLS

## SECOND READINGS

*The Loans (United Kingdom Government) Bill*

**THE MINISTER FOR FINANCE AND DEVELOPMENT** (Mr. Vasey): Mr. Speaker, I beg to move that the Loans (United Kingdom Government) Bill (Bill No. 48) be now read a Second Time.

Sir, as a result of discussions which have taken place at various Commonwealth conferences, including Montreal, and the discussions between dependent territories and Her Majesty's Government in the United Kingdom, the United Kingdom Government has agreed that indeed it will now participate in direct Government to Government loans between the United Kingdom Government and the Governments of dependent territories. The United Kingdom Government has recently passed legislation in the House of Commons to authorize these loans to be made when any other sources of finance are not available to the territory. This means indeed that the United Kingdom Government will act as the lender of last resort, and because it is very likely that in the not too distant future the Government of Kenya will have to seek from the United Kingdom Government loans to enable it to carry forward the Development Programme it has become necessary for this Bill to be placed before the Council and to be passed by this Council if money is to be made available.

Now, Sir, hon. Members will notice that the terms of section 3 state: "Any loan . . . shall be repaid by equated annual instalments . . . of principal and interest so that such loan shall be repaid within the period for which the same was granted." They will also notice in the Objects and Reasons that this money shall be borrowed on such terms and conditions as may be agreed.

Sir, I do not think it necessary to delay the House any longer. I therefore beg to move.

Mr. Webb seconded.

*Question proposed.*

**MR. ALEXANDER**: Sir, as the Minister has said, this is borrowing of last resort, and I am sure that I express the pleasure

of all of us on this side of the House when I say how pleased we are that Her Majesty's Government has agreed to this somewhat unorthodox form of capital advancement to colonial territories.

It is apparent from this that Her Majesty's Government have realized, and I trust will go on realizing, that through the normal channels of borrowing, relying on Britain alone, we will never be able to uplift this territory economically at the pace that is necessary.

In the Memorandum of Objects and Reasons it does not clearly say what the Minister has told us, that these loans will only come to us when other sources of finance are not available. That being so, Mr. Speaker, I would like to dwell for a few moments on some of the disadvantages of this type of borrowing and to draw the attention once again, as I have tried to do at other times in this House, to other means of borrowing that are available to us.

It is quite clear from section 3 of the Bill that the repayment of these loans is to be by way of the annuity method, which is by an annual equated sum to take care of the repayment of capital and the payment of interest. It is interesting just to compare this system with the system that is normally applied by the Government on a sinking fund method and remind ourselves how much more this method in respect of these Exchequer loans will cost. I have taken as an example a borrowing of £1,000,000, and the difference per annum as between the sinking fund method and this annuity method is a figure of approximately £5,000 per annum per £1,000,000 extra under the annuity method. Sir, over 30 years, and the suggestion in the Paper presented to the House of Commons, Her Majesty's Stationery Office, Command 672, is that the normal arrangement for these Exchequer loans will be repayment over 30 years. An extra amount of £5,000 per year for 30 years on £1,000,000 will be an added cost of £150,000. If we borrow, Mr. Speaker, the full amount that this Bill authorizes, that is, £12,000,000, we will, over a period of 30 years, pay out an additional figure of approximately £1,800,000—nearly £2,000,000. These figures have been based on Government's normal procedure of applying a 1 per cent

[Mr. Alexander.] possible and that it would be sound sinking fund and I have taken interest on the sinking fund method at 6½ per cent. Therefore I have loaded the disadvantage of the sinking fund method as high as possible. It is reckoned that currently it would not be possible for our Government to borrow in the normal way in the City of London much under 6½ per cent. That is why I have used that figure. In fact, it is reasonably certain that our Government is being asked to pay something like that figure which has driven it to resort to these Exchequer loans. In respect to the annuity calculation I have taken an interest rate of 6 per cent because again the Command Paper, presented to the House of Commons, talked about a rate of 1 per cent above the normal lending rate of Government loans in Britain: at the moment, or rather on 28th March, 1959, the Public Works Loans Board rate to British authorities for loans not exceeding five years was 5½ per cent, and adding 1 per cent on to that makes the 6 per cent which I have used for purposes of this calculation on an annuity basis over 30 years.

I turn now, Mr. Speaker, in relation to these other sources of borrowing referred to in the Memorandum of Objects and Reasons, to question, to ask the Minister when he replies to tell us whether it has been possible to negotiate with the Colonial Office in respect of the backing for the Currency Board investments by local securities. You may remember, Mr. Speaker, when I raised this several months ago, at least a year ago, I pressed the point that in fact the proportion as between Sterling investments and our own securities could be increased. At that time, I think, the proportion held in East African securities was about 10 per cent. I notice, in the *Official Gazette* of 7th July, 1959, that the East African Currency Board Statement at 31st December, 1958, shows that the securities in the Currency Reserve Fund are made up, in respect of nominal value, nearly 536,000,000 of Sterling investments and just over 29,000,000 of East African investments... that investment of some 445,000,000 of which the East African securities total 29,000,000... other words, a proportion of 20 per cent of the total currency reserve fund in securities is invested in East African stocks. I do believe, Mr. Speaker, that it is quite

possible and that it would be sound finance for this proportion to be pushed up to at least 50 per cent and I see no reason at all, still being sound banking and sound finance, as to why the amount in East African investments should not be raised to some 60 per cent. Therefore it would mean on a total of £45,000,000, if we took about 60 per cent, that some £25,000,000 could be invested in East African securities. That is another £15,000,000 over what is at present invested in these territories to back our currency. You will see from this, Mr. Speaker, if we had resorted to more finance of this nature that we would not have to call upon these Exchequer loans at this stage, and I do urge upon the Government to press this matter relentlessly with the Colonial Office. In fact, I think when I spoke on this subject before that I quoted the present Economic Adviser to the Uganda Government as saying that a figure of 50 per cent in our local securities was certainly sound and wise, and the Minister will no doubt remember my quotation at that particular time.

From that, Mr. Speaker, I turn to the other sources that could be available to us if we were, again, prepared to press Her Majesty's Government with greater energy, and that is, Sir, I refer to the possibility of loans from friendly foreign governments. When I spoke about this last I did quote the case of the Belgian Congo which was able to borrow some £5,000,000 in 1956 at 4 per cent, and I know that the Minister did tell us the last time we had a look at this question that he had found this proposition—I think he had enquired in West Germany—far too expensive. But I do wish to tell the House, Mr. Speaker, that I checked on this subject in London as recently as the end of May, this year, and my information, and I believe it to be entirely reliable, is that considerable progress has been made with, particularly, Switzerland and West Germany, as to the possibility of lending in our colonial territories. In fact, I understand that these countries are now even requiring a guarantee for all time. They are merely asking for a guarantee if the status of any territory for which Britain is responsible should change.

Naturally what they are looking at is the possibility of independence being granted to colonial territories with a

[Mr. Alexander.] change, of course, in the security and at that point they ask that Her Majesty's Government should if need be uphold any pledge in respect of borrowing from these Governments. But it is interesting to note on this—and this I take again from this Command Paper in connexion with these Exchequer loans—paragraph 16 says this: "No colony or former colony has ever defaulted on the payment of interests or the repayment of capital in respect of any of its loans." That is indeed a magnificent record to the credit of the British Government and having maintained that record over very many years I am sure that foreign countries have no doubt that Britain will continue to maintain it. However, they do wish this safety-belt and I am sure that if greater enthusiasm was put into this subject and greater pressure was placed upon Her Majesty's Government that we would find another source of capital and this, Mr. Speaker, goes back to what I said right at the very beginning. As much as we admire what Britain has done for us in the way of capital, as much as we all would like Britain alone to go on advancing our capital, nevertheless to be realistic we must appreciate that the economic uplift of these territories, the economic uplift of our 6,000,000 people, will never be achieved on the basis of the amount of loan capital that we are able to have at the present stage.

Mr. Speaker I beg to support.

THE MINISTER FOR FINANCE AND DEVELOPMENT (Mr. Vasey): Mr. Speaker, Sir, I have listened with some considerable interest to the arguments put forward by the hon. Member for Nairobi West. He will, of course, forgive me if I do not agree particularly with, for instance, his arithmetic. The Command Paper has merely suggested terms and periods; it has not laid them down as the Bill itself makes perfectly clear these are upon terms and conditions which will be agreed.

Now, Sir, let us take the figures of the hon. Member. Let us suppose however that Her Majesty's Government says that this loan will be repaid over 20 years on an equated basis. The annual burden falling upon the Kenya Government and taxpayer would then be heavier in the annual sense but in fact in the

overall sense the money would be much cheaper. Even given the same rates of interest. And so when the hon. Member speaks about the cost of these loans—a 1 per cent sinking fund depends, of course, upon one's ability to convert at least once or twice within the same forty-year period. It means indeed that one goes to the market, one borrows for 20 or 25 years and at the end of the 25 years the 1 per cent sinking fund has perhaps produced a reserve, shall we say that we have been fortunate, of, say, 40/43 per cent. But at that point we have in fact to convert in the light of the then existing market conditions in order to carry the loan of the 30 per cent for, shall we say, another 20 years. So that the hon. Member will forgive me if I say that the matter is not one of simple arithmetic only and that indeed I do not agree with his arithmetic in this respect. It is very easy to get up and say "this" will cost "that" much more. Indeed, there is no evidence that the overall cost of this money will be more and there is every evidence that the overall cost of the loan is distinct from the annual cost of the loan will be less even if the United Kingdom were to insist upon a 20-year period. That, I think, is the first point.

Now, Sir, the next point was the question of the currency. The hon. Member will forgive me if I do not agree with him again on this. There is this assumption that one of the easy ways to finance your development is an "incessuous" method of finance. Sir, my mind takes me back to the experience of Australia which, indeed, carried out for some period of the time this incessuous method of finance and then when it wanted to go to the London market found itself in great difficulty—because the London market in fact said, "You were not prepared to use us as borrowers when things were good. Now you come to us when things are bad in the market—and were much harder against them."

They, Sir, now are borrowing on general terms but, Sir, we must remember that we are a dependent territory. We must remember that we are not like Australia, and these other countries. Our currency cannot stand in the world market—on its own feet. Our currency stands on one particular point and that is the guarantee of the United Kingdom Government

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that if you take a Sh. 20 note from East Africa and present it in London you will get Sh. 20. And because we are tied by Act and by guarantee of the United Kingdom Government to the £ Sterling our £ today commands exactly the same rate in hard currency as the British £ sterling.

Sir, you cannot expect the United Kingdom Government, the British Chancellor of the Exchequer or the Secretary of State for the Colonies to undertake that type of guarantee and standing and indulge in anything in the nature of risky finance with our currency and I must repeat again, Sir, that—we must remember that the Currency Board, the currency of East Africa, is the responsibility of the Secretary of State. Now, he has on his Currency Board a representative of the Bank of England who deals particularly with these matters and I have no doubt at all that he receives the highest and soundest advice in finance from that particular advisor. We have pressed over the years for the easing of the old position where it was only possible to invest a very small amount of Currency Board funds in our own particular enterprises. And we have indeed over the past—because this, of course, was started as a policy; we started to press for this in about 1953—over the past years from 1956/57 until 1958/59 we have in fact had £4,000,000 of currency funds invested in our local loans and added to that, Sir, we have been able to overcome a great deal of our short-term finance difficulties in this country; whether it is the Cereals Finance Corporation dealing with the whole of our Cereals Finance structure in many respects or whether it is the Kenya Government Bills which have to be met to provide short-term finance for us, by the fact that the Currency Board has agreed to stand as a discount house for the tune of £500,000. So that Currency Board has gone a very long way to meet us and they consider and the Secretary of State considers that there is a limit to which a finance of this kind suggested by the hon. Member for Nairobi West which has a direct inflationary tendency can be carried out. And, Sir, I think with all due respect, that when we seek

the advice of the Bank of England representative and that advice is given to us we should be embarking on a very risky process if we ignore it.

So, Sir, I would say that in the negotiations over the past six and a half years since we first made this suggestion from the Kenya Government we have been met with very sympathetic treatment by the Currency Board. But the Currency Board has to bear in mind the overall responsibility it bears.

Now, Sir, the hon. Member's other point was a question of borrowing from other sources. He quoted, Sir, the Belgian Congo. I did point out last time that there was a very great difference, Sir, between the relationship the Belgian Congo Government bore to the Metropolitan country and the relationship which a territory like ours bears to the territorial Government of the United Kingdom. In the Belgian Congo, at any rate until recent pronouncements, there has been a very definite subordinate position directly controlled by the Home Government. Therefore, a loan that was issued to the Belgian Congo was, in fact, a direct loan to the Belgian Government because the administration was under their direct control. That is not, Sir, the position with us. With us the United Kingdom Government has the ultimate responsibility and if indeed, Sir, a Colonial territory, has never defaulted on its interest or its capital repayments, let us bear in mind the case of Newfoundland where indeed the British Government had to step in directly to the rescue. Let us bear in mind those number of other territories from time to time who have received grant-in-aid which in itself prevents the "defaulting" on interest. So that we must bear, I think, that point in mind, Sir, and remember again that the guarantee we are asking for is a guarantee from the United Kingdom Government and strangely enough if you are going to ask somebody to guarantee the repayment of what you have borrowed and the interest on it they insist upon doing this in their own way. Sir, we have time and again suggested to them—and this is no secret—that we should, in fact, perhaps be able to borrow money from this source or that source if they would guarantee us to the lender. And the United Kingdom Government says, "But look, why should we

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in fact guarantee you in this respect at what we know" and I am quoting the United Kingdom Government—"will be a much dearer rate and where we shall have to face the guarantee against exchange in currency difficulties, we would much rather, under those circumstances, lend you direct at the rate which the British Government security commands in interest on the market in the United Kingdom with a slight margin added for the cost of administration and direct lending." And, Sir, I am afraid when you are borrowing money you have in fact to listen to what the lender says because he happens to be in the position of lending you the money and making the guarantee. That is the position with Her Majesty's Government.

Sir, I quote from the speech that I made in 1957 in Delhi and I think that, it still stands: "Now, Sir, I heard one delegate from the United Kingdom say what indeed has been said to me, that they would welcome investment from other sources than the United Kingdom entering these areas. That is all right for the big States. The Finance Minister of India can go to Western Germany, he can go to Washington and place his case before these people on the size, on the stability and scope of his own resources. But small people like myself representative of a small State cannot go into these other sources of our own free will and volition and if we assess the scope of what we desire and the security we can offer it is insufficient. In a case like ours when we were dealing with the World Bank and it advanced money to the three combined territories of East Africa for the development of the railways, we have had to have a guarantee from the United Kingdom Government before the World Bank would advance money for what any business man would regard as a very sound economic proposition."

And that, Sir, is the situation; that we cannot, in fact, hope to borrow from these people without a United Kingdom Government guarantee and the United Kingdom Government prefers this method of direct lending by Exchequer loans rather than pledging itself—to what? Pledging itself first of all to sustain the credit of the Colony and accept the ultimate responsibility and, secondly,

to accept the ultimate responsibility for a period after a territory has gained independence and the United Kingdom has no longer any control or direction of its economy or its funds.

Sir, I believe the United Kingdom Government is indeed very realistic in the attitude it has taken up as long as they carry the ultimate responsibility.

Now, Sir, only one point more that the hon. Member made was the question of the amount of capital development needed to uplift the economy of our people. This, Sir, will be probably one of the last times I shall speak from this position as Minister for Finance but let me say this: I listened some time ago to the hon. Member suggesting that we should follow the example of New Zealand and borrow £1,000,000,000 in four years. What, Sir, has been the position of New Zealand since then? They have had to fight very hard to borrow money on the United Kingdom market in order to sustain their currency. They borrowed £10,000,000 if my memory is right and they had very great difficulty in raising that and the underwriters had to carry part of it. Sir, we must keep a sense of reality in this—and those hon. gentlemen who keep crying loudly about the level of taxation should remember this: If this year we borrow—as we shall have to—whether it be on the London market, whether it be on the local market or whether it be Exchequer loans, £6,000,000 if we get the money at 6 per cent and if we put a 1 per cent sinking fund on one side—and that is 7 per cent—and if we borrow £5,000,000 to carry out the present limited programme of development, we shall have added to next year's Budget £430,000 current expenditure which will have to be met by taxation. And at the end of three years of borrowing £21,000,000 our Budget will automatically without any increase in the general servicing side from the point of view of current expenditure and purely from the point of view of servicing the loan will have increased by £1,250,000. Now, if you are spending that money on economic projects which can develop immediately and within two years generate extra wealth from which taxation can be drawn, then you can go ahead. But if you are spending it on long term project like agriculture in many cases, like education—things which do



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not bring any natural wealth to the country for a period of five, seven or ten years—the taxpayer has today to meet that loan. Sir, I hope at any rate as long as I am in this position and, indeed, I hope, when I leave this position that the Government will always bear in mind what the burden of recurrent expenditures will be, because it is easy to borrow but one has to remember that with nations as with individuals, when you borrow you pay interest and you meet the capital repayment and you can only do that if your income is lifted to the level that it is possible to meet it without undue strain. The alternative of a free-borrowing programme of a kind the hon. Member has suggested is what? It is a continually increasing level of taxation in order to meet the additional burden during the interim period when no extra wealth is generated from the expenditure of the money. The hon. Member will forgive me if I say that I do not agree, therefore, with a great deal of this thesis of borrow freely in the "hope", presumably, that the day after tomorrow you may be able to meet your bills.

Sir, this Colony has progressed very greatly in its economic situation over the past decade. It has done it because its development programme and its expenditure has always been related to our capacity to meet the annual bill without inflicting a penal level of taxation which any other policy would have laid upon us.

Sir, I beg to move.

Question proposed.

The Question was put and carried.

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

#### The Companies Bill

Order for Second Reading read.

Mr. WENN: Mr. Speaker, I beg to move that the Companies Bill, 1959, be now read a Second Time.

This large and rather complicated-looking piece of legislation can, I think, Sir, quite fairly be considered as non-contentious certainly from the point of view of race or politics. It is odd to reflect that it was only in the 1860s that

the principle of limited liability was firmly established and it has been said by cynics that it has been the only invention ever made by lawyers. Whether it was a good invention may be questioned, but the purpose of this Bill is to make it a better invention.

The size of this Bill, Sir, may intimidate hon. Members, and it is, I think, true to say that it is the largest Bill which has ever been presented to this Council. Indeed, Sir, I am a little apprehensive that its mere size and the apparent complexity of the matter with which it deals in very great detail may have the effect of dividing the House, though not, I trust, in the technical sense of that term. There are a number of hon. Members who, by reason of their professional or business interests, will be intensely interested in this Bill and will probably be better armed at all points to discuss it than I; but they, I fancy, may be in a minority. The majority of hon. Members may feel that this is a highly specialized subject in which they have no, or little, interest. If that stillitude should exist, Mr. Speaker, I would deplore it; for this Bill must, in fact, concern, I imagine, the majority of the Members of this House. There can surely be very few hon. Members who have no shares in any company, public or private, and to all shareholders this Bill is of the greatest importance. Indeed, it is their charter.

It is important, Mr. Speaker, for the following reasons: company law proceeds on the democratic principle of control of a company by its members, the shareholders. But capital has tended of recent years to become so dispersed amongst numbers of small shareholders that their control over the company has very often become illusory and the relationship between an ownership and management has tended to become more and more shadowy. Secondly, it will, I think, be apparent to all hon. Members that the company has, since before the beginning of the last war, increasingly been replaced by the chain or group of companies. The existing Law, the Companies Ordinance, recognizes the company but to a very large extent it ignores the larger entity which is very often the real unit in modern enterprise. This fact also, the growth of groups or chains of companies, has still further

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divorced management from ownership. This Bill has, therefore, two principal purposes. First, to restore or to strengthen the relationship between the owners of the company and those who manage it—the shareholders and the directors; and secondly, to bring fully within the ambit of the law regulating companies the modern system of holding and subsidiary companies.

Mr. Speaker, I must say something about the genesis of this Bill: company law in Kenya has, always, for obvious and cogent reasons, followed English law. The present Ordinance, which was enacted in 1933, is based upon the English Companies Act, 1929; and this Bill in turn follows the Act of 1948. The difficulties which I have mentioned were, of course, more acute and more real in England and the problem was how to reconcile the law with modern practices without placing irksome fetters on legitimate business. To put the problem in a perhaps more immediately personal way, it was how to afford the utmost liberty to people to do what they like with their own property, and to embark upon commercial adventures, and yet to give a proper measure of protection to individuals from the activities of unscrupulous persons who have, at times, abused this freedom for their own ends. To resolve this problem, Mr. Speaker, a committee was set up in England in 1943 presided over by Mr. Justice Cohen, as he then was—he is now Lord Cohen: this committee was fully representative of all aspects of the matter. The committee presented a unanimous report in 1945 and an amending Act of 1947 carried into effect the recommendations made by that committee. The Companies Act, 1948, was actually a consolidation Act, which brought together the amending Act of 1947 and the previous law on the subject.

In addition to making certain major amendments of the law as recommended by the Cohen Committee, the opportunity was naturally taken to make a number of minor improvements which experience had shown to be necessary or desirable. The Bill now before this House reproduces the English Act of 1948, having, of course, regard to the circumstances of Kenya.

Sir, this Bill has its particular origin in a Bill drafted by the Registrar of Companies in Uganda in 1954. It is obviously in the highest degree desirable that the legislation on this subject in the three East African territories should be similar and, indeed, if possible identical. Nairobi is the commercial capital of East Africa and any butcher, baker or candlestick maker on a large scale who wishes to extend his activities to East Africa will almost certainly commence business in Nairobi and form here a company, which may or may not be a subsidiary or an associate of some other Kenya or English company. If, in due course, the business extends to the neighbouring territories, it may become desirable to form a further company or companies in Uganda or Tanganyika, and I think, Mr. Speaker, that the advantages which everybody concerned—shareholders, directors, secretaries and accountants—will derive from identical laws are obvious.

Indeed, Sir, the sequence of events which I have indicated prompts the obvious suggestion that company legislation, and perhaps certain other related commercial legislation, should be enacted on an East African basis. There are a number of practical difficulties which would have to be faced and overcome if this suggestion were to be implemented. For example, if only one Registry of Companies existed in East Africa, it would be vastly inconvenient. It is perhaps bad enough that there is only one Registry in Kenya. The Registry of Companies is examining every day by scores of people who want to find out the nature and financial position of companies, particularly whether they have issued debentures or otherwise charged their property to secure loans. There would be a very real problem of providing duplicate registries and of keeping them up to date, and they could never be immediately up to date. This proposal for interterritorial legislation has been made: it is no fault of Kenya's that it has not yet found acceptance. That being the position, Mr. Speaker, we must do the next best thing, and that is to enact territorial laws which are identical, certainly in essentials and in as far as possible in detail, and even in that wording. This Bill, Sir, conforms to that principle. In order to secure, as far as possible, this identical legislation in the three territories and, at the same time, to

[Mr. Webb] allow all persons and professional bodies and associations which have an interest in company legislation the greatest possible opportunity of considering such legislation in draft, copies of the Uganda Bill were circulated to the Federation of Chambers of Commerce and Industry of East Africa, the Association of Accountants in East Africa, the Law Society of Kenya, the Nairobi Chamber of Commerce, the Kenya Association of the Chartered Institute of Secretaries and the Corporation of Secretaries, Limited. Most of these bodies, and a special committee which was appointed for that purpose by the Uganda Government to examine the Bill, considered it very closely and made numerous suggestions. All these recommendations were considered at a conference attended by the Registrars of Companies and the representatives of the Law Officers of the three territories, and this Bill is the outcome of these deliberations. In some cases, Sir, the recommendations of those who considered this Bill were conflicting and it was necessary to decide which should be followed. In this regard the guiding principle has been to follow as closely as possible the English Act. Almost always we have followed the exact wording of the English Act, in order that those who have to operate the law and those who have to advise upon it may have the advantage of the English textbooks on the 1948 Act, and that both they and the courts may enjoy the benefit of the decisions of the English courts on provisions identically worded. Although many suggestions were made for the improvement of the Bill, and even for certain innovations, we had not thought it desirable to depart from the principles of English law nor even from its wording as far as possible, since so many companies in East Africa are either associated with or are subsidiaries of companies registered in England. Further, of course, it is obvious that by far the greater part of our professional men are trained with reference to English law and procedure. Consequently, Mr. Speaker, those responsible for preparing this Bill felt that in regard to public companies any departure from English law required to be justified by the weightiest reasons and, except in one respect, these were not forthcoming. The exception is in respect of private companies.

There is, Sir, another aspect of this matter which I think is of importance. Hon. Members will, I am sure, agree that the Kenya investor should be induced to retain his money here rather than seek an outlet for it in English companies, and indeed that the English investor should not feel in any way inhibited in investing his money in Kenya companies. If the laws regulating company matters are to any extent different, then the investor will clearly tend to place his money where his position as a shareholder is stronger and better protected. And, at the moment, it is true to say that the shareholder does enjoy a greater measure of influence and of security under the 1948 Act in England. This, Sir, is another reason for bringing the two codes into line, so that company law in both England and Kenya may inspire equal confidence in investors.

From adherence to these principles, with which I do not believe that any hon. Member will quarrel, there flows a further important consideration. I have considered, Sir, very carefully what we had better do with regard to the committee stage of this Bill. Some hon. Members, I have no doubt, will have it in mind that it should be committed to a Select Committee. I do not think, Sir, that that would work. I apprehend that the same considerations which have led me to this conclusion, inspired those responsible for the Tanganyika Bill to adopt the course, which I shall propose. If it is accepted, Mr. Speaker, that our Bill should be as nearly identical as possible with the Uganda Ordinance and the Tanganyika Bill, it will, I think, be clear that any amendments, particularly of substance, but even of more than formal rewording, would have to be agreed with the various competent authorities in the other territories. To undertake this sort of exercise would not fail to delay the enactment of this Bill, perhaps for a considerable period, and leave to the imagination of hon. Members a picture of suggestion and counter-suggestion and further argument as to whether this or that particular alternative is believed or not.

I believe that the commercial community is anxious that this Bill should be enacted and brought into operation as soon as possible. I am aware, Sir, that a number of professional bodies are studying this Bill at the moment, and that

[Mr. Webb] they will have observations to make about it, and that many of these will be most valuable and perhaps even provocative. It therefore seems to me, Sir, that the practical way to deal with this Bill is to give it a Second Reading now and complete that stage, but to defer the Committee stage until the House next meets, and in the interval to consider whatever may be said in this debate, and the suggestions now made as well as those which may be received from professional associations and the public, and certain proposals which have been made in Tanganyika. We will then endeavour to secure agreement on any proposals which are acceptable in principle, and we will propose the necessary amendments in Committee.

The position about the other territorial laws is that Uganda has already enacted its Ordinance. The Tanganyika Bill has been read a Second Time and stands committed to a Committee of the whole House, but it is not expected to go to Committee until perhaps September or October.

This, Mr. Speaker, will not, of course, be the end of the matter. We all recognize that this Bill—I do not think it is different from any other Bill—is not perfect, and even as it stands is capable of improvement. The matter goes deeper, Sir. A great deal of attention is now being given to company law throughout the Commonwealth, and a number of new ideas are being canvassed and brought up to date. I have in mind such proposals as the issue of shares, of no par value, and the issue of capital as stock in the first instance. Many of these ideas, and some of the suggestions which may be made in respect of this Bill, will have to be examined carefully and critically and will have to be considered by the other territories if we are to continue to march in step. I imagine that in a year or 18 months it will be possible to introduce an amending Bill to incorporate those matters which have been agreed, and I believe, in future, from time to time, further amendments will prove to be desirable in the light of experience. But, the advantage to be derived from having identical legislation will be lost if we deny ourselves ample time for consideration and agreement.

I do not think, Mr. Speaker, that this House will be in any way abrogating its legislative sovereignty by adopting this procedure, but rather it will be recognizing its primary duty of dealing in a practical way with a real problem, and not dissipating its energy by striving after theoretical perfection. Although Government is often accused of not paying attention to the views of hon. Members, here, through this House, and if I may change my metaphor, perhaps this Bill is the biggest bludgeon we have ever had. I can assure hon. Members that that sort of treatment is not what we intend.

I hope, Sir, that hon. Members will appreciate that the course of action which I have suggested is a real attempt to reconcile various considerations and interests to achieve, as far as is ever possible in this imperfect world, the best of all possible worlds.

I fear, Sir, that I have already spoken for some time, but the importance of this Bill is my justification. I do, however, hasten to assure hon. Members that I am not going to go through its 410 clauses and 10 schedules one by one. My hon. and learned friend, the Acting Chief Secretary, has in his substantive capacity, provided a very full memorandum of objects and reasons, and I am sure that I can proceed on the assumption, and that hon. Members would wish me to proceed on the assumption, that they have read, marked, learned and inwardly digested that memorandum. But I think I should draw very brief attention to certain provisions which seek to strengthen or amend the law, and to mention the one respect in which we have consciously and deliberately departed from the English law.

This, Sir, as I have already said, is in connexion with private companies, and I think I need do no more than refer hon. Members to the memorandum of objects and reasons. This is the one case in which we have thought that a greater independence of attitude was justified, and we have departed from the complicated and not altogether satisfactory English system to a simpler system which is based upon the law of Southern Rhodesia.

In order to secure, Sir, what I may call "financial democracy", and I am sure

[Mr. Webb] rights of unqualified persons who have audited companies' accounts at any time before the Bill was published have, of course, been preserved.

Directors, Sir, are the subject of certain new provisions in this Bill, designed to ensure that the conduct of the affairs of a company by its directors should not only be above reproach, but should be seen to be above reproach, if I may borrow a phrase from another context. Clauses 190 to 197 will prevent or inhibit certain abuses, and I might mention in particular clause 196, which should prevent any undesirable action by directors in the matter of dealings in the shares of their own companies.

Another point, Sir, concerns powers of investigation. The Supreme Court has long had power to appoint inspectors on an application by shareholders. The complaint has been in the past, not that this power has been exercised too frequently or too arbitrarily, but that it has not been used often enough. If this power is to exist, then it is obviously desirable that departmental action should be swift and effective, and the existing powers have been found to be too weak and too restrictive. It has been difficult to get the required number of shareholders to initiate an enquiry, and the existing provisions do not take into account subsidiary companies, which has proved to be a major omission. These defects are remedied by clauses 165 to 176, and in future it will be possible for 200 members of a company, even though they do not hold one-tenth of the issued shares, to apply for an investigation. Moreover, an investigation can always be ordered by the court on the application of the Registrar of Companies if he reports circumstances of maladministration or of oppression of the members.

Part III of the Bill, Sir, considerably strengthens the law with regard to prospectuses, allotments and offers for sale. The position of experts in relation to prospectuses is made plain, and a definite liability is placed on them. There is a modification also in regard to "placings". The line between these and what are technically known as "offers for sale" is often very narrow, and offers to the public is subject to the prospectus provisions of the Bill, but shares may be placed with a broker or issuing house,

which then offers them to its clients. Clause 57 remedies this defect by defining more precisely the meaning of what is an offer.

Mr. Speaker, I think I have given the House as much information as is necessary about the Bill at this stage. It has already received much initial consideration, and the Government will welcome any further suggestions for its improvement. I commend the Bill to the House as one which will be of great benefit to the investor and to the business community of Kenya, and as one which will enhance the high reputation for honesty and fair dealing which British commerce holds and has held throughout the world.

[Mr. Webb] will meet with a ready welcome, the Bill makes it easier for shareholders to influence and control their managements. Clauses 133 to 142 provide for increasing the length of notice of companies' meetings, for allowing members to circulate notices and submit resolutions, for extending the right to demand a poll and for facilitating voting by proxy. But clearly the best safeguard, Sir, is to ensure that the fullest possible information is given to shareholders through the statements of a company's accounts, and even although the individual shareholder may not always fully understand these very complicated documents, their secrets should be revealed to the expert reader. If adequate information is forthcoming, then informed opinion will be brought to bear on managements. Consequently clause 149, which deals with the contents and form of accounts, is of very great importance. Clause 211 is also relevant in this context. This was a new provision in the 1947 English Act, and it gives the Supreme Court very wide powers in cases where a minority shareholder feels it is being oppressed. Under that clause the court can take action without necessarily winding up a company, which is not always in the best interests even of the minority.

Clause 150 to 154 deal with holding and subsidiary companies and group accounts. In future all holding companies will, subject to certain exceptions, be required to furnish consolidated accounts for themselves and their subsidiaries, so as to disclose a true and fair view of the position of the group as a whole. The requirements of the Sixth Schedule in this regard may look extremely complicated, but I believe, Sir, that they are not really in practice unduly elaborate or unduly onerous. They are, in fact, based on common sense and on standards which are already adopted by the best companies.

In future also, companies will have to file their profit and loss accounts as well as their balance sheets.

Another provision, Sir, which has been made for the benefit of shareholders is that the auditors of companies are, for the first time required to have a professional qualification, and their powers and their position *vis-à-vis* their companies have been strengthened. The

pass, would hardly be able to write books of account in English, and that is a very great hardship not only for the new companies in the future, but even for the present companies. I therefore suggest that these two suggestions should be borne in mind before they are finally enacted into the law.

I beg to support.

Mr. TYSON: Mr. Speaker, Sir, for many years the commercial community have urged that legislation of this type should be on an East African basis rather than on a territorial basis. In fact, I think when the High Commission was originally established and the White Papers 191, I think it was, and 210 were published, legislation of this type was included in what I think we called "the scheduled services".

This proposed Companies Bill is a very good example. I think, of the importance of legislation of this type being on an East African basis. What has happened? Already we see that in Uganda the legislation is already part of the law. Here we are handling it in this Council—I think so far as Tanganyika is concerned they are about to have the Second Reading of a somewhat identical Ordinance—but when one realizes that in these days business in these territories is conducted on an East African basis and not on a territorial basis, it does, I think, emphasize the importance of having legislation of this type on an interterritorial basis rather than as we have it now on this territorial basis.

I appreciate that we have gone too far to make any change, but I would like to emphasize as far as the commercial community is concerned they still maintain that we have got to regard the East African territories as one big internal market, and business has got to be conducted by legislation such as this Companies Ordinance not on this parochial system that we still seem to be proceeding with.

I support the Bill, Sir.

Mr. NOBLE: Mr. Speaker, I should like to support the Bill. At the same time, Mr. Speaker, I should like the Bill as the hon. Member, this side has suggested, to go to a select committee. I should think, Mr. Speaker, if the Bill is sent to a select committee the Africans

Mr. BECHGAARD seconded.

Question proposed.

MR. TRAVADI: Mr. Speaker, Sir, I have a couple of suggestions with regard to sections 147 and 178. Before I deal with that I would recommend this House to submit this Bill to a select committee instead of having it in the whole Council, as it would give the commercial community an opportunity to study and digest and make any recommendations which may be supported by all the communities.

Now coming to section 147, which lays down that every company shall cause to be kept in the English language proper books of account, and those companies who come into being after the commencement of this Ordinance will have to keep English books as it is laid down there, but there is another provision which says that the existing companies who have not kept books in English will be given two years to convert them into, or to start afresh in, the English language, and in relation to this very thing section 178 says that each public company should have a secretary compulsorily. Now, Sir, in my experience as far as the business community goes, it is very difficult for the companies operating in the rural areas, quite apart from the towns and cities, to get a secretary there and keep their books of account by qualified persons in English. That is the difficulty which the hon. Member should bear in mind. Qualified persons, even at the level, I should say, with Senior Cambridge Examination

pass, would hardly be able to write books of account in English, and that is a very great hardship not only for the new companies in the future, but even for the present companies. I therefore suggest that these two suggestions should be borne in mind before they are finally enacted into the law.

[Mr. Ngonje] territories periodical amendments in the light of experience, I believe, Sir, we are very nearly getting the best of both possible worlds, but I can assure the House that if this Bill were to go to select committee it would be a matter of years rather than months before we could get similar legislation in the various East African territories.

I beg to support.

Otherwise I beg to support.

THE EUROPEAN MINISTER WITHOUT PORTFOLIO (Mr. Harris): Mr. Speaker, Sir, may I just deal with the question of the select committee which has just been mentioned by two hon. Members on the other side. I thought it was covered by my hon. friend, the Acting Solicitor-General. The point, Sir, is that it is really impracticable for this Bill to go to a select committee if we are to get what my hon. friend the Nominated Member has asked for, at least the nearest we can get to what he has asked for—that is similar legislation in each of the East African territories. If this is to go to select committee—if each of the debating points, cuts and thrusts are to go then to the select committees in other territories, or, as in the case of Uganda, be the cause of an amending Bill, we can look forward to the Companies Ordinance, 1964, having some chance of being enacted. It will certainly take all that time—and I have some experience of interterritorial negotiations—before the various points brought up in select committee could be resolved. I would even make the point, Sir, that it might be possible by going to select committee to get for Kenya the perfect Bill, but if it is the perfect Bill for Kenya, and it does not coincide with similar legislation in the other East African territories, then the imposition on those people who have to run companies and advise companies in East Africa is going to be almost impossible.

I believe, Sir, that the suggestion made by the hon. Mover is the right one. That if we delay the Committee stage of the Bill and allow representations to be made on the various clauses of the Bill between now and the Committee stage in late September or early October, and thereafter try and agree with the other

territories periodical amendments in the light of experience, I believe, Sir, we are very nearly getting the best of both possible worlds, but I can assure the House that if this Bill were to go to select committee it would be a matter of years rather than months before we could get similar legislation in the various East African territories.

I beg to support.

MR. BECHGAARD: Mr. Speaker, Sir, while supporting this Bill I would ask my learned friend the Acting Solicitor-General to have a further and more critical look into clause 56. This particular clause derives from comparable U.K. legislation. It was introduced in the U.K. shortly after the First World War in order to inhibit certain objectionable and speculative take-over bids, but its wording is so wide that if strictly enforced it would very substantially interfere with quite unobjectionable and normal commercial transactions. Over the past 30 years this section has been before the U.K. courts on two occasions, when the transactions at issue were obviously in contravention of this clause. In both instances the court quite resolutely refused to void the security, showing, in my submission, that they considered that the wording of the section was far too wide and that it fortuitously, or accidentally, covered transactions which it was never meant to cover.

A quite obvious instance which comes within the ambit of this clause is the instance of a private company, the sole asset of which is, shall we say, a block of office buildings in this town. If the company, or if the owners of the company decided to sell that particular property by selling the shares, and if the purchaser is unable to pay the whole amount of the purchase money, it would be contrary to the section to give the equity in the building as security for the balance of the unpaid purchase money.

I am quite certain that very often this particular section is overlooked completely, and while there is little danger in view of the U.K. decisions that the security itself would be void, it is a fact that by virtue of subsection (2) the transaction becomes a criminal offence, and every officer of the company becomes liable to a fine not exceeding Sh. 20,000.

[Mr. Bechgaard]

Quite apart from that there is one passage in a very popular textbook on company law in which the view is expressed that if the section is deliberately contravened this will amount to a criminal conspiracy, which could be punishable by imprisonment.

I would therefore ask my learned friend to consider wording, or rewording the section either so as to exclude ordinary commercial transactions, or perhaps more conveniently by making such transactions lawful with the written consent of the registrar of companies.

Mr. Speaker, I beg to support.

MR. WEBB: Mr. Speaker, I do not think I can do more than say what I did when moving the Second Reading, that we will of course consider all the points which will have been made in the course of this debate, and I am very grateful to Members for making them.

Mr. Speaker, I beg to move.

The question was put and carried.

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

#### The Rent Restriction Bill Order for Second Reading read.

THE ASIAN MINISTER WITHOUT PORTFOLIO (Mr. Madan): Mr. Speaker, Sir, I beg to move that the Rent Restriction Bill, 1959, be now read a Second Time.

As hon. Members are aware, we have at present rent control legislation in the form of the increase of Rent (Restriction) Ordinance, 1949, and I might say that the provisions of this Bill are, in the main based upon the existing legislation. Such changes as hon. Members will see reflected in this Bill are as a result of recommendations made by a committee of enquiry which was appointed by the Minister for Commerce and Industry to examine the working of the Increase of Rent (Restriction) Ordinance. Hon. Members will recall that I laid the report of that committee of enquiry on the Table of this House on 4th December, 1958. I may therefore, Sir, truly say that the provisions of this Bill present no new legislation; it is existing legislation modified and amended in the light of the recommendations made by the committee

of enquiry. The report of the committee of enquiry was accepted by Government, and the present Bill is the result.

I would like to remind hon. Members that when on 19th November, 1957, I introduced a motion in this House, which was approved, seeking an extension for the life of the existing Ordinance up to 31st December, 1960. I did point out that the committee of enquiry had been set up to examine the working of the Rent Restriction Ordinance 1949, and also that it was quite possible that the then existing Ordinance may not remain applicable or in operation in the same form and to the same extent. I did so, Sir, in an attempt to indicate to hon. Members that while Government felt it could not remove rent control entirely, Government was anxious to make efforts in order to achieve progressive decontrol, and also to regulate such decontrol by stages in such a manner that no undue hardship would be caused to the community generally. The provisions of this Bill reflect this policy.

Hon. Members will, however, note that under the provisions of subclause 2 of clause 2 it is sought to extend the life of rent control up to 31st December, 1961. This, Sir, will be one year more than the life of the rent control at present approved, which is up to the end of next year, and the present legislation is due to expire on 31st December, 1960, unless renewed further by a resolution of this House.

There is a provision in subclause 2 of clause 2 of the Bill for further extension by resolution of this House, and I think hon. Members will agree that Government must be free to review the position before the date of expiry now proposed, that is 31st December, 1961; in order to decide whether or not further extension is necessary to keep this control in being. I hope, however, that as a result of the progressive nature of the measures of decontrol which are embodied in the provisions of this Bill, and the increasing accommodation which is being added steadily as a result of new residential premises which continue to be built, it will not be necessary to ask this House to agree to a further extension at the end of 1961. But I would repeat, Sir, Government must reserve its position in this matter and if it is thought necessary, and if circumstances require it, Government

[The Asian Minister without Portfolio] must be free to come back to this House to re-examine the position.

Sir, the committee of enquiry to which I have referred recommended that rent control should forthwith cease to apply to at least six categories of dwellings. These categories are: (1) dwellings of which the standard rent is Sh. 7,200 per annum or more; (2) owner-occupied and part owner-occupied houses; (3) dwellings let to public bodies, companies, etc.; (4) dwelling-houses the area of which exceeds one acre; (5) dwellings or part of dwellings of which the landlord has lawfully recovered possession; (6) dwellings occupied by tenants who have themselves built and let houses either in their own names or in the names of their wives, which are not subject to control. Hon. Members will find these recommendations reflected in clause 3 of the Bill. Except the last one, which is to be found in the provisions of clause 15 (1) (f) under which a landlord may seek an order for recovery of possession.

Hon. Members will also note the safeguards which are contained in the two provisos to clause 3, and also under the provisions of clause 15 subclause (1) (f) which are designed to ensure that no wholesale or sudden evictions will take place, and also that tenants of the type described will pay a reasonable rent for the accommodation which they occupy. The underlying basis of these alterations in the law is to take into account the economic capacity of the tenants, and to ensure that those of them who are capable of doing so, of paying a reasonable rent, will do so. I consider, Sir, that a reasonable rent is a rent which is obtainable in the open market, and it is on that basis that in so far as the adjustment of rent is concerned the provisions of the Bill are attained.

An example of a progressive measure of decontrol is the freeing of houses which are owner-occupied whatever the date of their construction. Sir, decontrol of further categories of houses in certain circumstances is also provided for. In order to encourage the rebuilding of old property the requirement in the existing legislation that a landlord will provide for a tenant accommodation in the reconstructed building, or that even if a landlord has proved his case, the Rent Control Board may refuse to make an

order if it does not think it reasonable to do so—these requirements have been deleted, and hon. Members will find this in the provisions of clause 15 (1) (j) which should be read together with the provisions of subclause 3 of clause 15. This provision will also remove the anomaly that while new houses built after 28th February, 1954, have been free from control, old houses even if reconstructed completely, are still subject to control, and certain other impediments also exist which deter the reinstatement of old property. It is hoped that as a result of this change in the law, landlords will be encouraged to rebuild old houses, some of which are in an extremely dilapidated condition.

Mr. Speaker, another anomaly which exists under the present legislation is that landlords are unable to obtain possession easily of their own houses for the purpose of occupying it themselves. The provisions of clause 15 (1) (e) in this Bill will make it easier for landlords to obtain possession of their own property if it reasonably required for occupation as a residence by the landlord himself, or for his wife or minor children. In order to ensure that the tenant will have ample opportunity to find alternative accommodation, he is required to be given 12 months' notice. Also, to ensure that the landlord will occupy the premises himself, he may not let them again without the consent of the court during a period of 18 months. Further, an order for ejectment may not be withheld because it is not considered reasonable to make such an order even if the landlord has proved his case, as is the law at present.

I think, Sir, hon. Members will agree that between the two, that is between the landlord and the tenant, the landlord should certainly have the right and the preference to occupy his own property, and if one has to make a choice it should be the tenant who should seek accommodation elsewhere.

Sir, so far I have referred to some of the measures related to decontrol of premises. Fixation of rent is an integral part of rent control. Rents which are affixed and operated under the Ordinance are known as standard rent, and I would draw the attention of hon. Members to the definition of this expression

[The Asian Minister without Portfolio] in clause 4, and ask them to read it in conjunction with the provisions of clause 12 (1), which deals with the increases to be permitted in the standard rent. In this connexion I would like to quote a part of the remarks made on this subject by the committee of enquiry in paragraph 22 of their report. This is what the committee had to say on the question of standard rents, Sir. With your leave, I quote:—

"Our minds have been considerably exercised by the question of whether the controlled rents at present permitted under the Ordinance are fair and reasonable, both to landlords and tenants; more so because we have recommended that rent control in principle should continue. We have come to the conclusion that such rents no longer represent a fair and proper return for the landlord in view of the general depreciation in the value of money, and of the increase in building costs. We are also of the opinion that the present permitted incidence of rents is rightly producing a sense of injustice in the minds of landlords which should be remedied. In reaching our conclusion we have also noted the anxious representations made to us by the tenants that there should be alteration in the standard rent, and also the landlords' emphatic demand that nothing short of complete decontrol will give them a square deal—although we have kept these submissions in mind.

We recommend that the following percentage increases on the present standard rents should be permitted: (1) houses built before 3rd September, 1939, 50 per cent; (2) houses built after 3rd September, 1939, and before 31st December, 1945, 50 per cent; (3) houses built after 31st December, 1945, and before 28th February, 1954, 15 per cent. It will be seen that we have adopted the classification of dwellings according to the date of construction as used in the Ordinance."

The committee went on to say, Sir, that although such percentages may appear arbitrary, in their opinion they reasonably reflect present day conditions, and such increases would help to achieve a reasonable return for the landlords in present day terms.

When hon. Members read about the percentages to be permitted in clause 12 they must, of course, bear in mind that these increases are in respect of the original standard rent, and not the existing rents which enjoy certain permitted increase already. In other words, the increase now proposed under the Bill will include the increases already permitted and enjoyed by the landlords. It is worth recording, Sir, that some tenants themselves and their representative associations when giving evidence before the committee of enquiry agreed and supported an increase in the existing rents.

And now, Sir, may I refer to clause 4 again and draw the attention of hon. Members to the very first word to be defined, which is "court". This Bill seeks to eliminate Rent Control Boards and to transfer jurisdiction in rent control cases to a court which means a court of a Senior Resident Magistrate or a Resident Magistrate.

This is an important change in the policy of the rent control and it has been done for reasons of economy and also for the reason that as a result of decontrol of a number of premises and the decrease in the volume of work, which it is felt is bound to decrease, the rent control boards as at present constituted will not have enough to keep them fully occupied. Hon. Members will therefore find no reference to rent control boards in this Bill except in the saving clause 38.

Another provision in clause 4 (1) to which I would draw the attention of hon. Members is the definition of the expression "dwelling-house". Hon. Members will see that occasion for residential purposes is related to user. This is not so under the present law. Many landlords escape control because they built stores or godowns or kitchens and let them for residential purposes, but because they were not built as dwelling houses it seems that the rent control boards have no jurisdiction in the matter. In order to close this loophole the user of the premises is included in the definition of the expression "dwelling-house". The result in the past has been that these avicious landlords have been able to extract onerous terms from their tenants, and I hope therefore that hon. Members will support this provision.

[The Asian Minister without Portfolio]

In passing I would point out that no changes ought to be made in so far as furnished premises are concerned. The definition of the term "statutory duties or powers" may make hon. Members think of the provisions of clause 12 (1) (c) which seeks to impose a new burden upon tenants, which is that expenses incurred for items mentioned in this sub-clause can be passed on to the tenant. I think it only fair that a landlord should be permitted to increase the standard rent by the cost of the additional facilities such as roads and sewerage charges undertaken or incurred by landlords by the direction of public authorities. It is only fair that the financial burden of such improvements should be met by those who enjoy the amenities.

Hon. Members will note that all reference to business premises has been deleted as these are no longer the subject of control.

I would also mention the provisions of clause 40, Mr. Speaker, which refer to the Eviction of Tenants (Control) (Mombasa) Ordinance, 1956. The board under this Ordinance which is set up for the purpose of giving consent either to the institution of proceedings for possession or to increase the rent derives its membership in part from the Control Rent Control Board, which will be abolished. This clause, therefore, sets up a new board for the purposes of the Eviction of Tenants (Control) (Mombasa) Ordinance, 1956.

In conclusion, Sir, I would like to say that at the Committee stage I will be moving certain amendments which I hope will be circulated with tomorrow's Order Paper. They are really of a drafting nature and do not contain any matters of substance.

Mr. Speaker, I beg to move.

Mr. WEBB seconded.

Question proposed.

MR. BOMPAS: Mr. Speaker, there are occasions when one is almost dazzled by the speed with which Government does certain things which it wishes to do, the most recent instance being the suspension of Standing Orders this afternoon in order to proceed with the Second Reading of this Bill. There are equally, Sir, occasions when one is frankly appalled at the lethargy and dilatoriness

which does accompany certain other problems. I believe that this Bill falls into that latter category. When I was a child in this country during the 1914-18 war there was a current ditty which started "Bado Kidogo from Zanzibar to Topo", Kenya, or rather the East Africa Protectorate and since then the days, has advanced, and since then the tempo has increased very substantially in most undertakings outside Government. I believe that in most of those undertakings there is a sense of progressive urgency. When I made a similar remark in this House a few months ago, an expressive pair of Chief Secretarial eyebrows were raised at me. I am sorry those eyebrows are not with us today.

Now, Sir, I am sorry to criticize a service which falls under the control of a Minister who, perhaps more than any, shows a great awareness of normal commercial acumen and the need for speed. But what are the facts in this case? On 24th September, 1957, Government set up the committee of enquiry to examine the workings of the Rent Restriction Bill, 1949. That is nearly two years ago. In the meantime the anomalies and the unfairness of the existing legislation have, of course, persisted. Nobody has been particularly worried about it, except the landlords. The committee produced its report on 5th March, 1958, and it was Tabled in this House, as the hon. Mover has said, on 4th December, 1958. Now, if I may interpose, Sir, I think that that report was a very well-considered document and it was subscribed to by, I think, three hon. Members of this House in addition to other Members. It took full account of the circumstances as they began and at the time, which was the beginning of last year. Even so, Sir, one can sense in the report a slight lack of conviction as to the report a slight lack of conviction as to the real necessity for a continuance of rent control at all, and the committee did aim at a progressive decontrol. Had legislation been introduced a year ago, we would be well on the way to achieving the second, or perhaps even the final stage of that decontrol. As it is we are only starting. We are starting with a Bill which gives quite substantial periods of notice to tenants who are occupying houses, which in future are within the exemptions mentioned by the hon. Mover. It will be, therefore, a very considerable time before any benefit under the Bill can be

[Mr. Bompas]

felt by a landlord or indeed a landlady. I emphasize the expression "landlady", because many owners of properties in this town—the controlled, old properties—are in fact elderly widows and people in that category who are largely dependent for their livelihood upon the rents at the controlled figure; rents which have not moved in proportion to the increase in the cost of living. The hon. Minister opposite is laughing at the thought that a widow might own a house, and be dependent upon the rent from it. But it is perfectly true, because the majority of speculative builders who have built since 1954 arc, of course, exempt from that control.

Now, Sir, I am going to ask the Government to withdraw this Bill entirely, and to allow the present legislation which which is due to expire at the end of this year to do so.

Now, Sir, there was every justification for introduction of rent control as a wartime measure. It was clear that there was some justification for its continuance whilst real scarcity existed. There is no justification for its retention under current circumstances. Conditions have changed so drastically since the committee of enquiry examined the position, that I suggest it is in fact unnecessary. Today in Mombasa there are houses standing empty—and flats. The same apartments to Nakuru. Here in Nairobi we have probably reached the saturation point. Certainly there are houses standing empty in Eastleigh today. Granted they are not the most desirable houses, but that is the way that the market has moved. People have moved to better houses, leaving others standing empty, and in fact they are fast becoming derelict. Now, Sir, the law of supply and demand has taken over and there can be no possible reason to leave in existence a measure of control which victimizes only one section of the community, and that is the property owner who acquired his property before 1954, and the property owner whose property happens to fall into a few limited sections of the whole picture. With the increase in building which has taken place in Nairobi since rent control was lifted from new houses in 1954, there has probably far more non-controlled dwellings in Nairobi than there are controlled ones. That, to

my mind, makes the position something of a farce.

Now, my constituency has little or no interest in rent control directly, but my constituents have a very pronounced interest, as indeed have all the taxpayers, in the continuance of a machine which I suggest is a complete and utter waste of money today. I know that in the Estimates for this current year the cost of running that organization is very greatly reduced but, as the hon. Mover has explained, the work done by that Department will largely move to the courts and one can expect that there will be a commensurate cost or part of the cost, in the Vote for that Department. Quite apart from the measurable cost of maintaining control, is the intangible waste of money and time on the part of the public who from time to time are unfortunate enough to have to attend upon the Board, either for assessments, or as witnesses, or involved in actual litigation. I personally have never experienced anything but the greatest courtesy and patience from the rent control officials, and yet even their best friends would hesitate to eulogize the organization as being tremendously efficient. I unhappily recall an occasion when some ten people—I was one of them—spent an entire morning hanging round the rent control offices waiting for a case to be heard. In the event, one elderly lady was summoned as a witness, fainted at about 12 o'clock and had to be removed. Actually the court did assemble a few minutes afterwards. The reason for the delay was the fact that the chairman was detained on business elsewhere. I do not blame the chairman; I blame the system.

...The hon. Mover will probably tell me that increases now allowed under the Bill will largely help the widows I have mentioned earlier on. That is perfectly true. But the anomaly here, Sir, is that in many cases the new controlled rent, especially at Mombasa, will not even be obtainable in the market. Why, then, Sir, keep a service and spend public money on something which is redundant? The hon. Mover, Sir, mentioned some of the properties which will cease to be controlled. Now, I do not propose to go through all the anomalies which arise in this Bill but I think that in actual fact, Sir, the Government has always set its face against lotteries and yet the whole

(Mr. Hompa)

of this Bill is one glorious lottery. Let me quote one or two aspects from section 3. If you are lucky enough to own a dwelling-house the standard rent of which is £30 a month—Sh. 7,200 under the Bill—you can get it back, under certain conditions. But if you are unlucky and your house is only worth £29/10 a month, then you have got to lump it, and leave your tenant in it. If you are lucky enough to own a house which happens to be let to Government or to a company or public body then you can get it back. If you happen to have been, I will not say foolish because one was not to know, in a position to where you let your house to a private individual then you cannot get it back. A further anomaly is in connexion with acreage. If you are fortunate enough to own a house which stands on more than one acre you can get your house back, given certain conditions, and if it is less than one acre you cannot. It is all a lottery, Sir.

On the question of the one-acre plots, Sir, I would like to call the Minister's attention to a particular case which has come to my notice where a company has built 12 houses. I think that the original acreage was something over 13 acres. In the subdivision the surveyors, as is their wont, provided for roads and they made out the plots as being one-acre plots in a one-acre zoning area. But the physical outcome was that about half of those plots were 1.009 acre plots and half were 0.999 acre plots. So you get the anomaly that one house standing contiguous to another is controlled and the other one ceases to be controlled.

Mr. Speaker, in conclusion, I would like to repeat that I believe that the need for control no longer exists. I believe that it impinges on a very small fraction of the community in, for the most part, a most inequitable manner. I do ask the Government to consider withdrawing this Bill.

THE MINISTER FOR COMMERCE AND INDUSTRY. (Mr. Hop-Jones): Mr. Speaker, I only want to comment on three points that the hon. Member for Kiambu has raised. The first has to do with what he referred to as delay in bringing this Bill before the House. Now, Sir, the hon. Member knows well that

not only was it necessary for the committee to take evidence in various parts of Kenya but that it was also necessary to consider their report, and also, in view of the interests involved, some of which my hon. friend has referred to, it was necessary that the Government should give careful consideration not only to the Bill as presented and not only as between the different departments concerned, but also with such bodies as the Board of Commerce and Industry, the Chambers of Commerce, and property owners and various other bodies which made representations. Now, Sir, the hon. Member knows that very well, and it would not have been wise to put the Government in a position where it could be accused of rushing legislation of this kind, in fact a deliberate process of consultation had gone on, as indeed public opinion demanded. Therefore, Mr. Speaker, I do not think that that is a matter of criticism, the fact that some time was taken before the Bill was laid before the House, but rather a matter for congratulation.

Mr. Speaker, I want to make a further point which is more serious. The hon. Member referred to the fact that certain property owners, in his words, were lucky because they were out of the "lottery" and others in his opinion were unlucky because they were subject to rent control. He quoted, I thought most effectively, Sir, certain acreages. Now, Sir, the hon. Member knows more about this than I do do, but I know he will agree with me that generally speaking the acreage related to individual houses is, a particularly good measure of the state of prosperity of the people living in those houses, and, Sir, while the hon. Member made his point, I thought very effectively, he omitted to mention that particularly in parts of Nairobi and in certain parts of Mombasa, Asslan and Arab tenants of houses particularly need protection.

Now, Sir, those are the facts and those are the reasons why certain provisions are in the Bill. There are certain classes of people who still need protection.

Sir, the third and final point that I wish to make is this. The hon. Member himself pointed out that this Bill in itself has provision for its own demise in the sense that on a change of tenancy, and

(The Minister for Commerce and Industry)

as property comes into certain defined categories, so the necessity for the protection of the tenant diminishes, and eventually disappears. Now, Sir, this final process of the diminution of the necessity for rent control and the protection of the tenant during the final period has been handed over, quite properly in my view and in the view of the Government, to the courts. The expense will diminish as the courts are used less. I agree that it is possible to criticize expenditure. It is always possible to criticize expenditure, but I do submit that there is a case even today for a diminishing, progressively diminishing, degree of protection for certain defined classes of tenants, in the public interest and in the interests of an economically weak section of the community.

Mr. Speaker, as I have said, I find myself in very considerable agreement with the very well thought-out criticisms of the hon. Member, but I would submit that the points I have made are in part the justification of the Bill presently before the House is the very fact that it is not a permanent measure but contains within it the seeds of its own demise which I submit, Sir, this Bill deserves the support of the House.

MR. PANDYA: Mr. Speaker, I welcome the introduction of this Bill which has been long awaited, particularly after the publication of the report at the end of last year. I must say, Sir, that it is no use the Government denying that there has been some delay in the publication of the report after the committee had considered its findings. Probably it is true there has not been much delay after the publication of the report and the introduction of this Bill.

Mr. Speaker, Sir, before I go further I would like to congratulate the committee upon its very excellent work. It went round the country hearing evidence wherever it could, and holding meetings wherever necessary. It held meetings wherever it was expected that there would be a lot of conflict of evidence from the landlords and the tenants. It would have been very difficult indeed to have found a formula that was acceptable to the tenants and to the landlords, but, Sir, in my opinion, I think

this report has succeeded in producing a great deal of compromise by its policy of progressive decontrol and indeed at the same time it has provided some safeguards for some of the tenants who require it most.

The landlord's case for increase of rent has been accepted by quite a large number of tenants. The only difference of opinion has been to the extent to which the rents should be increased. Indeed, I feel, Sir, that in spite of the fact that this is a most controversial legislation, it has produced the least upheaval in the country.

I would like to refer to the proposal that the Rent Control Boards would now be abolished, particularly in the interests of economy. I think this would have to be accepted under the present circumstances and I think the Government has made a right decision in view of the fact that there will not be much work for the Rent Control Boards to do, and the magistrates will be adequate to deal with the minimum of complaints that will be coming forward. I only hope, Sir, that the justice will be as broad and acceptable to the people as it was under the constitution of the Rent Control Boards.

I would like to pay a tribute to the members of the Rent Control Boards who have in their public spirit devoted many days to the work done by the Boards.

I would like to refer to some of the clauses of the Bill. Clause 3 (a) says: "Dwelling-houses of which the standard rent is seven thousand two hundred shillings per annum or more." I personally feel, Sir, that a lower figure would have been better and I would suggest that that figure should be Sh. 6,000 as being sufficient to provide the protection which is necessary for the tenants, 90 per cent of the premises affected by this Bill in Mombasa have rents of a lower value and I think the Minister might consider the acceptance of the figure of Sh. 6,000.

So far as clause 12 is concerned, Sir, it has been felt by the Indian Association of Mombasa that the proposed increase of 102 per cent on dwellings constructed before the prescribed date is rather excessive. They suggested an increase of 70 per cent, and in 12 (1) (ii) where the

[Mr. Pandya] premises were erected between the prescribed date and 31st December, 1945, instead of an increase by an amount not exceeding 56 per cent it should be 40 per cent, particularly in view of the fact that there are many tenants in Mombasa who require this protection and who do not earn enough to pay these large increases which may not seem large but which are too large for them to meet from a diminishing income. I welcome, however, Sir, in the same clause subsection (c) the increases for improvements of drainage or sewerage, and indeed the construction of roads which has now been allowed by the Ordinance. I think this now meets with the situation which really should have been remedied a long time ago.

Finally, Sir, in clause 15 (e) instead of the period which requires not less than 12 months' notice to quit, may I suggest, Sir, in this case, notice of six months, which would be quite adequate to meet the situation.

With those reservations, Mr. Speaker, Sir, I welcome the introduction of this Bill. I personally feel, as has been emphasized by the Minister for Commerce and Industry, that there are classes of tenants requiring protection and a complete decontrol would have created the greatest upheaval in Mombasa particularly and I am sure in many other centres in this country.

Mr. Speaker, Sir, I beg to support the Bill.

MR. TRAVADI: Mr. Speaker, Sir, when the report of the committee of enquiry came out, I was under the impression that this report would first be debated here in the Council and later on a Bill would follow, but I understand now from my hon. friend Mr. Nazareth, that when Government accepts fully the recommendations of the report, the report may not be debated here, and hence I am confronted with a situation when I must admit frankly that I have not been able to study the Bill as fully as I would have liked. The only thing I was doing was comparing the provisions of this new Bill with the old one and I came across two or three typographical errors; the first one I saw was in section 3 (f)—"Any dwelling house which is in the possession of the owner, therein at

the commencement of this Ordinance, which comes into his possession thereafter . . ."; I think there should be the word "or" before the word "which"; as I cannot follow what it actually means. I see that the Minister nods his head in the affirmative.

[The Speaker (Sir Ferdinand Cavendish Beninck) left the Chair].

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

The other error was at the end of the Bill, in the Schedule, column 2, line 5—"31st December, 1941"—when I compared it with the original, it was in "1940" and that appears to me to be a mistake.

A third error I came across was in clause 27, last line when it says—"unreasonably withheld, the consent of the court:." I think the words should be—"without the consent of the court."

These are the three mistakes which I came across, and perhaps the Minister will consider moving amendments accordingly when we discuss this in committee stage.

Now, another point which struck me and about which only one landlord came to me to make a representation on, and that was section 29—take it for granted that as there was no public expression of opinion) that there is implied by the silence an acceptance of the recommendations which have been incorporated in the report. But in section 29 (f) it states: "Notwithstanding anything contained in this Ordinance, the landlord of any premises of which he is in personal occupation may, with the consent of the court, let the premises for a period of not more than twelve months, and upon the expiration of the period for which the premises have been let the landlord shall be entitled to resume personal occupation thereof."

Now, I do not understand how it would be if a landlord has in his occupation a dwelling-house has he no right to sublet it to some other tenant? Why must he go to court? As I have already said in section 3 (f) which is the one I referred to, he gets the possession and once he gets the possession is there any necessity for him to beg leave of the court? It

[Mr. Travadi] seems to me a little illogical. As a consequence, if my contention is right, subparagraph (2), in line 5 from the bottom—the words "standard rent"—the word "standard" does not apply to him at all as he is not covered at all; and I think this clause requires some further consideration, if my contention is upheld—I hope it is not so and that the Minister is right so that there is no trouble, but I would like to draw the attention of the Minister in particular to that. The word "notwithstanding" wipes out the provisions in clause 3 and then the owner who occupies his own house is forced to go to the court which I think is quite illogical.

With those exceptions, Mr. Deputy Speaker, I beg to support.

MR. NAZARETH: Mr. Speaker, Sir, I hope I have not misled my friend, Mr. Travadi. What I intended to do was to indicate to him that Government is not bound to have any report debated, and where the recommendations of any report are accepted by the Government they quite often do not put the report down for debate. The Bill has been published for quite some time, and I hope that my learned and hon. friend has had time to give consideration to its provisions.

I am strongly in support of this Bill, and I think Government has done well and acted very sensibly in accepting the recommendations of the report as I think the report itself was an excellent document.

When you have had a control lasting for so many years, it is essential that when decontrol is to be carried out, it should be carried out with some degree of gradualness. To have put an end summarily to a control which has been existing for so many years, might have led to quite a difficult situation in the case of those tenants who rent the cheaper houses. Even in the old legislation provision has been very carefully included to ensure that when decontrol took place, it would take place gradually, and this is the aim of the present Bill.

I have no major criticisms to make of this Bill, but there are certain provisions which I would like the Minister to reconsider. In clause 2 it is provided that the Ordinance shall expire on 31st

December, 1961. Now, when temporary legislation comes to an end, the effects are not quite the same as when legislation is repealed, and for that reason, the Landlord and Tenant Shops and Hotels Ordinance had a provision that when the Ordinance expired—that was also a temporary Ordinance for a limited period of time—the effect should be the same as if it had been repealed, and I would suggest, to the Minister, that he might consider amending that particular clause—subclause (2).

In section 8, subclause (4) it is provided that there should be no appeal from the decision of the Supreme Court. I feel that it is undesirable that final decision should rest with the Supreme Court. Important questions can arise and after all, we must acknowledge in an imperfect world, the quality of judges can differ. If an appeal to the Supreme Court goes to one judge it can quite often happen that the judge is not particularly experienced in rent control legislation and we may have a final decision given without the opportunity of taking that decision up to a higher court. I would suggest that no great difficulty would arise if it were provided that an appeal could lie to the Court of Appeal for Eastern Africa with the leave of the Supreme Court or with the leave of the Court of Appeal for Eastern Africa. It is undesirable, I feel, that the final decision should be given on legislation which is as important as rent control legislation by a single judge of the Supreme Court.

In clause 9, subclause (2), there is provision for a penalty of imprisonment for a landlord who does not apply to have his standard rent determined. I do feel that if by mere act of oversight or inadvertence, the landlord does not apply for determination of his standard rent, it would be an excessive penalty that he should be subjected to imprisonment. There ought to be some measure of deliberateness before a landlord becomes liable to a penalty of such severity even if it were just for a period of one month. The Minister might consider providing that the landlord should only be liable to a penalty if he has, notwithstanding a request, not applied for the determination of the standard rent.

In clause 15, subclause (B), it is provided that if a person does not obey an



[Mr. Nazareth] order ordering possession to be given, then he is liable to imprisonment or a fine. Now this is a civil matter, and if an order is made by a court for the delivery of possession, then it should be sufficient that that order be enforced by execution proceedings, and the person in whose favour the order is made should not have the additional sanction of rendering the person against whom the order is made liable to imprisonment or a fine. I think this is a provision which does not appear in English legislation. Why it was introduced into the 1949 Kenya legislation, I do not know, probably because of representations from the Rent Control Board who did not wish their orders to be challenged. I hope the Minister will reconsider that particular section, and indeed withdraw it. It is most undesirable that people should not be enabled to challenge orders made by the court by taking them to a higher court and that merely because there and then at the time of an order to deliver possession, they are unable to do so, they should render themselves liable to a penalty. The sanction to such orders should be a purely civil sanction.

The final major matter to which I would like to draw attention is contained in clause 23, subclause (2), where it is provided for a penalty of Sh. 300. I have been wondering why it was Sh. 300 and not the usual figure, but that is a matter of little importance, it appears to be Sh. 400 everywhere else.

There are two minor drafting matters which perhaps I might refer to in Committee.

Finally, I refer to clause 29 which was the subject of comment by my hon. and learned friend, Mr. Travadi. Perhaps I might explain the sense of that particular clause.

Now, it does happen that the landlord sometimes wishes to let his house temporarily and he wants to make sure that he will get possession. When he lets it, the moment he lets it it comes under de-control with the result that the tenant comes under the protection of rent control legislation. Therefore the landlord would have to meet the requirements set out in clause 16 before he can possess it and it could happen that he could not get possession in consequence of the

house having come under control. But if he lets it with the approval of the Court, then in effect that house does not come under control and he does not have to satisfy any of the requirements of clause 16—or is it 15 now?—when he seeks to get possession. That is the sense of that particular clause. If he does not get permission from the Court to let then the house becomes a controlled house—presuming that it is within the limits of Sh. 7,200 and so forth—and then the requirements of clause 15 have to be satisfied. I think these provisions also appear in the earlier legislation.

Mr. Deputy Speaker, Sir, I beg to support this Bill.

THE EUROPEAN MINISTER WITHOUT PORTFOLIO (Mr. Harris): Mr. Deputy Speaker, Sir, I am sorry the hon. Member for Kiambu has gone, because I wanted to congratulate him on the sort of speech that I would have made two years ago. He brought up all the points that I would have made. But, of course, two years ago I would not have had the benefit of sitting on the Rent Control Commission of Enquiry. On the question of speed, Sir, one of the things the enquiry had to do was to recommend the legislation that would replace the existing temporary legislation which expires later this year. Therefore, Sir, although as my hon. friend the Minister for Commerce and Industry said, we spent a great deal of time in consultation, there was no necessity for any immediate rush, having published the report and said that legislation would follow to implement that report.

Now, Sir, the hon. Member for Kiambu chided me for smiling when he mentioned these widows who were landladies. Sir, it was because of widows, among others, who were not landladies but were tenants, that the committee made the recommendations they did. They received a great deal of written and oral evidence from all over the country, and they found that in general there was no further need for rent control, but that there was a class which, without being racial, I would put at the lower European income group and the Asian income group, that was undoubtedly being subjected to considerable pressure by landlords. Therefore they made the recommendation that those

[The European Minister without Portfolio] houses which the more wealthy people in the community could afford to pay for should be exempt from control in future. Further that landlords should be exempt from having their premises controlled when existing tenants moved out of them, and that the rents chargeable on even the remainder of the houses, which were still subject to control, should be allowed to be subject to an increase in the proportions mentioned in this Bill.

It was, Sir, a genuine attempt to give the greatest possible freedom of action and a free market to landlords and tenants alike, and at the same time to try to continue for a short period the protection for that same class which I have mentioned where we found that the law of supply and demand was not operating in such a way that we could permit a free market. I would like to say, and I am sure that my Asian friends will agree with me, that there is a particular class of Asian landlords which are rather more avaricious than most landlords are usually to be found, and it was against quite a small proportion of landlords who are making considerable money out of a particular class of Asian and the less wealthy European that the present measures were designed.

Now, Sir, the hon. Member for the Eastern Electoral Area I think underlined, when he mentioned his recommendation that, instead of houses subject to a rental of Sh. 7,200 a year or more being exempt from control, it should be Sh. 6,000, and he suggested that the 102 per cent increase in rent allowed in one case should be decreased to 70 and so on—and I think he emphasized the difficult task that the committee had in making its recommendation. As the hon. Member will realize, we had representations from the tenants who considered they should pay no rent at all. We had representations from landlords who considered that for the house for which they paid £500 in 1939, today they should be getting at least £1,000 a year rental, because of the difference in the value of money. We had all extremes, and so we had to make recommendations on all these points, and, admittedly, we came down to it in the end, having made what I thought was a fair assessment of the situation, we had to make our recom-

mendations, which were accepted by the Government. It may be, Sir, that the hon. Member has a case or a house in point, where he feels that we have set the rent of Sh. 7,200, and this particular house is only getting a rent of Sh. 6,500, and he would like to see that exempted from control, but we had to draw the line somewhere and I feel that the committee's and the Government's guess is as good as the hon. Member's. In fact I would be so concurred to say that I think it is probably better.

The last point which I wish to make, Sir, is that the hon. Member for Central Area, if I may say so, made two very good suggestions. The first one is—I am grateful to him for putting his "or" in as he did and I am sure that the Minister in charge of the Bill will note that at the Committee stage.

With regard to section 29 (1) it is believed that he may have something here, and if he has, the Government will take care of it before the Committee stage.

I beg to support.

MR. HASSAN: I rise to congratulate the Minister and also the committee for carrying out this most difficult task of rent control. It was a matter which was brought to the notice of the Elected Members in every area by the landlords and the tenants, with all sorts of complaints, and it was very difficult to satisfy any of them. The committee has removed a number of anomalies and has helped and assisted considerably both the landlords and the tenants, and I must congratulate them.

There is one letter, which I received yesterday, which is a copy of one which went to the Minister without Portfolio. It is a question of Plot No. 33 in the Ganjoni area, where the owner stated that similar plots were removed from the Schedule and this particular plot has been included in the Schedule, and the owner is suffering great hardship as modern development is taking place all round that plot and he is not in a position to do so because of this particular control. I hope the Minister has given consideration to this particular request of the owner, and when he replies I hope he will tell us what he thinks about it.

[Mr. Hassan]

The second point is the question of clause 12—in which in regard to such expenses as road repairs, improvement of the house and so on they are being allowed to the landlord to be charged to the tenant. One thing I have not been able to understand is why the rates of local government are being allowed to be charged and included in the rent. There is no doubt that the local rates are entirely judged on the price of the plot, of which the tenant is getting no advantage whatsoever. There have been cases when the house itself is worth about £500 or £1,000 and the value of the land itself, by the site value expert, is being judged to the tune of about £5,000 or £10,000, and 1½ per cent and 2 per cent and 3 per cent of the local rate on that site value is being legally included in the rent, which is a great hardship to the tenant, and the landlord—knowing that this site value of the local government is to be paid by the tenant—is not a matter of any headache to him, neither does he fight for the reduction of this rate. I would like the Minister, when he replies, to tell us whether he gave any serious consideration to this, because these rates are fluctuating, and up to now they are always on the increase, and they are causing great hardship to the tenants.

With these few words, Sir, I support this Bill.

MR. ALEXANDER: Mr. Deputy Speaker, Sir, as a matter of policy I just want to deal with section 12 (c) concerning the increase of the rent related particularly to the making up of roads. If I read from the beginning of the section I will be able to describe better the point I wish to make. Starting from the beginning of clause 12, it reads: "A landlord may, by notice in writing to the tenant, increase the rent of any premises as follows:—then over the page, starting at (c)—"in any case where the landlord has since the prescribed date, incurred expenditure on . . . the construction or execution of or at the instance of a local authority"; in fact, Mr. Deputy Speaker, it is not clear to me whether in fact the whole of (c) relates to amenities executed by or at the instance of a local authority, as, for example, sewerage, drainage and improvements or structural

alterations. Nevertheless, I will deal for the moment with just the construction of making up of a street or road.

In this country, as distinct from Britain—and I understand that much of this is modelled on Britain—it is not usual for streets and roads to be made up at the time of the subdivision of the land. In fact, there are many examples of estates in urban areas where the roads and the streets have not been made up for many years, but in many cases the obligation to do so is upon the vendor of the land, and in some cases, in fact, perhaps there is an adjustment in the price until these roads and streets are made up. Now in many of these instances and in other instances the roads may not be made up at the instance of a local authority or by a local authority. Where it is done quite voluntarily, there is nothing in this Ordinance which enables the landlord to add to the rent and it does seem to me that some amendment is necessary here to make provision for those instances where a landlord does improve the asset without being told to or being required to do so by the local authority.

Dealing now with the Minister for Commerce and Industry, and the European Minister without Portfolio, both of them did make the case for the need to look after—through rent control—people in the lower income groups, and it is appropriate, Mr. Deputy Speaker, to put on record in the proceedings of this House precisely what the committee of enquiry said on this very subject, and with your permission I would like to quote it, because it is somewhat in contradiction of what the Minister for Commerce has told us and greatly in contradiction to what the European Minister without Portfolio has told us, and he signed this report. Mr. Deputy Speaker, I quote: "But we do not consider arguments"—and that is what the Minister for Commerce was doing, arguing on this subject—"we do not consider arguments as to the desirability of subsidizing housing costs for certain sections of the community as directly relevant to our terms of reference or, indeed, to the functions of rent control as at present instituted. In principle we consider that the burden of such social welfare should fall on the community as a whole

[Mr. Alexander]

by means of action by the public authorities and not exclusively on the landlord. It is important to stress this point, since the argument described above has been the cause of much misunderstanding as regards the fundamental object of rent control in the Colony."

It is quite apparent that both these Ministers are quite deliberately attempting, in what they said today, to aggravate this misunderstanding, because they have both made claims that rent control is mean in some measure to protect the lower income groups, and I do think, Mr. Deputy Speaker, in the interests of this Bill for the future, that it is wise to have had this particular opinion from the committee itself placed on record.

I do wish, in sitting down, to support my good friend on my right, the Member for Kiambu, and I will now give way to the Minister for Commerce and Industry.

THE MINISTER FOR COMMERCE AND INDUSTRY (Mr. Hope-Jones): On a point of explanation, I was not asking the hon. Member to give way. I just wanted to make it clear that I did not contradict the committee's views. I merely said, the point I raised was one for consideration by this House.

MR. MUCIURA: Mr. Deputy Speaker, Sir, I feel like saying I do not agree with the Minister for Commerce and Industry in this, that he said that this is supposed to protect those people in the lower income groups, because it does say—I think it is in clause 5 (2) (a) that "in respect of premises whereof there is no standard rent or whereof the standard rent does not exceed Sh. 70 a month the court may from time to time delegate all or any of its powers under this Ordinance."

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

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

In other words, I take it that up to that point the court will not have the right, or be sufficiently interested and therefore to the African Affairs officer in a town or a district officer, or anybody like that who is supposed to be sort of dealing with it—not directly concerned,

but people above Sh. 70 a month rent upwards come directly under the provisions of this Ordinance. I know I will be told, if I try to explain this one, that a dwelling-house has been defined specifically, but I know, during my days in the Labour Department, people have been found to be living in all sorts of places. Some of them I think were described by a magistrate as "glorified dog boxes". Now supposing in the circumstances where there is hardship on the question of housing any people, but so long as a landlord keeps the rent at Sh. 59, Sh. 60 or Sh. 70, it is perfectly all right for him to get away with it. We have got to do something. It has been cited here that there are empty houses standing in Eastleigh. I think the position is not that supply exceeds demand but I think that has arisen as a result of the municipal houses built across the Nairobi River and some built by Platinum Society at the same place which I think are offered at a lower rent than those further away into Eastleigh as opposed to the reverse being the case.

Now another thing which I should like to raise is the principle of rent control. I do not see why local authorities should have been exempt from the application of rent restriction. They are all lumped together with Government, the High Commission—East African Railways and Harbours and Posts and Telecommunications—and local authorities. Now I would divide local authorities into two parts; the first part would be housing for its staff and the second part for tenants, as in the case of townships. I would have thought that the best thing would have been to leave it as it was—ten per cent with a ground rent and the rest of it, and whatever the court assessed—not lump it altogether and say the local authorities should be lumped together with the Government and the High Commission services, which as far as I am concerned are merely for staff quarters and those staff rentals are governed by staff regulations. I think that should have been considered. Probably it is too late, because the Bill has only another year and a half to live, but the whole idea was wrong from the beginning. The two should have been separated.

Then of course the last thing I would have suggested, Mr. Speaker, Sir, is that

(Mr. Muchura)

in view of the fact that those lower or low income groups are excluded from this one, I do not see how this is going to help the lower income group. The better word would have been "middle income group".

With those words, Mr. Speaker, I beg to oppose.

THE SPEAKER (Sir Ferdinand Cavendish-Bentley): If no other Member wishes to speak, I will call on the Minister to reply.

THE ASIAN MINISTER WITHOUT PORTFOLIO (Mr. Madan): Mr. Speaker, Sir, the hon. Member for Kiambu and the hon. Member for Nairobi West seemed to give me the impression that they thought rent control was not necessary any more, and the hon. Member for Kiambu went so far as to suggest that Government should withdraw this Bill. At the same time he praised the work done by the committee of enquiry. If I may quote to him, with your permission, Sir, what the committee of enquiry said on this point in paragraph 14 it may be of interest to the House. I quote, Sir: "We have come to the conclusion that although the housing situation has improved in all areas, a complete relaxation of control is not desirable at present and that the principles of the Ordinance should, with certain modifications, continue to operate. We are also of the opinion that bearing in mind the continuing progress of new buildings, Government should adhere to its policy of progressive decontrol."

Now I submit, Sir, the situation has not changed in any way since the committee submitted its Report and the two recommendations made in this paragraph—one that Government should aim at progressive decontrol, and secondly that although the housing situation had improved, rent control should continue, but with certain modifications. That is exactly what this Bill seeks to do—modify the incidence of rent control. But let us for a moment think, Sir, what would the position be if the Government were to accept the suggestion made by the hon. Member for Kiambu and withdraw this Bill. Would you have no rent control then? Of course we would; we would still have in force Ordinance No. 22, of 1949 which is much wider

than the present Bill. It does not free any of the categories of houses which this Bill will do if it is approved by this House.

To point out to the hon. Member for Kiambu as to what type of people we have to deal with, I would also like to quote from paragraph 10 of the committee's report. "Secondly, tenants presented us with woeful tales of exploitation by landlords, of fear that exorbitant rents would be charged if the legislation is repealed; and of landlords who harassed them in many unpleasant ways in order to obtain vacant possession (in one case it was alleged a landlord had bored holes in the roof so that the tenant would have to vacate during the rainy season when the roof leaked.) That is the type of people we have to deal with, and that is the type of people against which the tenants are sought to be protected. I am not suggesting, not even for one moment, that the tenants are all angels and that they all behave themselves, and although in the context of this matter perhaps to bring in the case of the poorer class of tenants may be out of place, nevertheless we cannot escape the implications of it. I do not think it is any use saying that this rent control is not even indirectly designed to protect the poorer class of people. It is. The committee quite rightly point out that it should not fall upon the landlords alone to subsidize the tenants, which, in effect, rent control can amount to. The committee was quite right in pointing that out, but nevertheless we cannot escape the implication that to a certain extent rent control does result in a subsidy by the landlords to the tenants. Why do we tolerate that? Why did we tolerate rent control legislation in the first instance? It was because of the existence of abnormal housing conditions. The exigencies of the situation demanded unusual remedies. The shortage of housing was so severe and acute and rents were soaring so high that Government felt obliged to introduce rent control legislation, supported and approved by this House.

I suggest to the hon. Member for Kiambu that this Bill seeks to ameliorate the position. It seeks to improve the lot of the landlords; it is in no way derogatory to their interests. In the event that we withdraw this Bill the landlords would be no better off; in fact they would be

[The Asian Minister without Portfolio] far worse off if this Bill were not approved.

He gave examples of how lucky one can be if one's house is given a rent of Sh. 7,200 or if the area of the land is one point something acres, and how unlucky would be the next door chap whose area of land is .99 and just misses the one acre standard. But in this matter, as in any other such matter, the committee of enquiry had to draw a line somewhere, and the standard they set themselves was the standard of reasonableness. At what point need we say people paying a certain rent need not be protected any more under the provisions of rent control legislation? After the most careful consideration the committee came to the conclusion that that point was Sh. 7,200. Again after the most careful consideration the committee came to the conclusion that an area of one acre provided a reasonable yardstick whereby houses could be decontrolled within that area or more.

It may interest hon. Members to know that the Mombasa Ratepayers' Association, the hon. Member for Eastern Area has pointed out, has suggested that this limit of Sh. 7,200 per annum should be reduced to Sh. 6,000. On the other hand, the Chairman of the Central Rent Control Board has suggested that it should be increased to Sh. 8,400. In between the two, we have what I would call a happy medium—Sh. 7,200. But the point is this: that any standard that the committee fixed and which would be reflected in this Bill would be open to criticism, because it would be impossible to say that that was the absolutely perfect and absolutely right standard.

I do suggest to the hon. Member for Kiambu that the landlords will be much better off if he were to support this Bill instead of suggesting that it should be withdrawn, because rent control legislation will not come to an end, as I have already said.

The hon. Member has referred to the question of permitted increases in rents. I did make it clear that these increases are to be related to the original standard rent and not the present day rents, which are quite different from the original standard rents, in as much as they already enjoy certain permitted increases; for

example, houses built since 3rd September, 1939, have already been allowed to increase their rents by 35 per cent. The increases mentioned in clause 12 of the Bill include the already permitted increases. So when you look upon the 102½ per cent that is mentioned in clause 12, do not think it is going to be an addition of 100 per cent; it includes the permitted increases and probably, when worked out mathematically, the increase will amount to about 55 per cent.

But coming back to the remarks of the hon. Member for Kiambu, what could be a reasonable basis for increase? I have already read out a relevant passage to this House from the report of the committee, which stated that the landlords asked for complete decontrol and the tenants suggested that the only way to give them a square deal was to leave things alone, that is, to make no increase at all. Again the committee had to adopt a standard of reasonableness in their judgment which, I submit, was sound, well thought out and well considered. They suggested the increases that you find in clause 12.

The hon. Member for the Eastern Area also referred to the increases of rents and he hoped that cases under this Bill would be dealt with as expeditiously as at present. I certainly hope so and I hope that it will be even more expeditiously than at present. I do not mean to cast any aspersions upon the work done by the Rent Control Boards. In their own spheres they have rendered us satisfactory service and we are grateful to them, but, as I said in moving the Second Reading of the Bill, Government feels the time has come to abolish them and to substitute a magistrate's court to undertake the work they are doing.

The hon. Member for the Eastern Area suggested that the proposed increases were excessive and he suggested certain other percentages—but my hon. friend, the European Minister without Portfolio has already dealt with that matter and I will not dwell on it. But I was glad to hear him say—as indeed did some of the later speakers—that there are tenants who will require protection and that if Government did not enact legislation of this type it might produce a social upheaval. It was most gratifying to hear from certain hon. Members that they agree with Government that there

[The Asian Minister without Portfolio] is need for the continuance of rent control legislation.

Then the hon. Member referred to clause 15 (1) (e) and suggested that the period of 12 months might be reduced to six months. Now the important point here is, Sir, that this refers to a landlord who requires possession for occupation for himself or for occupation by his wife or minor children. It is important to remember that in such a case both the landlord and the tenant must have a place to live in. It is felt that between the two the landlord should have the preference and be entitled to occupy his own premises, that he should be able to evict the tenant. But we should also ensure at the same time that the tenant who has been living in the premises gets a reasonable opportunity, which we considered to be 12 months, to find alternative accommodation for himself. We are reinforced in this conviction, because the landlord is not in possession of the premises of which he seeks possession. He may possibly have been out of possession of such premises for a very long time, and therefore no particular hardship will result if we do not reduce the period to six months.

I now come to deal, Sir, with the remarks made by the hon. Member for Central Area, Mr. Travadi, and I am very grateful to him for drawing my attention to clause 29. As has already been stated, I think he may have a point there and I will study it further with our legal advisers. He has also drawn my attention to a possible misprint in the Schedule. I will check that also, I am grateful to him. He did say, Sir, that he had not studied the Bill. It may be perhaps for that reason his remarks were all the more intelligent.

Sir, the hon. Member for Western Area referred to several clauses of the Bill and he suggested that provision should be made to provide that when the operation of this Ordinance expires the effect it should produce is as when an Ordinance is repealed. In this connexion I would draw his attention to section 26 of the Interpretation and General Provisions Ordinance which says that "upon the expiry of any written law, the provisions of subsection (3) of section 23 of this Ordinance shall apply as if such law

has been repealed." The hon. Member will find, on studying sections 23 and 26 of this Interpretation and General Provisions Ordinance that the effect is as he thought it should be.

Then he referred to clause 8 (4) of the Bill and said there should be provision for an appeal from the Supreme Court to a higher court. It is true, Sir, that sub-clause (4) of clause 8 restricts the right of appeal only up to the Supreme Court. That has been done intentionally and deliberately as a result of the reduction in the volume of rent control litigation, and in order to expedite the administration of justice, it was thought that if we limited the right of appeal to the Supreme Court only no hardship will be involved in any case and in addition it would facilitate matters for the poorer class of litigants and provide speedy justice. I would say, with the greatest respect to the Judges of our Supreme Court, that one can rely upon their legal acumen and astuteness to deal effectively with any rent control matters that may come up before them.

Then the hon. Member referred to clause 9 subclause (2) of the Bill and stated—I understood him rightly—that the penalty was excessive and it was also penal. Now, here he pointed out that this was largely a civil measure and that if the landlord fails to discharge his obligation under the provisions of this Ordinance that the remedy should be a civil one. But in this instance I would ask him to bear in mind that all that the landlord is required to do is to have the rent assessed by the court as reasonably quickly as possible and this has been done to avoid the possibility that landlords will be able to overcharge.

MR. NAZARETTI: On a point of explanation, I said that the attention of the landlord should be drawn to it and with his failure to reply and then only he should then make himself liable to a penalty. I did not say that there should be no penalty at all.

THE ASIAN MINISTER WITHOUT PORTFOLIO (Mr. Madan): But we are drawing the attention of landlords to this requirement on their part by passing this legislation if it is approved by this House. I do not see how else we could draw the attention of landlords if they have failed to have their premises assessed.

[The Asian Minister without Portfolio]

From there, Sir, the hon. Member went on to deal with subclause 8 of clause 15 and he agreed that a similar provision exists in the existing legislation. It has been brought forward from the 1949 Ordinance and I did point out, Sir, when I moved the Second Reading that this was no new legislation: This Bill reflects the measures of progressive decontrol in the light of the recommendations made by the committee of enquiry. Government has therefore not thought fit that this particular provision should be abandoned, and on thinking over it since the hon. Member spoke, I do not see that any great harm would be done if we were to retain subclause 8 which only entitles a prosecution to be instituted against somebody who contravenes or fails to comply with an order of the court made under the provisions of subsection 1 of section 15. In this connexion I would draw the hon. Member's attention to the provisions of sub-clause (j), for example, where a tenant is ordered to vacate controlled premises and move into his own premises which are not controlled because he is taking advantage of a landlord who is subject to the provisions of this Ordinance whose house was built before a certain date. And it may be necessary—I am prepared to think that it would be an extreme case—but it may be necessary to invoke some such provision as is contained in subclause 8 of the Bill.

The hon. Member then dealt with the provisions of clause 29 of the Bill and tried to explain it to the hon. Member for Central Area, but as I said in reference to the remarks made by the hon. Member for Central Area, I think there may be a point here in as much as if a landlord is already in possession of his premises such premises should become decontrolled by virtue of the provisions of subclause (f) of clause 3. But as I said before, we will think over this matter again.

I should like to stop dealing with the hon. Member for the Western Area by saying that I am grateful to him for his support of this Bill.

The hon. Member for East Area raised the question of a shadow. I am afraid I did not quite follow or catch the shadow, Sir. And then he went on to refer to the problem of the site value

rates; how sites which are valued at about £5,000 or even more carry a house which is worth only £500. I fear, Sir, that even though I would like to oblige him I cannot. It is not a subject that falls within my orbit. It is a subject which should be addressed to the Minister for Local Government who could deal with it more effectively. He also said, "Why allow these local authorities to charge site rates?" All I can say is that I think we passed a measure in this House approving their authority to levy such charges. But, however, I respectfully suggest to him that these remarks are quite irrelevant as far as this Bill is concerned.

The hon. Member for Nairobi West, Sir, referred to the provisions of clause 12 (1) (c). It is a new provision and I have already stated that it seeks to impose a new burden upon tenants. It is a burden of roads or a drainage system or a sewerage system which has been constructed by or at the instance of the local authority and which the landlord can pass on to the tenant because the tenant really enjoys the amenities. He made the point, Sir, what if such improvements are not executed at the instance of a local authority. What if they are executed by private owners? Why should the landlord not be able equally to pass on the burden to the tenant? When we considered this matter—I will admit it frankly—what I had in mind was, Sir, that it should be officially done and there should be a proper authority for the cost that is incurred and there should be no doubt that anyone is trying to impose a burden which either has not been incurred or which has not been incurred properly. It was for that reason that I think we excluded private persons and limited it to local authorities. But of the type of people that he has mentioned, that is, private owners who undertake such work, they must be a rare species. I should think there are very few of them who are likely to suffer. The hon. Member will bear in mind that the effects of this legislation fall more within the urban areas and the boundaries of local authorities than outside. And for that reason also, perhaps I can say this quite frankly, that the works such as are mentioned in this clause are undertaken and must be undertaken at the instance of the local authorities.

MR. ALEXANDER: Why?

THE ASIAN MINISTER WITHOUT PORTFOLIO (Mr. Madan): Because they are the people charged with the duty of ensuring that such services are provided. The hon. Member should know that, Sir. He was himself a prominent member of a local authority.

I have already dealt with his remarks which he made in connexion with the poorer class of tenants and now, Sir, I come to deal with the last speaker in this debate, the hon. Specially Elected Member, Mr. John Muchura. He referred to the provisions of clause 5 (2) which contains powers of delegation.

Now, Sir, the purpose of these provisions is to enable the Court to delegate its powers to an officer to hear cases where the standard rent does not exceed Sh. 70 or where there is no standard rent. I have pointed out that it is proposed to transfer jurisdiction in respect of rent control matters to a magistrate who will be of a senior calibre like a Senior Resident Magistrate or a Resident Magistrate and there may be cases of a small nature which perhaps would not justify the Court's spending its time on them. I would like to draw the hon. Member's attention to the provisions of subclause (c) of this clause which says, "that a delegation affected under this subsection shall not prejudice or affect the power of the Court for itself to exercise any of its powers under this Ordinance in respect of any premises for the time being affected by such delegation." The hon. Member will see that even though the Court delegates its powers it does not thereby completely exclude itself from exercising those powers.

He also asked, Sir, why it is that local authorities are exempt from the provisions of this Ordinance under clause 3 of the Bill. This is another provision which has been brought forward from the 1949 Ordinance. It is not a new provision. Local authorities have been so exempt for a very long time, in fact, I think, Sir, I am right in saying that they have been exempt since 1940 when the Ordinance was first enacted. They are, as the hon. Minister for Commerce and Industry remarked, non-profit making institutions and it is not necessary to

subject them to the provisions of this Ordinance.

I think, Sir, those were the points made in this debate and I beg to move the Second Reading.

*Question proposed.*

The question was put and carried.

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

#### ADJOURNMENT

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): That brings us to the end of the business on the Order Paper. I therefore adjourn Council until 9.30, tomorrow, Wednesday, 22nd July.

*The House rose at ten minutes past Six o'clock.*

Wednesday, 22nd July, 1959

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

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

#### PRAYERS

#### BILLS

##### SECOND READINGS

*The Registration of Documents (Photostatic Copies) (Repeal) Bill*

Order for Second Reading read.

MR. WEBB: Mr. Speaker, I beg to move that the Registration of Documents (Photostatic Copies) (Repeal) Bill be now read a Second Time.

Hon. Members will have been aware, Sir, that over the months recently we have introduced a number of Bills to amend our real property laws, particularly from the point of view of conveyancing and the practice and procedure in the Lands Office. Into each of these amending Bills we have incorporated provision to enable the Registrar under the various laws to make photostatic copies of documents presented for registration and to file those copies. The Ordinance which made general provision in that regard is therefore unnecessary and we propose that it should be repealed. It will only, of course, Sir, be brought into force at the same time as all the other amending legislation.

Mr. Speaker, I beg to move.

MR. BECHGAARD seconded.

*Question proposed.*

The question was put and carried.

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

*The African Courts (Amendment) Bill*

THE TEMPORARY MINISTER FOR LEGAL AFFAIRS (Mr. Conroy): Mr. Speaker, Sir, I beg to move that the African Courts (Amendment) Bill, 1959, be now read a Second Time.

This Bill, Sir, seeks to amend the African Courts Ordinance, 1951. In the eight years of practical experience which we have had of the working of that Ordinance a number of amendments

have proved, in practice, to be necessary and the purpose of the Bill which is now before the Council is to effect those amendments.

None of the amendments which we seek to introduce is of great principle. They are mainly procedural and they are of minor but some practical importance.

I think, probably, as the Bill is rather a hodge-podge dealing with a number of things, it would be simplest if I went through the Bill and described the more important measures.

Sir, clause 2 repeals and replaces those provisions of the principal Ordinance which deals with the jurisdiction of African courts. It makes no real alteration to the jurisdiction of African courts but it sets out more clearly what the Ordinance sought to set out in 1951. In other words, we hope that these new sections are clearer than the old sections and will be easier for people to understand.

Sir, clause 3 and clause 4 do much the same thing. Clause 3 removes a doubt. Clause 17 seeks to clarify the provisions of the existing law.

Clause 5, Sir, seeks to amend section 18 of the principal Ordinance, which deals with punishments, and is, perhaps, of interest to some Members of this Council. The proposal is that where a young person, under 16 years of age, is convicted by an African court, the new section 18 (1) (c) will give the court power to require the parent or guardian to enter into a bond to exercise proper care and guardianship over the young person who has been convicted, or to give security for the young offender's good behaviour in the future.

Sir, that is a provision similar to the provision contained in section 13 of the Juveniles Ordinance, 1934, which, of course, applies to other courts in the territory other than African courts.

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

(Mr. Deputy Speaker (Mr. Bechgaard) took the Chair)

Sir, clause 7 increases the penalty for disobeying an order of an African court. At the present moment the maximum

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penalty is Sh. 200 and it is proposed to substitute for that maximum penalty of Sh. 350 or to a term of imprisonment not exceeding four months or to both.

It is not uninteresting to compare with this section, section 126 of the Penal Code, which provides that anyone who disobeys the order of any other court goes to prison for two years, so although there is an increase it is not an increase to such a great extent as was provided for in section 126 of the Penal Code.

Sir, the new clause 8 provides for service of process of an African court outside the jurisdiction of that African court in a more simple manner than that provided in the existing law. At the moment, if an African court wishes to serve a summons outside the jurisdiction of that African court it can only do so if the summons is endorsed by a district officer. It is now proposed that that endorsement should not be required if the service is to be effected within the same administrative district.

Clause 9, Sir, seeks to amend section 29 of the principal Ordinance to allow a relative to appeal on behalf of a litigant in an African court. For example, it might be desirable that a litigant should be represented, say by a brother, and this amendment is to allow this to be done.

Sir, clause 10, proposed to introduce four new sections to the Bill in order to allow evidence to be taken on commission, and perhaps the simplest way of explaining this is to give an example. Supposing a case is being heard in an African court, say in Kisumu, and it is desirable to take the evidence of a witness at Kilifi, then the proposal is that the court at Kisumu can send to the court at Kilifi and require the court at Kilifi to take the evidence of the witness down there. That seemed to the Government to be desirable in order to save expense, to save time, and in order to make justice more freely available to the litigants in African courts.

Clause 11 is merely to correct a minor typographical error.

Clause 12 is of some importance. It proposes to add a new section to the principal Ordinance in order to allow an African court who has convicted a

person of an offence, to send the convicted person to a subordinate court of the first class for sentence. That is to say, where the African court does not think it has got sufficient punitive power it can, after conviction, send the case to a subordinate court of the first class in order to allow a heavier sentence to be imposed by the subordinate court of the first class. And that, Sir, is similar to a provision in respect of subordinate courts contained in section 217A of the Criminal Procedure Code.

Sir, the amendment proposed in section 13 is to permit the transfer of criminal cases from one African court to another. It is often desirable to transfer cases from one court to another because all witnesses live in the jurisdiction of the other court.

Sir, those are the principal amendments which this Bill seeks to introduce, and I accordingly beg to move that it be now read a Second Time.

Mr. Webb seconded.

*Question proposed.*

The question was put and carried.

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

**The Protected Areas (Amendment) Bill**  
Order for Second Reading read.

THE TEMPORARY MINISTER FOR LEGAL AFFAIRS. (Mr. CONROY): Sir, I beg to move that The Protected Areas (Amendment) Bill be now read a Second Time.

The present law which is contained in the Protected Areas Ordinance only applies to places where arms, ammunition and military stores are kept, and it is very desirable to have a power to give protection to other places. I can think of such places as power stations, water supplies, aerodromes, hospitals, telephone exchanges, oil installations and so on, which in times of violence it may be necessary to protect. Now, Sir, if we are going to extend, as this Bill seeks to extend, the protection of the principal Ordinance to non-military places, then we find that the protection given to the existing military installations and the powers given to sentries on those installations are both too wide and too narrow to apply to general protected

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It is therefore proposed to amend section 7, and I think the simplest way I can explain this to hon. Members is to ask them to turn to the back page of the Bill where they will find the old section 7 is set out. If I read the new section 7 while they look at the old section 7 they will see the difference. "Any person in a protected area who fails to stop after being challenged twice by any sentry or by a person authorized in that behalf by the prescribed authority so to do, may be arrested." Now, hon. Members will see that the difference is that the protection—the new protection—will extend to 24 hours, and will not only be during the hours of darkness, and that when the person has been challenged by the sentry on the protected area and he fails to stop, he may be arrested. The existing provision is that he may be arrested by force, which force may, if necessary to effect the arrest, extend to a voluntary causing of death.

Then, Sir, it is proposed to add a new subsection (2), which is on the second page of the Bill, to prescribe when arms may be used in effecting arrest. This is declaratory of the Common Law power of arrest of a sentry or police officer, and we thought it would be a good thing to set it up there so that everyone knows what the position is.

Now, Sir, I think it might just help hon. Members if I remind them that section 8 of the Ordinance, to which no substantial amendment is to be effected, provides the protected areas must be surrounded by a fence, and they must also have notices outside them, so there is no question of any person innocently stumbling into a protected area and being arrested in this way. It is only wicked people who are trying to go in improperly who will be arrested, and against who this Bill is aimed.

I do not think there is any necessity for me to say any more on this Bill. If any hon. Members have any questions I should be delighted to do my best to answer them, and I accordingly beg to move it now be read a Second Time.

Mr. Webb seconded.

*Question proposed.*

The question was put and carried.

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

**The Money-lenders (Amendment) Bill**  
Order for Second Reading read.

MR. MACKENZIE (Secretary to Treasury): Mr. Deputy Speaker, Sir, I beg to move that the Money-lenders (Amendment) Bill be now read a Second Time.

There is very little for me, Sir, to add to what is stated in the Memorandum of Objects. The Government's attention has been drawn to the fact that as the Ordinance is at present worded it is necessary for people like bankers and insurance companies whose normal course of business leads them to lend money to take out, strictly speaking, money-lenders' licences. Of course, it was never really intended that they should do so and in fact they never have done. The object of this Bill is to legalize the position which obtains in practice and to ensure that the Money-lenders Bill will only deal with money-lenders in the normal sense of the word and will not catch bankers and insurance companies.

The opportunity has also been taken to make one or two other amendments. The first one relates to the licence fee for a money-lender. The existing fee has been in force for a very large number of years and it will be noticed that it is not proposed to substitute another fee for it but to leave this for prescription by the Minister.

It will also be noted that the opportunity has been taken of substituting for the Governor, as the prescribing authority, the Minister. That is in accordance with present-day constitutional arrangements.

Finally, Sir, there is reference in the Ordinance as it stands to the Commissioner of Inland Revenue. That is an office that no longer exists and therefore the reference to it is being removed.

I do not think that there is anything more I need say about this Bill, Sir, and therefore I beg to move.

THE TEMPORARY MINISTER FOR LEGAL AFFAIRS (Mr. CONROY) seconded.

*Question proposed.*

MR. USHER (Mombasa): Mr. Deputy Speaker, Sir, I hope that I do not show undue curiosity, but the hon. Member did say that in point of fact it was never intended that bankers should rank as money-lenders. I would just ask him if he could kindly explain how it happened that in 1936—when I was not in this House and neither, I think, was the hon. Member—the bankers were put back into the category of money-lenders.

MR. WEBB: Mr. Deputy Speaker, I did not think that from such a mundane subject as money-lenders we might be able to extract a little humour. But the story behind the question which the hon. Member has just asked is not without some wry amusement. It is true, Sir, that, as he said, in 1932, when this Ordinance was originally enacted, the definition of "money-lender" excluded any person who was carrying on a bona fide business of banking or insurance. Certain difficulties seem to have arisen over the administration of the law and in 1934 the Kenya Law Society appointed a subcommittee to consider the Ordinance and report upon it. The subcommittee in due course reported and in December, 1935, a certain firm of advocates sent a copy of their recommendations to the Law Officers suggesting that the definition of money-lenders should be amended by deleting the provision which excluded bankers from the operation of the Ordinance. So accommodating, Sir, was the Government of the day that it of course immediately took action to implement this recommendation, and in 1936, as the hon. Member has pointed out, a Bill was enacted which had the effect of inserting the definition now in the Ordinance, which is set out on the third page of the Bill. In January of last year, Mr. Deputy Speaker, a firm of advocates wrote to the Attorney-General pointing out how stupid it was of the Government to have amended the Money-lenders Ordinance in 1936 in this way, so as to bring bankers and building societies within the ambit of money-lenders. Well, we naturally referred the matter to the Law Society and in due course everybody agreed that it was very foolish as before the Council. But the humour of the situation, Sir, is this: it was the same firm of advocates in each case.

MR. NAZARETH (Western Electoral Area): Mr. Deputy Speaker, Sir, I am wholly in agreement with the intention of this Bill. However, there is one matter on which I would seek clarification. It is stated in the Memorandum of Objects and Reasons that the amendment is so worded as to give it retrospective effect. Now, some time ago when I sought from one of the Ministers protection for agricultural tenants with retrospective effect I was informed that it was not the policy of the Government—that it was indeed against its policy—to pass any legislation with retrospective effect. I do not know whether an exception is deliberately being made in this case, and if so I would ask the Minister or the hon. Member to explain why an exception is being made in this case. I should have thought that the case of agricultural tenants was just as important as that of the bankers or such other persons in such high positions in our society, and that if protection was to be given to them the Government would have the same willingness to pass legislation retrospectively as in the case of the persons affected by this Bill. When the hon. Member comes to reply I hope he will clarify why the intention of Government is different in this case from the general policy not to pass legislation with retrospective effect.

THE TEMPORARY MINISTER FOR LEGAL AFFAIRS (Mr. Conroy): Mr. Deputy Speaker, Sir, it is in general bad to legislate with retrospective effect. There are particular cases which fall outside this general principle and in which it is possible to make an exception to that general principle. This is one of those particular cases.

In deciding whether it is possible to legislate retrospectively one must look at the number of citizens whose rights are involved. If one attempts to legislate retrospectively in respect of tenancies then so many people and so many rights become involved that the last position may be very much worse than the first position. But here, Sir, we find that a large number of reputable bodies have been currently breaking the law for many years, to no-one's detriment, and it is therefore proposed to put the law right retrospectively to save them from the consequences of their allegedly evil acts. This is therefore an exception to the

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general rule to which my hon. friend has drawn attention.

MR. MACKENZIE: Mr. Deputy Speaker, Sir, I have really nothing to do now except to thank my hon. and learned friend for dealing with the points that have been raised by hon. Members opposite and to add one further point, which is that although the law was amended in December, 1936, the banks treated it apparently with superb indifference and never took the trouble to licence themselves as money-lenders under this Ordinance, and of course the object of this amendment is to bring the law into line with the facts.

The question was put and carried.

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

#### The Price Control (Amendment) Bill Order for Second Reading read.

MR. MACKENZIE: Mr. Deputy Speaker, Sir, I beg to move that the Price Control (Amendment) Bill be now read a Second Time. This again, Sir, is not a very exciting Bill, and its purpose is entirely explained in the Memorandum of Objects and Reasons.

There has been some difficulty in bringing prosecutions owing to the technical defects referred to, that is certain sections of the existing Ordinance fail to state that failure to comply with those sections shall be an offence. The necessary amendments are being made in clauses 2 to 9 of the Bill.

There are also one or two minor amendments being made. Generally, Sir, it is important that this should be done. There are at present only six commodities which are subject to price control but they are commodities of considerable importance to the poorer members of the community and it is felt by the Government that if we have this law that it should be made possible to enforce it properly.

Sir, I beg to move.

MR. WEBB seconded.

Question proposed.

SIR CHARLES MARKHAM (Ukamba): Mr. Deputy Speaker, whilst supporting this Bill I would like to draw the atten-

tion of the House and of my hon. friend the Secretary to the Treasury concerning some remarks I made on the subject of price control way back in 1955 when there was a mild legal argument with the present Temporary Minister for Legal Affairs regarding the enforcement of the Price Control Regulations.

Now, Sir, to turn to this particular amending Bill today, I refer to section 4 which is amending section 14 of the principal Ordinance. The only concern I have, Sir, is regarding the same subject which I raised in 1955, that of maize meal, or *posho* as we call it, and the quantities which are differentiated in price by the quantities: in other words, a sack of *posho* sold retail is sold at a different price when it is sold by the pound.

Way back, Sir, those four years ago, I did ask the Government to look into this question because I still cannot see under this amending Ordinance what the position is when a trader issues two invoices of 100 lb. each at the full retail price per pound, rather than agree to an invoice showing the price of the 200-lb. bag. There is a marked reluctance in some parts of the country for the individual purchaser to obtain from the retailer an invoice. I have had complaints brought to my notice, Mr. Deputy Speaker, both concerning *posho* and sugar, which are items which are still price controlled, and I am wondering whether the Government will tell us if this amending Bill today will give them sufficient powers to prosecute in certain circumstances. The Temporary Minister did say this before that there is always the trouble of one man's word against another man's word, but it is a fact, I believe, that in Nairobi and elsewhere it is often very difficult to buy certain price controlled goods at the price controlled by the law, and sugar in particular.

I am raising this now, Sir, because, in view of the failure of the rains this year, there is a considerable anxiety that there might be famine or near-famine in certain parts of Kenya. In which case, Sir, it is vitally necessary that Government should have sufficient powers to make quite certain that the unscrupulous trader does not cash in, if I may use such words, on a shortage of foodstuffs which are price controlled.

(Sir Charles Markham)

All I would therefore ask, Sir, is that under this amending Bill today, particularly regarding clause 4, there are sufficient powers for the Government to take action in order that the examples I have given can be remedied by prosecution in the courts.

I beg to report.

MR. WEBB: Mr. Deputy Speaker, Sir, as the hon. Member for Ukamba knows full well, and as he has recognized in the speech which he has just made, the question of prosecuting a particular offender is always a matter of considering the evidence available in respect of the particular alleged offence. All I can do, Sir, is to give him this assurance, that this amendment we are now proposing is designed to make it easier to deal particularly with the question which he has specifically raised, namely, the sale of a bag of 200 lb. and the problem of giving two invoices for 100 lb. or 200 invoices for 1 lb. The intention is that in that case the seller must give one invoice in respect of 200 lb. which, to be lawful, will have to be at the correct controlled price. I cannot, of course, predict what views the courts may take, the purpose of this Bill is to enable a prosecution to be launched in such a case if the evidence is available. On the general issue which the hon. Member raised, the position is very much the same, that is that we must look at the evidence of the particular offence which is alleged to have been committed before we can say whether a prosecution will be launched, and we cannot ever guarantee the success of a prosecution.

MR. HASSAN (East Electoral Area): The question has been raised regarding the sale of controlled commodity by the retailers, particularly the sugar and the maize meal. Both these commodities are in very short supply to the retailers in outlying areas. The people do not get more than a bag or two of sugar for a month or a few bags of *posho* for a month, and they have to cater for the needs of very much larger numbers of their clients who keep coming for the best part of a month and naturally they are not very keen to sell three bags of sugar to the first-three customers on a bag price and get rid of it and sit down with nothing in their shops for the

remainder of the month. The same thing applies to the maize meal. I fully realize that it is unforfeivable for a person to sell maize meal to one person to the extent of 200 lb. and give two invoices of 100 lb. each. But I take it that such people should not have any protection of the law, but I have not been able to find out why, in the legislation, no provision is made for a person to buy-by the bag instead of by the pound. If there is a price fixed per pound then there should have been some measure of control of the price at 36 lb. That would have helped those who are buying in small quantities, smaller than one bag. It will also help the retailers to get a little less than per pound price but not the same as per bag. These are what we call the tricks of the trade of the small man, and, naturally, if he can take advantage of marketing his smaller quantities on a pound basis he will certainly try to sell it always per pound instead of in bags because of the very short supply of the controlled commodity that he has.

With these few points, Sir, I support the Bill.

MR. MACKENZIE: Mr. Deputy Speaker, Sir, I have noted the various points that have been made by the hon. Member who has just spoken. I think the points made by the hon. Member for Ukamba have already been dealt with by my hon. learned friend.

I have only one particular point that I should like to make on what has just been said and that is, of course, that there is no shortage of sugar as such in the Colony. I am told that the distribution is on the basis of past performance in the various areas, but there is no overall shortage of sugar in Kenya, and therefore I think it should be possible to overcome any difficulties. If some retailer finds that he has not got the right amounts that he needs to sell to his customers I am quite sure that this is a matter in which he only needs to make representations in the right places and it will be adjusted. I suggest that if the hon. gentleman knows of any cases where there has been this difficulty owing to insufficient supplies being made available, he should take steps to draw their attention to the fact that they can have the matter adjusted if they can show that this is really necessary for

(Mr. Mackenzie) the carrying on of their trade and for the convenience, of course, of their customers which is of even greater importance.

The question was put and carried.

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

#### The Cereals Finance Corporation (Amendment) Bill

Order for Second Reading read.

THE MINISTER FOR FINANCE AND DEVELOPMENT (MR. VASEY): Mr. Deputy Speaker, I rise to move that the Cereals Finance Corporation (Amendment) Bill be now read a Second Time.

Perhaps it will be necessary, Sir, to give just some slight historical facts on the need for this particular Bill. In the Cereals Finance Corporation Ordinance which was passed in 1955 a step was taken by the Government to enable us to meet the cost of imports of wheat and the cost of the purchase of wheat and maize made on behalf of the Government by means of the Finance Corporation which would be able because of its constitution to raise money on a short-term basis both here and overseas. The overseas operations which were conducted with the help of friends in London have proved very successful. This has saved a great strain on the ordinary cash resources of the Government and has proved one of the measures by which we have been able to finance on a short-term basis our long-term development programme during the period when we have been unable to raise long-term loans.

At the time of the reorganization under the Exchequer and Audit Ordinance certain moneys were appropriated to certain funds which meant that those funds were placed on their proper footing and the money was appropriated to that fund and could not therefore be used for any other purpose.

Amongst these sums were some £800,000 which had been appropriated to the Sugar Equalization Fund. Now, Sir, the cash position of the Government as a result of going forward with the development programme at a time when we have not been able to raise long-term money has grown increasingly difficult

although we have, as I have said on several occasions, in this House, survived this pressure extremely well but any step which we can take therefore to ease the cash position of the Government is a good and forward step.

Now, at the present moment, the Cereals Finance Corporation makes funds available through its agents for three types of advances; advances to farmers against a guaranteed minimum return of essential cereal crops; advances to farmers against cereal crops harvested and sold by the Government but stored by the farmers and advances for the purchase of cereals from overseas. But because of the old position and because of course we were not able at that time to make arrangements for alternative finance for the Sugar Equalization Fund we have not operated this on sugar purchases on the same basis. As a result of negotiations that we have been able to undertake we can in fact now find sources from our friends in London or from moneys on deposit and accumulated from local Bills which will enable us to do without locking up this £800,000 in the Sugar Equalization Fund and will indeed therefore enable that money to be released to the general use of the Colony in assisting the cash position.

The Fund itself will be able in the early days at any rate continue to work on the surplus which it has accumulated and which is at present in the neighbourhood of about £200,000. Now, in order to enable the Government to carry out the negotiations and thereby enable us to release this £800,000 back into the general cash of the Colony we must broaden the scope of the Cereals Finance Corporation so that it shall be enabled to move outside the three areas of advances which I have delineated and into the sugar field.

That, Sir, is the purpose of the Bill and if it is passed it will mean that the Colony's position in so far as cash is concerned will be £800,000 to the good whilst at the same time the operation of the Sugar Equalization Fund will not suffer because we have been able to arrange alternative sources of finance from overseas.

Sir, I beg to move.

MR. WEBB seconded.

Question proposed.



MR. HASSAN: I have some comments to make to the Minister that due to the shortage of sugar in the country we had controlled this commodity to maintain supply to the people here because we could not produce enough for the whole country. Our requirements were met by a neighbouring territory, Uganda, and when they could not supply us with enough, arrangements under control were made to get it from overseas. There have been complaints from the commercial community that the restriction of sugar which was imposed as an emergency measure during the war, has been unnecessarily maintained under control not removed and the commercial community given an opportunity to import sugar from available sources, so that the price of sugar should be available now, at reduced prices to all in this country.

The commercial community considered that such a measure should soon be brought into force and that the control of sugar should be removed. Present prices are maintained and subsidies are given to the local producers. The costs of importing from overseas by the Government have been reported to be a little in excess of what one individual importer can bring it in at, and market it at, in this country. Is it the idea of having this sugar included in the Cereals Finance, to perpetuate the control of sugar forever in this country? If that is so it is not in the interests of the consumer and the commercial community in this country.

Now, I have been informed just a few minutes ago by the Minister that there is no shortage of sugar in the country at all, and anyone can ask for additional supplies for his customers and that I should inform the authorities to increase his quota. If such a position is now in existence why on earth is this control not now removed and the commercial community given an opportunity to import sugar from whichever source they can obtain it? I hope that the Minister when he replies will give some information of the removal of this control one day.

THE MINISTER FOR COMMERCE AND INDUSTRY (Mr. Hope-Jones): Mr. Deputy Speaker, I was glad that the hon. Member who has just sat down raised these most interesting points in such a cogent way. There are three aspects to the problem

that he has referred to, one of which concerns price control which is the subject my hon. friend is dealing with. The other concerns the protection of the local sugar producer to which my hon. friend referred and the third refers to the equalization of prices; which, I think, hon. Members will appreciate flows as a necessary adjunct from the two points to which I referred.

Now, Sir, if I may take the time of the House for a few moments to deal with the points raised by the hon. Member. The reason why—and the only reason why—we cannot have complete freedom of importation of sugar at the present moment is because it is the policy of the three Governments, we believe with the support of public opinion, to ensure that there is a sugar industry in the three East African territories. The reason why that policy is enforced is if the hon. Member will cast his mind back a matter of a few years—in fact, I believe he could carry it back not to two wars but to three wars—when there has invariably been a sugar shortage. Now, sugar is not a crop that can be produced in a matter of one season. The hon. Member knows this better than I do, that it is a fairly long-term cycle, a cycle of, I believe, five years. Now, Sir, it is therefore necessary in the view of the Government and I believe in the view of most hon. Members of this House, that we have a reserve of sugar production in this country, so that in times of emergency and war there is an insurance that this essential foodstuff shall be available.

Now, Sir, here comes the price that has to be paid for that policy. Generally speaking, apart from a certain few favoured areas in East Africa, in terms of sugar production the East African territories are somewhat marginal. They are not as well placed as Mauritius, they are not as well placed as Cuba, they are not as well placed as the West Indies. Therefore, because these areas here are marginal it costs somewhat more to produce that proportion of our sugar—produce it in East Africa—than the proportion that is imported. There are of course times when to import sugar from overseas would not only cost more than it costs to produce in East Africa but it would be impossible: in times of war, times of emergency; times of international disturbance. Therefore, Sir, we have

[The Minister for Commerce and Industry] an Equalization Fund. It is necessary to import the proportion of sugar that we cannot produce when there is free demand from overseas. At times that price is cheaper than we can produce the sugar in East Africa; at times it is more expensive. It is necessary therefore to have an Equalization Fund. That fund to which the hon. Member referred to has on the whole been operated successfully in the interests of the East African consumer because the East African consumer's interests are twofold. They are that there should be some guarantee of supply in times of difficulty and, secondly, that the price should be as low as possible and the supply as ample as possible.

Now, Sir, there are two final points that I can make briefly. First of all, there is no reason why there should be a shortage of sugar in Kenya. There have in fact been at times surpluses. It is only a matter for those who find that the demand for sugar in their area is greater than the supply. All they have to do is to ask for more sugar. It is as simple as that. There has not been a period since the Suez crisis when somewhat naturally we took certain precautionary measures which fortunately were not required—there has not been a time when people could not obtain sugar.

Now, Sir, the final point I wish to make is this. The hon. Member referred to control. Well, Sir, I have tried to explain why there must be some equalization of price. I have tried to explain the imperfections of the present system, and the reason why we think it is in the interests of these three territories. The control is minimal. We believe that it can become even more so; that so long as we are trying—I believe in the interests of these territories and inhabitants—to protect the local producer to the limited extent that we can, then that minimal degree of control is necessary.

THE MINISTER FOR FINANCE AND DEVELOPMENT (Mr. Vasey): Mr. Deputy Speaker, my hon. colleague the Minister for Commerce and Industry has, of course, answered the majority of the arguments put forward by the hon. Member from the other side. There is one point I would like to make, Sir. The hon. Member said that did the introduction of sugar into the Cereals Finance

Corporation mean the perpetuation of control. The answer is, "No, Sir." The Cereals Finance Corporation is only a statutory board under the control of the Government which exists to supply money to Government and Government agencies for the purposes of the policy which Government sets forward. Therefore, the introduction of sugar into these operations merely means that if sugar is needed for the operation of the policy of the Government the power will be given to the Cereals Finance Corporation to operate for the raising of money for that particular purpose. I think, Sir, that was the only point that I had to answer and I beg to move.

MR. COLCIESTER seconded.

The question was put and carried.

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

#### The Municipalities (Amendment and Miscellaneous Provisions) Bill

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): Mr. Deputy Speaker, I beg to move that the Municipalities (Amendment and Miscellaneous Provisions) Bill be now read a Second Time.

Sir, this is one of these omnibus Bills with a number of amendments to the main Ordinance and it is a rather confusing one. I am afraid that I will have to go through the clauses more or less one by one although that is not the usual procedure in a Second Reading as each clause has really incorporated in it a different principle.

The first clause, Sir, apart from giving the title to the Ordinance does provide that separate dates may be decreed for the various provisions to come into force. The reason really for this although it naturally can be applied to all clauses is that those clauses which provide for the new constitution for Mombasa Municipality at Mombasa and for the enlargement of Mombasa Municipality boundaries may have to be brought into effect after the other provisions of this Bill. In fact, the idea would be to bring these two clauses into effect on the qualifying day, that is for the registration of voters in the Municipality of Mombasa.

[The Minister for Local Government, Health and Town Planning]

The normal qualifying day for registration of voters under the Municipal Election Rules is the 1st November but we are not absolutely certain whether we will be able to arrange for this to be the qualifying day in Mombasa as there is a lot to be done.

Clause 2, Sir, introduces a new definition of a scheme for education and that is linked with clause 20 which enables the municipal council or the municipal board to request the Minister to authorize them to levy a poll rate on all or any specified class of persons residing in the municipality or a part of the municipality for a period not exceeding three years and this money to be spent in respect of capital expenditure on a scheme for education.

It should be noted with regard to this particular clause, Sir, that the Minister may only authorize the levying of this poll rate if the Council so request that they should do so.

This amendment has been included because it has been felt that as there is such a great need and a great desire for increased educational facilities and the Colony's finances are unable at the moment to finance all that is required it may be that certain communities and sections of communities may wish to make finance available within their own municipal area for an improvement in those facilities.

Now, Sir, I wish to make this quite clear, that this is not a matter for recurrent expenditure at all. It is only in order to provide the buildings for schools—the capital expenditure. I also want to make it quite clear that we are in fact using the powers of the local authority to collect this money really because they can find out the feelings of their citizens or sections of their citizens and secondly they have the machinery with which to collect the money. But this does not indicate that the local authorities concerned are education authorities and, indeed, I will move an amendment, Sir, at the Committee stage to make that clear to the effect that the money so collected will be paid over to the education authority so that it is quite clear that the munic-

pality itself by this provision is not so regarded.

The other point, Mr. Speaker, which has been brought to my notice is that it has been suggested to me that the period is not long enough. It is a period of three years which is incorporated in the Bill and I will be moving an amendment at the Committee stage that the period should be not exceeding six years which I think would be quite sufficient to collect the money required for such institutions. I hope, of course, that the period will not be normally six years because that is rather a long time over which to collect money for capital expenditure but as I say on representations that have been made to me on this matter I have agreed to extend the period.

Now, Sir, in clause 3. This is a matter that is really rather a legal provision and the amendment is necessary in that the present wording of this subsection was suitable whilst there was only one municipality, that is, Nairobi, with aldermen and the number of such aldermen is seven but under the new constitution of Nairobi which is to be brought into force early next year they were to be between seven and nine aldermen in Nairobi and also the constitution of Mombasa has in this present Bill eight aldermen and therefore a minor amendment to the main Ordinance is necessary.

Clause 4. This, Sir, provides for a new constitution for the Mombasa Municipality. It also elevates the municipality to the status of municipal Council and increases the membership of that local authority.

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

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

The present constitution of the municipal board is in section 10 of the existing Ordinance and is reprinted on page 7 and 8 of this Bill. The new section provides for the procedure laid down in the Ordinance for the election of aldermen to be applicable in the case of aldermen elected to Mombasa.

The new section 11 repeats the provisions of the existing section 11 to provide for the terms of office of

[The Minister for Local Government, Health and Town Planning]

The composition of the new municipal council of Mombasa was discussed at very great length with members of the board over a long period and it is generally acceptable to them. It introduces, as hon. Members can see, African elected seats for the first time in the Mombasa local authority. There is one small amendment, Sir, that I think I will have to move in the Committee with regard to the Asian members. When I was at Mombasa the other day I had consultation with Asian members of the board and they have asked that the eight Asian members mentioned in clause or new clause 10 (c) should be divided into Muslim and those not of the Muslim faith: that is, four/four. The actual method of election of those different types of members will be set out in the proclamation. At the moment I have been asked that there should be eight wards within the Mombasa municipal area of which four would be allocated to Muslims and four allocated to those not of the Muslim faith. Having looked into the legal side of this I feel it is going to be very difficult and it may be necessary to have four wards each with two members, one of Muslim and one of non-Moslem faith. So we will have to go into that in detail. It is not necessary to introduce it into the Ordinance. It will be done by proclamation.

Clause 5, Sir, is with regard to the statutory functions of the Standing Committee of Local Government under the Municipalities Ordinance, and as I have warned this House before the Standing Committee is being abolished and therefore certain consequential amendments are necessary.

Clause 6. It amends section 14 of the Ordinance so that the power to appoint nominated members for municipal councils and boards lies with the Minister and not with the Governor. The power has already been in fact devolved on the Minister and this is merely to tidy it up with regard to the legislation.

Also the constitutions of Nairobi and Mombasa both provide for the appointments to be made by the Minister.

Clause 7, Sir, is one that has led to a certain discussion and criticism both

public and private and this is a matter of the establishment of parishes. The Bill will have the effect of greatly enlarging the municipality of Mombasa so that its new boundaries will be almost identical to those of the administrative district. In fact, it will be an area of some 107 square miles which is rather a large area for a municipality, in this country anyway. And it is felt, Sir, that maybe in order to administer these outlying areas and I would like to make it quite clear that a number of these areas are semi-rural in character and not built up and urban areas like the compact areas of Nairobi, for example, in order to administer these areas satisfactorily it might well be the establishment of smaller councils within that area would help very considerably. As I have said elsewhere, I do feel that in some places—and Mombasa is one where the danger is rather great, I think, with this large 107 square miles—that areas and people living in certain areas may well find themselves rather remote from the central administering authority.

Now, I think that I must say here, Sir, that the indications possibly in this Bill as it is now drafted give people to think that the establishment of parishes would, very drastically, fragment the administrative administration in an area like Mombasa. Well, that is not the intention and I intend to move an amendment to this particular section to make it quite clear that the parishes are going to be to a great extent under the control of the municipal council, to the extent anyway that if they wish to rate themselves that rate level must be limited. It is quite obvious that if a parish were allowed to rate themselves at any level they might indeed take all the money out of the pockets of the people in that area and leave nothing for the general services administered by the central municipal council. So it is intended that the limitation will be to 25 per cent of the total rate collected including the municipal council rate.

Sir, I think that will give an indication of how the functions should be limited. Secondly, with regard to the estimates of the parish, the amendment which I wish to put before the House later will state that the estimates of the parish council will be subject to the approval of the municipal council.

[The Minister for Local Government, Health and Town Planning]

Now, I do wish to put in a small proviso there though because there may be clashes and there must be somebody who judges between local authorities of this sort and this is no new principle. It has been applied, as hon. Members know, to both Africa and district areas with their local councils and county council areas with their district councils. But if there is a clash between two bodies there must be somebody who can decide which is right and which is wrong and therefore with regard to the estimates a proviso will be put into the amendment to the effect that if the parish council feels that the municipal council has been unfair in not approving their estimates they can appeal to the Minister and I believe that provision is necessary to see that fair play is done between all.

But there again, Sir, I would repeat that I do not consider myself that mean—in fact, I cannot think of any really important service now carried out by the municipal council will be devolved any way by the Minister on a parish council. The municipal council can itself devote it on a parish if it so wishes, but it seems to me that the functions of a parish council will really be rather extra to those that are now performed by the municipal council.

I also with regard to the establishment of parish councils wish to include in this new amendment a provision to this effect which I think will help those who have doubts about fragmentation and encouragement of dissension between different parts of the municipal area. The idea will be that at the request of a representative body of opinion in any particular municipal council—which request, I think, most certainly should be conveyed to through the municipal council itself—the Minister may (again only "may") appoint a commissioner but before establishing council he must appoint a commissioner. Either he can turn down the request straight off and there say no parish council or if he thinks there might be a case for one he will appoint a commissioner to enquire into all practical details of whether the parish council in the area concerned is either desirable or practical—and that, of course, is a very important point.

That, of course, is a very important point because it is quite useless and it is certainly not the intention to establish a whole lot of tiny little councils which are not financially viable. The Commissioners will then enquire into the whole matter taking evidence from wherever he wishes, or from whoever wishes to give evidence, and submit a scheme to the Minister as to (a) the recommendations as to whether a parish council is desirable or not and (b) if it is desirable, this is how it can be worked. Only then will the Minister be able to establish a parish council, having obtained all the information on this particular subject, and having obtained all the opinions of the different people interested.

Then, if the report is accepted the parish council can then be established.

Now, Sir, clause 8. This is another very simple clause. Section 20 of the Ordinance is not in this Bill, but deals with the appointment of municipal officers. The clause allows the town clerk and other officers of the local authority to exercise the functions of the local authority within the limits laid down by that local authority—in these cases where the functions are not of such importance that the local authority itself should consider them.

A further small amendment which I shall be moving is that the words "or other officer" be inserted after town clerk. That is at the request of the Municipalities Association, who have pointed out a number of functions in the nature of things are carried out by officers other than the town clerk, on behalf of the local authorities.

Clause 9 of the Bill, Sir. This refers to section 34 of the Ordinance which was reproduced on page 790, and requires that the mayor and deputy mayor shall be *ex officio* members of every committee of the local authority, and it is considered that in some cases this imposes an unduly onerous burden on the mayor and deputy mayor, and therefore this clause will remove this requirement. This, of course, does not mean that they cannot be members. They can be if they wish, but they do not have to be. This amendment actually arises out of the report by Sir Colin Campbell on the administration of the City Council of Nairobi.

[The Minister for Local Government, Health and Town Planning]

Clause 10 is to really replace section 36 of the Ordinance, and the main defect of the present section is that it requires the Council itself to approve each item of expenditure of over Sh. 500 and for other committees to approve the spending of smaller sums. This really seems to be rather a waste of time to the Council and its officers, and the new clause—the new section—will enable any spending committee of the local authority to authorize payments and make such authority unnecessary in the case of certain payments such as wages and salaries, where it is unnecessary to refer the matter to a committee for approval.

The present proposals in this Bill have been criticized by the Association of Municipalities as still being rather too restrictive, and I will again be moving another amendment, and having considered the matter I think we can meet the association to a very great extent, to the effect that section (4) in brackets, page 769, states the Council may, with the approval of the Minister make standing orders regulating the making of payments out of the Council's moneys, but that is, at the moment, subject to clause (2), which says it has to be approved by a committee, and I am prepared to go to the extent of stating that the provisions in that section (4) may be an alternative. Therefore in certain cases where the Minister approves there will be no need to function under subsection (2), and they can function under subsection (4). This is where the Minister approves in certain cases. I have in mind that the more advanced municipalities might well be able to operate under standing orders rather than under the provisions now suggested in this amendment. On the other hand, other less advanced municipalities, especially those who are not really able and can afford to pay high salaries for highly qualified officers, I think will have to maintain the position as set out in section 2.

Clauses 11 and 12, Sir, here sections 38 and 55 in the main Ordinance, are to be repealed. These apply to entering into contracts, and the old clauses, or the present sections, are reproduced in the Bill. A new section 55 under clause 12 is provided, and again this arises out

of the report by Sir Colin Campbell, where he recommended the preparation of lists of approved contractors on the grounds that such a step would avoid the necessity for arguments about the reliability of certain tenderers when tenderers are under consideration, and should reduce the number of defaults by contractors on work entrusted to them. Hon. Members can cast their minds back, and they will realize there has been, especially in the City of Nairobi, considerable difficulties in this regard in the past few years.

The amendment which I wish to move, Sir, on this particular section, will be in regard to (b), that is to clarify the opening of tenders need not be in secret and can be in secret. It can be one or the other. But in fact normally they are opened by a committee and need not be in secret. It is only a very small amendment, but there are very much more important factors with regard to this section of the Bill, and again, on discussion, I would be prepared to move at the Committee stage two more small amendments. The first will enable the Minister to set up a panel to be the appeal to whom contractors can go when they have been turned down, and they have not been allowed to have their names on the selective list. I think that the Minister himself should exercise this function in a number of areas, but in other areas it might be that he himself would be in rather an invidious position, and therefore enabling provision to allow him to set up a panel. Of course, if he sets up a panel he can always dismiss them. That is a legal provision which I think is well understood, but I do believe that in some areas, and possibly Nairobi is one of them, a panel might be more satisfactory than the Minister himself making the decision.

Secondly, quite considerable trouble and work is entailed when it is laid down that all purchases of any material size should go out to tender, and these purchases relate to what one might call proprietary goods, where indeed only one firm may make the item required, and it is ridiculous that a tender should have to be issued and all the administration be gone into under the administration of this law. Therefore, I will again move another small amendment to the effect that the Minister may allow a

[The Minister for Local Government, Health and Town Planning]

Now, I do wish to put in a small proviso there though because there may be clashes and there must be somebody who judges between local authorities of this sort and this is no new principle. It has been applied, as hon. Members know, to both African district areas with their local councils and county council areas with their district councils. But if there is a clash between two bodies there must be somebody who can decide which is right and which is wrong and therefore with regard to the estimates a proviso will be put into the amendment to the effect that if the parish council feels that the municipal council has been unfair in not approving their estimates they can appeal to the Minister and I believe that provision is necessary to see that fair play is done between all.

But here again, Sir, I would repeat that I do not consider myself that many—in fact, I cannot think of any really important services not carried out by the municipal council will be devolved anyway by the Minister on a parish council. The municipal council can itself devolve it on a parish if it so wishes, but it seems to me that the functions of a parish council will really be rather extra to those that are now performed by the municipal council.

I also with regard to the establishment of parish councils wish to include in this new amendment a provision to the effect which I think will help those who have doubts about fragmentation and encouragement of dissension between different parts of the municipal area. The idea will be that at the request of a representative body of opinion in any particular municipal council—which request, I think, most certainly should be conveyed to through the municipal council itself—the Minister may (again only "may") appoint a commissioner but before establishing council he must appoint a commissioner. Either he can turn down the request straight off and say no parish council or if he thinks there might be a case for one he will appoint a commissioner to enquire into all practical details of whether the parish council in the area concerned is either desirable or practical—and that, of course, is a very important point.

That, of course, is a very important point because it is quite useless and it is certainly not the intention to establish a whole lot of tiny little councils which are not financially viable. The Commissioner will then enquire into the whole matter taking evidence from wherever he wishes or from whosoever wishes to give evidence, and submit a scheme to the Minister as to (a) the recommendations as to whether a parish council is desirable or not and (b) if it is desirable, this is how it can be worked. Only then will the Minister be able to establish a parish council, having obtained all the information on this particular subject, and having obtained all the opinions of the different people interested.

Then, if the report is accepted the parish council can then be established.

Now, Sir, clause 8, this is another very simple clause. Section 20 of the Ordinance is not in this Bill, but deals with the appointment of municipal officers. The clause allows the town clerk and other officers of the local authority to exercise the functions of the local authority within the limits laid down by that local authority—in these cases where the functions are not of such importance that the local authority itself should consider them.

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Clause 9 of the Bill, Sir, this refers to section 34 of the Ordinance which was reproduced on page 790, and requires that the mayor and deputy mayor shall be *ex-officio* members of every committee of the local authority, and it is considered that in some cases this imposes an unduly onerous burden on the mayor and deputy (mayor, and therefore this clause will remove this requirement. This, of course, does not mean that they cannot be members. They can be if they wish, but they do not have to be. This amendment actually arises out of the report by Sir Colin Campbell on the administration of the City Council of Nairobi.

[The Minister for Local Government, Health and Town Planning]

Clause 10 is to really replace section 36 of the Ordinance, and the main defect of the present section is that it requires the Council itself to approve each item of expenditure of over Sh. 500 and for other committees to approve the spending of smaller sums. This really seems to be rather a waste of time to the Council and its officers, and the new clause—the new section—will enable any spending committee of the local authority to authorize payments and make such authority unnecessary in the case of certain payments such as wages and salaries, where it is unnecessary to refer the matter to a committee for approval.

The present proposals in this Bill have been criticized by the Association of Municipalities as still being rather too restrictive, and I will again be moving another amendment, and having considered the matter I think we can meet the association to a very great extent, to the effect that section (4) in brackets, page 769, states the Council may, with the approval of the Minister make standing orders regulating the making of payments out of the Council's moneys, but that is, at the moment, subject to clause (2), which says it has to be approved by a committee, and I am prepared to go to the extent of stating that the provisions in that section (4) may be an alternative. Therefore, in certain cases where the Minister approves there will be no need to function under subsection (2), and they can function under subsection (4). This is where the Minister approves in certain cases. I have in mind that the more advanced municipalities might well be able to operate under standing orders rather than under the provisions now suggested in this amendment. On the other hand, other less advanced municipalities, especially those who are not really able to afford to pay high salaries for highly qualified officers, I think will have to maintain the position as set out in section 2.

Clauses 11 and 12, Sir, here sections 38 and 55 in the main Ordinance, are to be repealed. These apply to entering into contracts and the related provisions of the present sections are reproduced in the Bill. A new section 55 under clause 12 is provided, and again this arises out

of the report by Sir Colin Campbell, where he recommended the preparation of lists of approved contractors on the grounds that such a step would avoid the necessity for arguments about the reliability of certain tenderers when tenders are under consideration, and should reduce the number of defaults by contractors on work entrusted to them. Hon. Members can cast their minds back, and they will realize there has been, especially in the City of Nairobi, considerable difficulties in this regard in the past few years.

The amendment which I wish to move, Sir, on this particular section, will be in regard to (b), that is to clarify the opening of tenders need not be in secret and can be in secret. It can be one or the other. But in fact normally they are opened by a committee and need not be in secret. It is only a very small amendment, but there are very much more important factors with regard to this section of the Bill, and again, on discussion, I would be prepared to move at the Committee stage two more small amendments. The first will enable the Minister to set up a panel to be the appeal to whom contractors can go when they have been turned down, and they have not been allowed to have their names on the selective list. I think that the Minister himself should exercise this function in a number of areas, but in other areas it might be that he himself would be in rather an invidious position, and therefore enabling provision to allow him to set up a panel will be included in the Committee stage. Of course, if he sets up a panel he can always dismiss them. That is a legal provision which I think is well understood, but I do believe that in some areas, and possibly Nairobi is one of them, a panel might be more satisfactory than the Minister himself making the decision.

Secondly, quite considerable trouble and work is entailed when it is laid down that all purchases of any material size should go out to tender, and these purchases relate to what one might call proprietary goods, where indeed only one firm may make the item required, and it is ridiculous that a tender should have to be issued and all the administration be gone into under the provisions of this law. Therefore, I will again move another small amendment to the effect that the Minister may allow a

[The Minister for Local Government, Health and Town Planning] council to dispense with the necessity for tendering for proprietary goods.

At this stage, Sir, I would apologize to hon. Members that I have not been able yet to produce in writing, or in typing, the actual details of amendments that should be put before the House.

MR. BLUNDELL (Specially Elected Member): Shame!

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): The hon. Member opposite is saying "shame," but he should himself know the great pressure under which Government is working.

MR. BLUNDELL: If the hon. Member will give way—

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): No, I am not giving way. But, of course, they will be on the Order Paper for the Committee stage of this Bill.

Now, Sir, clauses 13, 19 and 27. The first amendment here is a very minor one, and is contained in paragraph 18 (c) of clause 13. This amends again the paragraph produced on page 792 of the Bill, which is 59 of the Ordinance, so that the power to approve charges imposed by resolution on a local authority is transferred from the Governor to the Minister. This means charges which are imposed of a trivial nature, and I do not think this amendment requires any further explanation.

The second amendment is more important. Hon. Members may recall that the Minister for Legal Affairs announced in this Chamber in answer to a question on 1st November, 1957, that a senior resident magistrate would shortly assume duties of the stipendiary magistrate in the City of Nairobi. At that time my hon. colleague explained that the magistrate would primarily hear cases involving offences against the City Council by-laws, that the Government would be fully reimbursed for his emoluments, and that the City Council would provide the necessary subordinate staff, and premises and that the fine imposed in cases of convictions against by-laws would be relinquished by the City

Council. These clauses, 13, 19 and 27 give legal effect to the arrangements and allow them to be applicable where it is desirable to other municipalities if conditions are the same as those in Nairobi.

But there are other small amendments which I wish to move. Firstly, to give retrospective effect to the date of commencement of the arrangement for the stipendiary magistrate for Nairobi City, secondly to provide more flexibility for the percentage of fines to be paid to the local authority. In fact the situation very often occurs when it is necessary to send certain types of cases, usually due to pressure of work in one court, to another court. This new provision will allow it to be decided in such cases of what proportion of fines it would be appropriate to pay to the local authority. I would say here it is not the intention to reduce the 100 per cent fines paid to the local authority in respect of fines for offences against by-laws to the stipendiary magistrate's court.

The third amendment, Sir, will make the Minister's arrangements for approving fees and charges imposed by resolution made much easier. If at present the Nairobi City Council wishes to increase the fees for a very small thing, for instance for hiring out benches, they have to obtain the Minister's approval for such a change. The new procedure proposed will enable the Minister to declare that certain items—hon. Members need not be worried—the important items he will not declare—certain items, the hiring of benches, etc., the local authority would not have to obtain his approval for changing the fees.

Also, one other small thing. In order to tidy up the Ordinance the local authority and City Council local authorities will be empowered to build a court house. In fact they have built one but as far as I know there is no legal provision for them to do so.

Clause 14 is again with regard to the Standing Committee of the Municipalities with which I have dealt.

Clauses 15, 16 and 17, which should be read together. These are quite straightforward amendments. The phraseology used in these sections of the Ordinance—the main Ordinance—refer to the Councils and Ministers powers to make, alter, amend or revoke by-laws. These similar

[The Minister for Local Government, Health and Town Planning] words to the same effect are to be deleted from these sections by these clauses because they are unnecessary since the power to make a by-law, which is of course retained, includes the power to alter, amend or revoke by the same authority.

Clause 17. The present section provides that by-laws to which there are objections shall be submitted for the approval of the Minister. By-laws to which there are no objections should be considered for approval by the Standing Committee for Local Government. The Standing Committee for Local Government disappears and therefore an amendment has to be made, and they will all be submitted to the Minister.

Clause 21. The existing statutory provision is that there shall be paid to the local authority one half of the expenditure incurred in connexion with the outbreak of infectious diseases and such proportion as may be agreed of other expenditure as may be incurred in maintaining public health. In practice, of course, that proportion as may be agreed has for very many years in the past been 50 per cent, and this amendment will write into the Ordinance that it shall be 50 per cent. That means that if the Government ever wish to alter that percentage the Government would have to amend the Ordinance. I hope hon. Members appreciate the importance and generosity of the Government in moving this amendment.

The second amendment, Sir, in paragraph (b) of clause 21 makes provision for the payment of diminishing grants, and here I want to make it quite plain that it is general diminishing grants to local authorities in respect of services provided in parish areas. In other words they would then be dealt with on exactly the same basis as county councils.

Clause 22. This is an amendment arising from the amendment of clause 24—again with the effect of the removal of the statutory powers of Standing Committees for Local Government. The effect will be that the annual estimates of municipal boards will now be approved by the Minister, and not by the Standing Committee, and the provision for appeal to the Minister is, of course, deleted.

Here, hon. Members will know, I am sure, that the annual estimates for the municipal council do not need to be approved by the Minister, and that is one of the reasons why local authorities like to have mayors.

Clause 23, which refers to section 108 of the Ordinance. That section again is reproduced for the information of hon. Members. This is another amendment to delete reference to the Standing Committee, and will remove the statutory functions of the Standing Committee under the Municipalities Ordinance.

Clause 24. It is considered that the statutory functions of a Standing Committee, which I have said will be moved, should now under the ministerial system be mostly exercised by the Minister. The Committee though will continue to exercise certain duties under the Public Health Ordinance, and that Ordinance will eventually be amended so that the Standing Committee will cease to exist entirely, and when saying this, Sir, I would like to make two points. First of all, although the Standing Committee is being abolished, I especially did not take this step, although the functions have become rather moribund, until I had set up the advisory committee which was asked for by hon. Members of this House, and which, of course, has now been set up and is working. Secondly, I would like to say that over the years the Standing Committee has done a considerable amount of work, although possibly the hours of work have not been very long, but I know that they have had to take considerable trouble over circulars and come up with their inconvenience sometimes for committee meetings, and I should like to take this opportunity, Sir, of thanking hon. Members who have served on this committee for the work they have done and the help they have given to local authorities, and especially my hon. friend Dr. Hassau and my hon. friend Mr. Maxwell.

Clause 25. This clause introduces some rather important new sections, and these new sections were, envisaged in the Government Sessional Paper No. 116 of 1956, and that Sessional Paper itself arose from the Rose Report on the affairs of the City Council of Nairobi.

A further amendment I wish to move, the new section 117, is in order to give

[The Minister for Local Government, Health and Town Planning] the local authority concerned a chance to consider the matter at length and perhaps to rectify the matter in which the local authority is considered to be at fault. This is in line with the statement I made in April, 1957. The Association of Municipalities of East Africa has made representations that the wording of the new section 117 (b) and (c) are somewhat strict. That really is coming to 117 (b), 117 (c) I do not think they take a very great objection to. Here, Sir, I would like to say that a working party has been set up to consider the complete rewriting of the Municipalities Ordinance. This main Ordinance has been amended and re-amended and amended and re-amended over a number of years, and I would certainly think it is now time that the whole thing should be rewritten and reviewed. This will take some time, of course. I am not giving notice that another Ordinance will be coming in the near future. It will take some time—up to a year I should say—and I have especially directed this working party to look at these particular sections and consider them and see whether they would wish to make further recommendations for their amendment.

I would also like to say this. That there are powers, of course, for the Minister to interfere with the local authorities if they are not carrying out their functions properly, but the powers which are now in the Ordinance, the main Ordinance, require that there should be an enquiry, etc., before any drastic measures are taken. I would like to say that I, personally, would have no intention at all of using these new sections, at least until the working party have given their report, and if any local authority does not come up to the mark I would, much prefer, and will do so unless it is a matter of real urgent public importance, to use the present sections and not this 117 (b) which is the difficult one. And here, if I may just express what I think, is the hub of the difficulty. Hon. Members will see that 117 (b) refers to powers conferred on the local authority, and there is rather a difference between powers and duties. Powers are functions which the local authority under the Ordinance may take on, or may operate, whereas duties, of course, are

those which they have to operate. In fact, under the Municipalities Ordinance, I am told, the only duty which is imposed on the local authority is the burial of paupers, but there are other duties imposed on the local authorities under the Health Ordinance, and those are duties as against powers, and in 117 (b) the provision is made here that the Government may, or the Minister may, impose or rather change a power to a duty and force the local authority to undertake something which at the moment in the Ordinance is a voluntary matter. I must admit here, though, that there are quite a number of what are now powers in the Municipalities Ordinance which should be duties, and I think we should try to sort out and allocate and list what are powers and what are duties, and then I think it would be justifiable to take very stringent action where a local authority does not carry out its duties. Sir, that is the sort of thing which I hope the working party to which I have referred will give their special attention, and when they have done so, then I think that these clauses may well be operative.

Clause 26. This amendment again is rather a consequential one arising out of the abolition of the Committee of Local Government, and there is a small amendment, Sir, that I may move which is only a matter of a drafting mistake in clause 27.

If I may move to clause 28, this is also a very straightforward amendment, which will give the town clerks the powers of a public prosecutor and obviate the need to appoint each of them as such. I do not think there is any contention about that.

Clause 29 of the Ordinance. This clause is an amendment designed so that municipal boards which become municipal councils shall succeed to the rights and duties of the boards to continue the municipal laws. As at present worded the Ordinance only allows such succession where a board is declared a council by proclamation, not where such elevation in status takes place by amendment to the Ordinance, and as far as Mombasa is concerned, their constitution is written into the Ordinance that the elevation must take place by amendment to the Ordinance, and therefore we want

[The Minister for Local Government, Health and Town Planning] to make this provision. Other municipal boards are in another category and may be raised by proclamation.

Clause 30 defines the new boundaries of the Municipality of Mombasa, and clause 31 allows the councillors of Mombasa and Nairobi who are due to retire on 30th June, to continue in office until the new constitution of these municipalities can be brought into force. That is, after the preparation of voters rolls and the holding of elections. It also provides for the members of Mombasa Municipal Board to be deemed to be members of the Municipal Council until the new constitution is brought in and for those councillors to elect just prior to the first meeting of the council aldermen to serve for one year. The purpose of this is to provide a certainty of some continuity of experience and knowledge of the old board to the new council and to avoid the necessity for by-elections if some of the newly elected councillors were elected immediately after their first election. There is another matter as well, a small amendment to which I will move in clause 31. After discussions with the Board in Mombasa the other day I agreed that on the passing of this Bill the Municipal Board will become a council, and that they will have a mayor, and when this Bill is passed there will be an election for a mayor, and then, of course, there will have to be a re-election after what I might call the general election, which I think will take place about November or December.

Clause 32 is to allow a municipality whose boundaries have been extended to levy a type of rate other than the rate of unimproved site values normally levied in municipal areas, and here it comes back again to the point I made with special regard to Mombasa, to the extent that boundaries will include quite a large amount of agricultural and semi-agricultural land to which the ordinary municipal rate might not be applied. It is desirable to apply, so they can vary the rate, and indeed follow what the county councils do if they so wish.

Now, Sir, I think I have outlined the main provisions of this Bill. I have no doubt there will be certain comments, but any further comments, Sir, I would

rather leave to my reply, and therefore I beg to move.

THE EUROPEAN MINISTER WITHOUT PORTFOLIO (Mr. Harris) seconded.

Question proposed.

MR. KHAMISI (Mombasa Area): Mr. Speaker, first of all I should like to say that the Africans in Mombasa generally have been very much disappointed at the new constitution which gives them four African Members instead of eight as the other people have, and for which they have been asking for very many years. They would like the representation at that board amended so that they can have their voice effectively heard and implemented in the proceedings of the Council. At all stages when we have asked for such improvement of the position we have usually been told by the Municipal Board that such an increase could only be considered at the time the Bill is amended. I believe, Sir, this is the only time when the wishes of the people can be met. Sir, I was one of the people who took part in the negotiations for the constitutions of this board over the last three or four years and right from the beginning I put up a case for eight African representatives in the Municipal Board. My case was based on the fact that there are several standing committees of the Municipal Board, and they were not less than eight and if we had eight representatives then the Africans would be sure to have at least one African representative in each of the standing committees so that these committees could reflect the African opinion on all matters that are being discussed by them. I also pressed very hard, when we were having these negotiations with the other races that the work that is being done by the municipalities is purely voluntary work, and that we have at present very many Africans who are able and willing to take up this voluntary work for the town, because at that time it was doubted whether it would be possible to obtain services of eight African councillors who would contribute to the working of the Council. Sir, during the course of the negotiations, the other races, for instance, the Asians, who had up until now seven representatives, also thought that they should have more representation in this Council, and later I reluctantly accepted

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that we should have four representatives instead of two, but that was purely done very reluctantly because each race wanted to have much more representation than the others. Sir, at that time, about two years ago, when I agreed to four African elected representatives, I agreed on condition that one additional African would be elected as an alderman and that one more African would be a Government nominee out of the four who are drawn as nominated by the Government. That was agreed at that time but according to this Bill there is no indication whatsoever that we would have six African Members in that Council. I have waited in vain to hear from the Minister, who had agreed to this in principle, and I am quite sure that he remembers this because I made these demands before him in a Council meeting which he attended. He heard the facts and he did in fact give me an undertaking that he would see that one of the four Government-nominees was an African.

Sir, the population of Mombasa is so great at present and we have the Mombasa African Advisory Council and we have the locational ward councils, and the standard of these councils is very high and I am quite sure since we have eight chiefs and eight locational councils that it would be quite fair and proper that each of these eight wards should have one representative in the Municipal Board or in the new Municipal Council.

Now, coming to the question of the parish councils. If these are going to be introduced they are going to be a heavy burden on the African peasants who will be included in the new Municipal Council area because even now, Sir, some of these African peasants have been rated and are being rated by the Municipal Board although the services that are being rendered to them are very, very small, and in fact in other areas they do not exist at all. In most of these areas, particularly the mainland areas, you will find swamps and pools of water in a great many places and the municipality know of them but do not do anything, or take any steps to see that these areas are cleared of these swamps and that the certain services of the Board are given to these people. Now, my own impression, Sir, of the parish councils

will be that what will happen is that the Minister will be creating other local authorities in the mainland area and will not in any case be able to provide better services than those which are now being provided by the Municipal Council although the people there will be forced to pay the much higher rates for their lands in order to cover the expenses that will naturally be involved in the establishment of these parish councils.

Sir, most of the land in the mainland areas is not very fertile and even the land that is covered with coconut trees, some of these trees do not produce any wealth at all to these people and the people are finding themselves in very great financial difficulty if they are forced by the Municipal Council even now to pay the rates. It will be a great calamity if these parish councils come into existence and increase the present rates which are being imposed in order that they may carry out their duties. I feel, Sir, that the area is not as large as one which could not be looked after by the present Municipal Board, or by the new Municipal Council. For those reasons, Sir, I do not see any necessity at this juncture to encourage or to suggest that parish councils should be introduced.

Now, Sir, coming to the compulsory education schemes, I welcome in the Bill the provisions that have been made to enable the Municipal Council to collect rates, special rates and levies, from the people for the purpose of providing capital expenditure for the establishment of schools for the children of the inhabitants of that place. Sir, we have been pressing for this type of legislation because the people themselves have been asking that they would like to see more schools being built and they would like to contribute to the building of these schools by voluntary levies, and I am quite sure, Sir, that this will be welcomed now by the people. We hope, however, that when this money has been collected it will not be placed in the coffers of the Government but that it will be used to provide the schools that are urgently needed at present in order to provide compulsory education for the children in Mombasa. At present, Sir, we have the problems of juvenile delinquency and we have the problems of very many children who are unable to

[Mr. Khamisi]

find places in schools, and therefore they become mischievous, and no doubt they become a liability to the Government and to the town of Mombasa as a whole. Sir, I would like to see that these moneys, which will be collected, not kept for six years, but that year after year they will be used to provide schools and when they are collected, so that the utility of these levies will be seen by the people themselves, to which they have helped pay and to which I hope the Government will contribute on a £ for £ basis in order to have these schools built as quickly as possible.

Sir, I want to make it quite clear that the representation of the Africans must be further considered so that we can have equal representations in the Municipal Board for the reasons that I have stated and I have not advanced any political reasons why we want an effective say in the running of the Municipal Council. That can only be achieved if our numbers are equal to those of the other races.

With these few words, Sir, I beg to support the Motion before the House.

MR. MBOVA (Nairobi Area): Mr. Speaker, Sir, I intervene to speak in the debate, and firstly I want to make one very general observation that I thought ought to have been given very serious consideration when the Government was considering amendments to the Municipalities Ordinance. I have been concerned, and I believe that many people in the country are seriously concerned, with the state of relations between the local governments and the Government, and especially in this connexion the relations between the Nairobi City Council and the Government. It has become more and more evident that unless something positive and definite is done to improve these relationships a lot of the powers now devolved on the local governments may seriously hamper development in certain areas. Now, Sir, I wish to cite just a few incidents to illustrate my point. Now we all remember the scandal over the joint housing scheme and how the passing of responsibility, at least some responsibility, from the Government to the City Council and the attempt to handle the whole African housing programme in Nairobi jointly between the Government and the City Council resulted in this very sad day

in the programme of building houses for Africans in Nairobi, and whilst the City Council and the Government accused each other and argued from side to side thousands of Africans were sleeping in the streets without houses, and for over a year no houses were built merely because the City Council and the Government were still arguing as to who should do what. It was not just a question of whether the money was available but a question of how the programme was to be administered, and various other things. Now, Sir, I think the public has a stake in these matters and there should be serious consideration by the Government before they decide on these powers and responsibilities being passed to the City Council or to any other local government body that the interests of the public will not be adversely affected by such a devolution of power.

The second incident, Sir, is the present one over the health services, and here again we find that after the transfer of responsibility for the health services within Nairobi to the City Council we are beginning to meet with a great deal of difficulty over the capacity of the clinics to provide for the Africans and other people within the City area, and currently it has been approved by the City Council that the fee for attendance at the clinics should be increased. I understand that one of the difficulties is that the Government has placed a ceiling on the amount of aid it can give to the City Council in respect of the running of these services. The City Council has suggested in defence of this increase in fees that the services will be expanded and improved. We have been told that there is a very big burden on the medical facilities within the City Council area. Now, one is immediately prompted to ask as to how far the City Council and the Government jointly considered the possibility of the increasing burden that might come over the years and in this regard the transfer is hardly a few years' old. Previous to the transfer the Government handled the health services in Nairobi, provided the general dispensary and other facilities within the City. Now, one would have thought that when the transfer was being carried out the whole question of adequacy of staffing for the new clinics and dispensaries would have been gone into very thoroughly.

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): On a point of order, Mr. Speaker, is it right that a general policy debate on Local Government should take place on a Bill with specific amendments?

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): The Bill does cover a rather wide range of subjects. I think we should hear what the hon. Member proposes to say at the moment.

MR. MBOYA: Thank you very much, Mr. Speaker, I think that the Minister should listen and hear us out on this question because it is the public that are suffering on these matters. The City Council and the Minister can sit pretty, but it is the small African man in the street for whom these services are being provided who should be considered in this debate. Now, Sir, the present position is that unless the Government agrees to do something about the ceiling, unless there is some agreement between the City Council and the Government, the African workers in Nairobi will have to pay an increase in the fees for attending clinics of the City Council. I think the whole question of providing these services has to be related to the incomes of the people concerned, and we are at the moment in a situation in which I do not think that considering the general income levels, especially of those people at the minimum wage level, we can afford even to increase by 10 cents this vital and important service to our community. The tendency will be if we continue to increase the fees for this service that people will not report at the dispensaries or clinics but will try to wait and see if they cannot get better without going into the clinics and getting treatment or consulting with the doctors. This is a situation, Sir, which cannot be encouraged in the general interests of the health services of our community.

The third incident, Mr. Speaker, is that regarding the developing question of child welfare, and I understand that in this regard again there is argument between the City Council and the Government over what would provide what part of the expenditure, and I understand that the Government agrees to pay. I think it is, about 45 per cent only if the City Council pays so much in advance. Now, Sir, one would have

thought that in dealing with the whole question of child welfare and the problems of delinquency, prostitution and so on, that the Government would have accepted the responsibility in these matters, not only because it is a national problem but also because the Government is aware as much as we are that especially in so far as Nairobi is concerned some of the causes of this problem are the conditions arising from the state of Emergency and the regulations that the Government insists upon in this regard. I would have thought that the Government would have seen fit to pay whatever money it had towards this very important service regardless of whether the City Council was able at this very moment to find the money that it should contribute towards this scheme. Now, Sir, I think that there is a very definite lack here of appreciating that the services which the Government or the City Council provides are mainly intended for the public and not the City Councilors or the Minister or his Permanent Secretaries. I think that the position here should be a consideration, a serious consideration of the children that we are trying to help and generally facing the problem that we have in Nairobi and in other urban areas. Now, we admit openly, and we have been told here by the Government on several occasions that the problem of juvenile delinquency is becoming serious in places like Nairobi and other urban areas. We have been told by the Government members on this side, Sir, that the problem of child prostitution and prostitution generally is becoming serious in Nairobi, in the villages in the Central Province and in other urban areas in the country. Now, if the Government has funds, then it is my submission that in the interests of the public this money should be released forthwith and it should not be dependent on the bargaining position as between the City Council and the Government.

Lastly, Sir, the other incident that has certainly annoyed me in these relationships is that the Government saw fit recently to extend the period of registration for the vote in Nairobi by another month. This was done after representation was made to some of us and also the City Council, and we are very much appreciative that the Minister considered

[Mr. Mboya] the situation and accepted our representations. But, Mr. Speaker, what the Minister has achieved on the one hand is being to some extent undermined by the Government when we who have sought this extension in order to explain to the public the voting qualifications and the manner of registration are denied the opportunity by the Government to go around the various African districts, or to hold meetings with the potential voters and explain to them the system.

Now, Sir, it is my submission—

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): Mr. Mboya, I think you are getting very near the point of wandering a long way from the subject-matter of the Motion.

MR. MBOYA: I still feel very strongly, Mr. Speaker, that the whole question of the relationship between the City Council and the Government is so muddled at the moment and the sufferers are the public, and I think that the Minister, inasmuch as he is trying to bring about some amendments, if it is a question of his authority or lack of enough authority for the Minister to act under certain circumstances then I would have thought that in considering amendments to the Municipalities Ordinance the Minister might have considered also this whole question of the suffering that has been caused to the public merely as a result of lack of agreement between the City Council or the local governments and the Ministry. It has been suggested by some people. I do not know whether sceptically or as a jest, that probably some people in the Ministry and some people in the local governments do not like each other's faces. Well, we are not going to have this dislike between some personalities in these two organizations or bodies to affect the interests of the public. I think that something ought to be done about this situation.

Now, Sir, as regards the amendments, there is provision for, and my colleague the Member for Mombasa Area has already indicated, that we are generally in approval of the provision which will enable the local governments to levy some rates for the purpose of educational work.

Now, I just want to express this reservation or anxiety, firstly, that we hope when these powers are granted they will be used effectively and properly, and that we shall not have another state of affairs in which the transfer of such responsibility, especially over the education of our people, may become the subject of another middle situation between the local government and the Government. We hope that this does not result in our asking for more educational facilities and being told by Government, "Go to the local authority," and on the other hand being told by the local authority, "Go to the Government." We hope that it will lead to some positive steps in providing facilities for education and not six years of argument as to who should raise what portion of the money and as to who should administer what portion of the money. We hope that they will bear in mind that what the public requires from them is the provision of the facilities. We have slaved in this Council many times that we would be prepared to do anything to persuade our people to pay something more in their taxes for education. We are prepared to do this. But only if we are also assured that this will be used to an effective and positive series of steps being taken by the Government and whichever body is concerned in providing the facilities.

Now, Mr. Speaker, the other point on the Bill before the House is the provision for parish councils. Now, I am rather undecided as to whether to support or oppose this particular provision. In a sense one would welcome the idea that where you have large urban areas there should be some provision for some decentralization to some extent with some authority or powers given to the smaller bodies. Now, we have had experience, Sir, of African advisory councils and also in Nairobi recently of the African General Ward Council. These advisory councils and the General Ward Council are mainly advisory. They have virtually no authority. The consequence of this is that from time to time we are told that we have a channel through which we can effectively express our views in local government matters. But there is no question about it but that from time to time these advisory councils have been a handicap in the way of Africans taking part effectively in the affairs of local



[Mr. Mboya:] government within the various urban areas. To this extent, therefore, I would myself welcome the idea in the larger urban areas of some smaller councils with some authority. My fear, however, is that in so far as at present in most of the urban areas, if not all, the residential arrangements are such that we live entirely according to the racial groups. I fear that the parish councils may not be designed to meet the African demand for a direct and effective voice in the actual local government itself, the parent body. We would hate to see any attempt by Government to meet our demand for effective representation on the local Nairobi City Council or the Mombasa Municipal Council by suggesting to us that we might have parish councils in the residential areas that are predominantly African. As it is, by the present arrangements of residence the residence parish councils are bound to be to a large extent racial bodies, and the provisions of the Bill are such that the parent body will be responsible in the first place to agree whether or not the Minister may establish a parish council. Secondly, the parent body will be responsible to decide as to how much authority will be given to the parish council. Now, Sir, unless we have some effective voice in the parent body the chances are that we will not have the amount of authority that we need in our parish councils, and I think that the local politics within this local government cannot be ignored. Consequently, Sir, I would like to express this very definite qualification that in so far as we welcome parish councils to the extent that they are a necessary part of a developing larger local government system, we would like to state very definitely to the Government that we shall not be content with the introduction of parish councils unless we have an effective voice in the parent body. The Government should not seek to use this as an alternative to giving the African community an effective say in the parent body.

Now, Sir, the Member for Mombasa Area has already made some remarks regarding the constitution of the Mombasa Municipal Board. All of us welcome the fact that the Mombasa Municipal Board will become a council with a

major as we understand how, giving it some sort of respectability that it needs. Well, I thought this was said in the Memorandum of Objects and Reasons to this Bill. I do not know whether it needs that degree of respectability or not but if it is the intention to give it a degree of respectability then the first question I ask, and I see that the arguments are that it is a gateway to Kenya and that many a people come in and we ought to have a Council down there. Well, that is all well and good. Many people come in, foreigners and so on, so let us have a Council, a respectable Council, but if it is to be a respectable Council—

CAPT. HAMLEY (Nominated Member): A dignified Council.

MR. MBOYA: The Member in question might be sitting on it!

But if it is to be a dignified Council then I would like to see the whole population of Mombasa share in that dignity, and not one part of it to have the indignity of not being represented on the Council. How does the Government explain the position where in producing amendments at this stage of Kenya's development 90,000 African are to be represented by four members, 30,000 Asians, which includes Arabs, to be represented by 12 members, and I understand, 4,000 Europeans to be represented by eight members? What is the dignity we are talking about? Dignity for whom?

Mr. Speaker, it is this stage in Kenya when we are going to indulge in introducing in this legislature pieces of legislation contrary to all the professions that everybody is going to feed us on daily in this country? We are rising above race. We are rising above communal representation and yet the Government and the Minister, who is a member of the New Kenya Group, introduces this piece of legislation, this very definite manifestation of the worst forms of racialism that we have heard of in this country.

Mr. Speaker, it is not time that someone saw fit and had the guts to implement these professions that they make in public in some concrete form?

How can these people make these professions, how can this Government which continuously preaches the ideas of multi-racialism, partnership, equality and so on come here and tell us that it is fully

[Mr. Mboya] justifiable that 90,000 Africans should be represented by four members and 4,000 Europeans by eight. And we are told here that it is very dignified! It is an indignity to our community that we should be given this status and position in Mombasa or anywhere here in this country. It is an indignity that anyone should ask us to be a party to this sort of programme. I humbly submit to the Government that the time has come when they should do something to rectify this false basis on which we have been running our society for all these years.

Mr. Speaker, the other day the Minister stated—I think it was in the Press—that local government was the place for us to learn the process of government administration as so on. Mr. Speaker, I want to agree with him, but if it is the place to learn, then is it not the place where we should start learning something about democracy; something about forgetting race; introducing something today that will be a basis for the development of our main constitution? Why, Mr. Speaker, cannot we introduce in Mombasa today a democratic system: forget about this four/eight/four something and let us have wards and let each ward elect its representative to the Mombasa Municipal Council. If it succeeds, will it not be an experience worth having, a risk worth taking in the interests of all these professions that have been made here every day?

Mr. Speaker, the time has come when the Government has to face the challenge of this moment and take it upon itself to give a lead in this matter instead of just talking, talking, talking. There has been a lot of talking around here and we have hardly had any action. Already there is the suggestion and, Mr. Speaker, it is not for me to speak for the Asian community, but there is even that suggestion that of the Asian—eight Asian Members—there should be a further split between Muslims and non-Muslim Indians. Now, Mr. Speaker, where are we going in these matters? Where is the sense of direction? Who is going to give it, if this Government committed to non-racialism and so on, is not even attempting to face the challenge before it. Mr. Speaker, this Bill before the House is the worst thing the Government could have done in the present

state or stage of our development. It is the worst piece of legislation that has been brought before this House. At a time when we should be doing everything to forget this thing called race—the Government is coming here persuading us to accept racialism, to accept racial representation!

Mr. Speaker, we would be prepared—the African Elected Members are prepared here and now to introduce an amendment giving up completely any claim to communal representation in the Mombasa Council and we challenge the other races to come forward—we challenge the Kenya Group and all these groups—to come forward today and say that the Mombasa Municipal Council as a local government body is the place to test these theories about non-racialism and professions of "I love you; I am thy brother".

Mr. Speaker, experience has shown us that our local governments as at present constituted are not only the most undemocratic bodies but have become the most authoritarian bodies and an injection of some realistic, effective, democratic thinking is necessary if we are going to change them to become a foundation for the sort of society we want to build. I cannot understand how we are expected to come and talk democracy at the top when everything we are doing is to undermine democracy at the foundation.

Mr. Speaker, it is for this reason that I find it impossible to support this Bill. I find it impossible to support any attempt by anybody—Government included—to introduce racial thinking at this late hour, and as I have said, this is a challenge to the Minister who is a member of the New Kenya Group. I want to see how far that group goes in its professions.

I beg to oppose.

MR. HASSAN: Sir, I rise to pay tribute to the Minister for bringing us a complete Bill today although it has taken a very long time for him to bring it. But now that it is completed and brought to this Council I congratulate him because certain difficulties had arisen in a place like Mombasa where the municipal members wanted to raise the status of the municipal board to a municipal council.

Sir, without giving any regard to the very emotional speech by my friend who

(Mr. Hassan).

of just sat down—I would like to congratulate the Minister for helping the Asian members, for giving us eight members which can be divided among two major groups. A number of my friends must be feeling that there has been a division between Muslims and non-Muslims in the municipality of Mombasa, but we Asians know to our cost that this was one of the difficulties that created the greatest headache for the Asians in this town of Nairobi and it caused the division of Muslims and non-Muslims in this country. We had not the least intention to have any such division in the voters roll or otherwise in Mombasa and, with a view to avoid any such headache, the matter was left entirely to the Asian municipal fathers in Mombasa to decide on this issue. After a great deal of discussion and consultation, they came to the unanimous conclusion that, with a view to prevent any such clash on a communal basis which was the cause of trouble in Nairobi, we must decide in this new Bill the division of seats in this town so that we should be like friends and like brothers and not be subjected to the onslaught of the mischief-mongers which every community has in this country. It should not be considered a sort of communal amendment based on communal demands because it is the unanimous wish of the Muslims and non-Muslims of Mombasa and, as far as we are concerned in this Council, we have to give blessing to what they desire and what they consider to be the best thing for the unity in their town for the good of the local government body.

The second matter is the question of the parish council. Sir, this is a matter which is extremely controversial and has been made controversial in the Municipal Council of Mombasa for years ever since the Minister introduced this subject that with a view to bringing about certain improvements and to cut down the tremendous work which it will bring about on the Municipality in Mombasa the Minister and his advisors thought that the introduction of parish councils in the neighbourhood and particularly on the mainland would be the ideal to suit the requirements of the people living therein. Perhaps the Minister is aware that these three areas, Likoni, Kisauni

and Changamwe, are the areas used from time immemorial by very low income and poverty stricken Africans, Arabs and members of other communities. It was found that Mombasa Town was an area where it was not possible for very poor persons to live. They could not pay the rent and the cost of living was high. Some of these poorer people were given almost free lodging by the *shamba* holders and sent down to Likoni, Kisauni and Changamwe to look after their farms and get farm produce free of payment and free of rent. Now, there is no doubt that due to this modern development a considerable number of people have taken up lands particularly residential places along the seashore and they need some modern development. If it is considered necessary that some sort of councils are needed to help and assist the central municipal council of Mombasa I would like to put it to the Minister that it should be left entirely to the Municipal Council of Mombasa. If they ask for the establishment of parish councils in any particular mainland areas either Likoni or Kisauni or Changamwe the Minister should help them and agree to establish a parish council. I would not like that this parish council idea should be forced upon them. This thing is well known now that the Municipal Council of Mombasa is composed of very intelligent and qualified people and they have done a considerable amount of spade work to bring about necessary improvements in Mombasa itself and although they are very short of funds to complete everything in a modern way in the town itself they have never hesitated to spend whatever funds they could possibly spare on the neighbouring areas, particularly to help the health requirements of those areas. I know the medical department always sent sanitary inspectors and others round, to carry out malaria prevention work in those areas.

I have had talks with a number of very prominent people living in those areas and the feeling that I had a year ago was very much against parish councils. Some of these people who have come from up-country to live on the seashore did not like, on their very much larger plots of four or five acres, for these sanitary boys to come smelling about for stagnant water and sending

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them notices or summons for prosecution of mosquito breeding. They wanted peace. They did not want to be disturbed by these people. But no doubt, Sir, the development has come to a stage when considerable health services are needed there and as I have said before—and the previous speaker also mentioned it—that relations between the Minister and his advisors and the local bodies has not been given publicity in the press in very pleasant language and any further pressure to force them to have parish councils without the consent of the Municipal Boards will certainly be considered unnecessary. And if this Bill is amended in a way which should instead of saying "by consultation" say "after consent and consultation with the Municipal Council" of Mombasa or as the case may be "establish one or more parish councils" probably that will meet the requirements of Mombasa.

With these few words, Sir, I support the Bill.

CAPT. HAMLEY: Mr. Speaker, Sir, that was a very good speech of the Member representing Nairobi Area and one has to congratulate him on it. But I do wish he would not stir the pot quite so vigorously. I know what his goal is. It is a very natural goal. He will get there, I have no doubt, in time, but he must realize that before you can have goals there is a very great deal of footwork to be done and I think that a great deal of footwork has been done in Mombasa. He holds this Bill up as an example almost of oppression to his people. But there are two things I would like him to remember: firstly, that in Mombasa where, as I have always said, we do things so very much more pleasantly than you do up here, we have come to agreement over this, without any recriminations and without very much heat, and in a very pleasant manner. And I would point out to him that we have made progress, and if he keeps on making progress, and we keep on making progress we all get somewhere. I put to him a concept that I have always tried to work on in this life, that if in any undertaking you make one improvement every day, in the course of a long life he will have done a lot of good work. Does he not see that in Mombasa on the Mombasa Municipal Board his people

up to the present have had but two nominated representatives. What have they now? He has got at least 100 per cent improvement on that in numbers, alone! If not 200 per cent, because he has got four African elected members, and the great chances are that he—in fact, I think it is laid down in the Bill—that he will have an African alderman, and he will have an African nominated member. I have no doubt appointed by the Minister. Now is that not progress? Is that not going well on his way? Does not that get him well on the way and far closer to the goal than he ever was before, if you have a 200 per cent improvement and have elected Africans there whereas before there were but two nominated Africans.

Surely he will take note of these things. He wants to arrive at places before he has walked to them and I would ask him (he says the New Kenya Group, the Government, and other people do not want to play with him) is not this proof that we are playing with him? Is not this proof that we are sincere—that we are working towards a goal? I would ask him to realize that you cannot get to the goal without a certain amount of foot work, and I would ask him not to stir the pot so vigorously—to look at the progress which has been made, and not always looking for what he thinks is the obstruction, which in my opinion does not exist.

Mr. Speaker, Sir, I support the Bill.

MR. ALEXANDER (Nairobi West): Mr. Speaker, Sir, in the absence of the experts on local government on this side of the House it is with considerable humility that I rise to contribute to this debate. It does give me the opportunity, Mr. Speaker, to deal with some rather wide financial implications at the outset that are introduced as the result of this Bill.

In the Bill we have the proposal of a poll rate for social services and for capital expenditure on education. There are the very far reaching proposals regarding parish councils which contain financial implications, and also there is reference to the system of grants for health services; in that case rather reaffirming a system that has applied for some considerable time. I particularly wish to deal with this in general terms,

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Mr. Speaker, arising out of all these financial implications because, particularly, in recent months there has been widespread publicity in the country as regards the formula for the future in the financial relationships between local government and Central Government, and it is in my fear, it is my anxiety, that perhaps some of this wisdom should have been listened to that I seek to deal at some length with the financial relationships between local government and Central Government.

I consider that it is most unfortunate that these measures should have been introduced into a Bill at this particular stage because the Minister has a committee at this moment looking at the whole of this question of the financial relationship between local government and Central Government, and that committee has the good fortune, I understand, to be chaired by a Member from the opposite side of the House, Commander Goord, who has very considerable experience of local government, unlike so many of us on this side of the House, and I would have thought that it would have been far wiser for the Minister to have waited for the results of the advice of that committee before plunging into the rather widespread financial implications that are contained in this Bill. However, the subject or the advice I wish to refer to that is being spread throughout the country is a rather naïve, a rather casual and completely unanalysed reference to block grants. There are people in this country at the moment trying to convince our people that the answer to all the financial problems in local government, and the financial answer to the devolution of power to local government lies in a feeble reference to two words "block grants", and I am very pleased to see that the Minister in this Bill has, at any rate so far as public health services are concerned, confined the Bill to the present system of a percentage grant for health services undertaken by local government. I wish to explode completely this—

SIR CHARLES MARRIHAM: Don't explode here!

MR. ALEXANDER: Now I am afraid I have no retort for that. I wish, Mr. Speaker, to condemn this theory of block

grants that is being preached throughout the country. Block grants can be defined as the total amount to be distributed from a pool, but the total amount to be distributed from that pool has little regard to the actual expenditure of authorities. The grant is made towards services as a whole and not related to services which are semi-national in character. It is important that that definition be placed on the record because it is from that definition that there are attempts to convince us that this is a wise system. A block grant system is eminently suitable for countries where local government has been extensively developed. It is quite inappropriate to a country such as this with the different areas all in different stages of development, and I would ask the Minister when he replies, as I did ask him before, to provide us with some enlightenment on this whole question of the financial relationship with local authorities because I can assure him that as a result of this campaign throughout the country it is of considerable concern to many members of the public, and I know that many of our people are looking to the Minister to analyse this particular question very thoroughly.

It is most unfortunate that if it is necessary now to resort to a system of taxation, local government taxation, for social services and for education, that there has been no attempt to go beyond purely a poll system—a system of poll tax. This does raise the question as to the extent to which local authorities should have available to them free revenue and should have available to them various financial powers of raising that revenue, of raising it for education, for social services and for other purposes. On this it is most interesting, Mr. Speaker, to refer to an address that was given in September of last year by Mr. D. N. Chester, the warden of Nuffield College, Oxford, speaking to the Spring School of Local Government in Johannesburg, and it was quite clear from that that Mr. Chester, who is an expert on this subject, having explored other possible sources of revenue, he concludes that it is better for local authorities to collect their own revenue rather than to be the recipients of government grants. Admittedly the Bill in providing for a poll tax is going some way to accepting that local

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government should have authority to collect their own revenue. Unfortunately in this case it is the collection of a revenue solely for the purposes of carrying out an entirely government responsibility, and of course there is no reference whatsoever as to how the recurrent cost is to be met.

Now if I may just develop this for a moment, I would like to refer the Minister, to other sources of revenue, free revenue, to local authorities that have been developed in other countries, and I am referring now to countries like Denmark, Norway and Sweden, and I would refer him, and I would like to refer Commander Goord's committee to a recent report of the Royal Institute of Public Administration on this particular subject, in which they discussed the possibility of local government revenue coming from these types of sources; local government taxes, business taxes, retail sales, taxes on entertainment, and one we have heard so much about recently, motor vehicle taxes, and other miscellaneous licenses. It is interesting that America has found that since 1940 she has introduced a form of local government income tax. Now I mention all this.

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): On a point of order, Sir. There are a number of provisions in this Bill—a wide one—but no provision on taxes, and I would appeal to you that this is getting so wide and completely out of line.

THE SPEAKER (Sir Ferdinand Cavendish-Benfield): This is a comprehensive amending Ordinance and I think possibly Mr. Alexander is getting a little wide of the mark, but if a Member wishes to deplore that although multifarious amendments are proposed certain other possible amendments to which he attached importance have been omitted I am afraid I cannot stop him.

MR. ALEXANDER: Mr. Speaker, I am working up to the point of establishing all the other provisions that the Minister might well have brought into legislation of this kind, and to suggest that in fact many of the provisions in the Bill should be withdrawn, or alternatively that he should agree that this goes to a select

committee, and at the very worst, or very least, that he should agree that at least the Committee stage of this Bill is not taken until next week. There is still considerable thought to be put into this subject, and I have elaborated at some length on this question of finance, and I have not finished yet showing the Minister just the sort of problems that are on our minds over this Bill.

Turning now, Mr. Speaker, to the Bill itself, I cannot recollect whether at the opening the Minister did tell us in relation to clause 1 which deals with the Governor's power to appoint different dates in relation to different provisions of this Ordinance, whether he was able to say that that would also be extended to different local authorities. In other words, that the Governor should be empowered to appoint different dates in relation to different provisions of this Ordinance to different municipalities and local wards at varying times. If he was prepared to agree to that, then perhaps some of the more mature and advanced local authorities would be able to accept some of this legislation rather on the understanding that in fact it would never be applied to them whilst they maintain their present efficiency and present standing.

Turning to section 2, which defines this new introduction into the Bill of a scheme of education which is related later to section 20, I think I have got my legal adviser in front of me, Mr. Speaker. Unfortunately he has apparently decided that he will never again speak before me. I asked him just now what he was going to do and he has denied me of this very considerable advice that I get from him. Section 20 and section 2 relate to this question of a scheme of education and so far as concerns voluntary education or so far as it concerns purely education in relation to section 20 and the poll tax I do beg of the Minister to agree to the withdrawal of these clauses. I have at some length described other ways in which the revenue might be derived by local authorities if it is considered wise for them to undertake this obligation, and for that reason I would like this matter to be re-considered, but for other reasons as well I do urge upon him to withdraw this particular proposal at this stage. Government, Mr. Speaker, already has

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a machine for the collection of poll tax, and it does seem cumbersome and perhaps expensive to expect local government to create another machine at this particular stage.

I have more to say, Mr. Speaker.

THE SPEAKER (Sir Ferdinand Cavignish-Bentley): The time appointed for the interruption of business has been reached. This debate will be resumed at 2.30 p.m.

The House rose at thirty minutes past Twelve o'clock and resumed at thirty minutes past Two o'clock.

MR. ALEXANDER: Before lunch I was in the unenviable position of trying to struggle with this most difficult and complex problem of local government without the assistance of the mental telepathy that could have come from the experts on my right here, who I am now delighted to see have joined us, because I am sure that they—with their intimate experience of this subject—will enhance this debate.

I was, Mr. Speaker, in referring to certain financial provisions in this Bill, questioning the Minister as to why he had not considered various other financial methods, and included provisions in the Bill for local authorities to have a variety of financial powers, and I did go on to criticize with some vehemence those who seek to convince the country that all our financial problems in relation to local government can be naively disposed of in the two words "block grants", and I did ask that Members should convey to the country the lack of wisdom and the lack of financial experience in merely a reference to block grants as the be all and end all of our financial system in relation to local government in Kenya. Then I came to deal with the provisions of the Bill and I had just started on this question of a poll tax for an education service.

It is most unfortunate that this very fundamental issue of education by local government or an educational responsibility of any kind undertaken by a local government should be introduced, as it were, casually into an amending Bill of this nature. This, Mr. Speaker, is a fundamental issue as to whether local government should be involved in education, and I consider it most unfortunate

that the Government has not had a specific debate on this very issue—a debate introduced by a White Paper explaining exactly all the detail on this very complex problem.

I am sure, Mr. Speaker, that local government would not shirk to undertake responsibilities for education, provided that with the responsibilities it is given adequate powers of administration and of finance. The most unfortunate part about this particular proposal—and the Member for Nairobi Area put his finger on it very accurately when he referred to the division of responsibility between local government and Central Government on this subject—is what would obviously be the reaction of the public when the educational facilities go wrong. There is a situation where local government is asked to provide the capital out of a poll rate for the building of schools, etc., and then the Government presumably will administer education as it does now. If that education is poor, of a low standard or inferior, the parents will obviously point a finger at the local authority. It will be the local authority that will have taken the money off them personally, that is, the local residents, to build a school, and it would have a most unfortunate reflection on local government if this situation is allowed to develop.

The Member for Nairobi Area drew the analogy with dispensaries when he criticized this particular aspect. He did, when he was speaking, question at some length as to whether the devolution of responsibility for dispensaries in Nairobi had been fully considered between the local authority and Central Government. I can tell him, because I was a party to the particular negotiations, that in fact they went on for very many years—far too long, in fact—and the reason why they did was because of this very thing that he has pointed to. We realized, on the City Council of Nairobi, that if the arrangements with Government were inadequate it would be us that would come under criticism, and the result of that was that a considerably improved dispensary service was started—a considerable improvement on that operated by the Government. As hon. Members will remember, it was a meagre service operated in a tin hut down by the Norfolk Hotel, and at least now the local authority have some, I

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think it is, three or four dispensaries and because of the improvement naturally there is increased demand on these dispensaries, and it will go on increasing and there will be need for greater improvements in the service. But the Member was quite right to use this as an illustration of the way in which this relationship between the Government and local government, as the result of lack of financial wisdom, can go so seriously wrong.

As the educational service is national as distinct from a local service, and as it is at present financed out of national funds, the municipalities have consistently opposed proposals to expand their powers to deal with any form of education. If such a power were based in municipalities it is likely that pressure would follow on what power should be exercised, and a possible conflict of duties might arise between Central and local government. I say again, Mr. Speaker, that given the proper powers with the responsibilities, I do not think local government will shirk the undertaking of educational responsibilities, but certainly not on this basis. This basis is what frightens us.

I see the Minister querying it. I do not say they will take over willingly or that they will not shirk their responsibilities willingly, but I do believe that there is a high sense of responsibility in local government and I am quite certain that with proper discussions and proper arrangements that you would find that local government would not be backward in accepting its responsibilities.

Now, Mr. Speaker, I turn to section 7, which introduces new clauses 15A, 15B and 15C, which deal with this question of parish councils. These proposals seek to introduce a two-tier system—a system that may well be suitable for rural areas, a system which may well be suitable for county councils, where the different areas are well defined and have fairly well identified problems of their own—but it is questionable whether this particular system, particularly with all the refinements introduced in this Bill, is wisely applicable to municipalities.

There is one important feature that may have been overlooked, and it relates to the commitments of local authorities

—the current commitments by local authorities to those from whom they have already borrowed. Of course, the City Council of Nairobi and other local authorities—but particularly the City Council of Nairobi—have borrowed many millions of pounds for which they have pledged their assets. It is quite clear from the financial arrangements for these parish councils that they can become financially autonomous, and I believe that there will be a serious reaction, particularly from the City of London where money has come from to the City Council of Nairobi, concerning this transfer of their security to lesser authorities.

This particular proposal may be appropriate to Mombasa, but if it is, it is unfortunate that it has been introduced in such a way as to make it applicable to all urban areas. In fact, Mr. Speaker, I am not certain whether it would not have been wiser to have confined this whole Bill to Mombasa, because it is here that a reason for it appears largely to be the need to elevate Mombasa to municipal status. Whilst doing that, the Government have chosen to add a few bits and pieces here and there—some of it unwise—relating to all local governments. In fact, I think it would have been the reward of Mombasa to have had a Bill all of its own. It deserves it. They are good people down there. They are very peaceful. They are very dignified indeed. But I do consider it most unfortunate that in dealing with this very delightful part of our country, the Member for Nairobi Area should, in his anxiety and his enthusiasm to propound his ideas about one man, one woman and one vote—actually I think it was the European Minister without Portfolio who was confronted with this, Mr. Speaker, and he said, "Well, when you have got one man and one woman, what is there to vote about?" However, it is most distressing that the affairs of this very delightful place should have been dragged into this debate in the most unfortunate way they were. Local government has progressed in Kenya over the last 60 years. It is continuing to progress, but nevertheless it is a very fragile infant and for many, many years to come it will need very constant and careful attention, and I am quite sure that in the case of Mombasa, from this

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very excellent start they will grow rapidly in stature and importance, adding to their already illustrious position as the town—the only town—that Kenya relies on. It could do without the rest of us.

These proposals for parish councils could become administratively complicated and thereby exceedingly expensive. It is one of those problems that those who are over-enthusiastic about local government so often forget. The theory they rely upon is that two can live always as cheaply as one, but of course it never works quite that way, and the greater the devolution, undoubtedly the greater the expense. I question whether, as well, there are the people available, unpaid, to do the voluntary service that is so necessary in local government. Already there is quite a problem in finding people of calibre to serve local government, and I wonder whether there are yet sufficient of us in quality really to indulge in the luxuries of greater and greater devolution, because that is what this parish council proposal really is. It is a greater devolution of power to local government.

Another important matter is the need to standardize services in the boundaries of a local authority, and there is a danger that if parishes are allowed to create autonomy there may be considerable variation in the services as between one parish and another, and this, in a compact urban unit, is undesirable.

Whilst the municipalities are strongly opposed to the principle of the creation of parish councils in municipal areas, they also consider that the clauses, in their present form, are open to serious objection on several grounds. Firstly, the clauses give no indication as to whether the members of the parish council will be elected or nominated. Secondly, the Minister is empowered to control the appointment and this is important—the remuneration of its officers. Thirdly, the proposed arrangements for providing finance for the execution of the functions of parish councils for accountancy, for the borrowing of money and for the preparation and review of estimates are ill-conceived and are likely to prove unworkable in practice.

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): I thank the hon.

Member for giving way. Has the hon. Member received the circular that has been circulated to all hon. Members with the proposed amendments?

MR. ALEXANDER: Mr. Speaker, that gives me the opportunity to complain vehemently. As I walked in the door, it was a very decent hon. Back Bencher who had the courtesy to push this into my hand—just now—ten minutes ago. I asked him—and he is a doctor and he could do it and still cure his patient—really to deal with the Minister, and I hope he did. You know what I think about this coming into my hands a few minutes ago. I have not read it, Mr. Speaker, and I do not know what is in it and I have not got time to delay the House now.

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): By giving way again! Perhaps the hon. Member would be interested to know that that is a result of discussions with the people who briefed him on the speech he is making now.

MR. ALEXANDER: Exactly, Mr. Speaker, discussions which should have taken place months ago, not last night. That is the trouble with this Bill.

If the Minister for Commerce would like me to give way I will do so gladly, but if he goes on doing what he is, Mr. Speaker, I will start to deal with him, too. We do not mind just ordinary cheer-leading on the other side, Mr. Speaker, but professional interrupters—no.

Section 10 deals with the control of finance and appointment of a Finance Committee. The procedure outlined in the section is cumbersome and does not accord with that normally followed by several of the Kenya municipalities, nor that generally in vogue in the United Kingdom. It is suggested that subsections (3), (3) and (4) should be deleted and provision substituted requiring local authorities to adopt financial regulations appropriate to their circumstances. I can recollect that on the City Council of Nairobi we prepared financial regulations with considerable care, and I also recollect that when Sir Colin Campbell looked at these he reviewed them with considerable approval.

Section 12 deals with contracts and tendering, and the proposal is that when

(Mr. Alexander)

municipalities are entering into contracts for the execution of works or the supply of goods, there would be two alternative procedures. Firstly they can advertise in the event of work being in excess of Sh. 10,000 or by the preparation of approved lists of contractors from whom tenders would be invited. It is particularly in relation to the second part that there is complaint because the legislation Bill does allow a right of appeal to those whose names have not been included on the tender list. The municipalities are of the view that if the right of appeal is laid down in the legislation and it is permitted to go forward, it would result in the second procedure—that is, the procedure of an approved list of tenders becoming unworkable in that the local authorities will not embark upon preparing select lists of contractors in the knowledge that such lists, no matter how carefully they are drawn up in the public interest, will be challenged, resulting in considerable time being spent in submitting a case to the Minister. The Minister, being subject to political influences, must tend to be lenient in including names on the list. This leniency will result in an unsatisfactory list and also in embarrassment.

The second proviso to subsection (4) requiring the Minister's approval to be obtained before it settles with a tenderer other than the lowest tenderer, where tenders have been obtained from persons on a nominated list, should be deleted as this would result in an undesirable encroachment of the Minister into the functions of the local authority. It is not the slightest bit of use, Mr. Speaker, in other words, giving responsibility to advanced local authorities and then finding that they are subjected to serious direction by the Minister.

Section 25 concerns the provisions whereby the municipalities can be directed to carry out certain duties. This is the result of the Allen Rose Commission, and I believe of the Rose Commission Report, and in fact, as the Minister said, was the subject of a Sessional Paper, and he quoted the wrong number this morning. It is nat. 116; it is 118 of 1956; and it was quite apparent from what he said this morning that he could see that there were undesirable features in these particular provisions, because he went on

to say that it would not be his intention to use these provisions until the committee advising him upon the alteration to the Municipalities Ordinance had reported. But the question obviously is, Mr. Speaker, if he is not going to use these powers, why put them in here. Why irritate and arouse the suspicions of local authorities by putting these particular provisions in here if, in fact, the inference is that the consolidating legislation on municipalities is likely to alter substantially what is here?

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): Would the hon. Member please quote me in full? I said I would not usually, except in the case of urgent public importance.

MR. ALEXANDER: Yes, Mr. Speaker. I do not think it detracts from the point I am trying to make, that the Minister quite clearly sees in it objectionable features, and I do consider that it is unfortunate that he has introduced these because I am sure that he has adequate powers in the interim for undertaking his responsibilities in matters of urgent public importance. In point of fact, his record is one showing quite clearly that he is prepared to undertake those responsibilities and it is very greatly to his credit that the finest Minister for Local Government that we have had has never shirked his responsibilities, although at times they have been unpopular and not particularly palatable to those to whom he has had to administer them.

Mr. Speaker, I did say that I thought several of these provisions should be withdrawn at this stage. If the Minister is not prepared to do that—and I have told him the ones that could well go out—I do beg upon him to allow this particular Bill of far-reaching consequence to go to a Select Committee. I do believe that the part of it that concerns Mombasa should be enacted quickly. I have accepted that. But the rest of it I believe would be considerably improved and the country would be the more greatly pleased for it, if it went to a Select Committee. If he is not prepared to do that, the least I ask is that he should leave until next week the Committee Stage of this Bill.

Mr. Speaker, with the provisions that I wish deleted, the rest I beg to support.

MR. TRAVADI (Central Electoral Area): Mr. Speaker, Sir, up to now I was under the impression that the Local Government Municipalities Ordinance was based on a non-racial basis, but when I try to read and read between the lines of the provisions in this Bill, more particularly the education ones, I feel that racial legislation is being brought in indirectly.

I am aware of the racial composition of the City Council of Nairobi and the various municipal boards, but leaving that aside, the other provisions of levying rates—they are all on a non-racial basis. But here the definition of the "scheme of education" in clause 2 and the provisions made in clause 20—and here I would remind the House that my friend, Mr. Alexander, the Member for Nairobi West, that he was trying to remember, when he stopped at clause 2, and tried to find out what the second clause was; I thought he was in need of some help and I spoke out—"Clause 20". When a man is in need and someone comes to his help, naturally he has thanks. He has expressed his gratefulness, no doubt, but he is the person who criticized me in this House. I do not want to go further.

Now, Mr. Speaker, clause (b) of that definition of the scheme of education says that it provides "for the compulsory education of all, or any class of, children for the time being resident in the municipality to whom the provisions of Part XIV of the Education Ordinance, 1952, have been applied." Now this House is aware that the compulsory education provisions of the Education Ordinance, 1952, have been applied throughout the Colony to the boys and girls of the European community, only to the Asian boys of Nairobi, Mombasa and Kisumu, and so far as the African children go I think there is no compulsory education whatsoever.

Turning to clause 20, this says: "The Minister may, if a council so requests, by order, authorize the council to levy a poll rate—(a) for a specified period and in respect of all specified scheme of social welfare;" and then it goes on to say: "for a specified period not exceeding three years and in respect of capital expenditure on a specified scheme of education"—and I would underline the next words—"on all or any specified

class of persons for the time being residing in the municipality." Now naturally, when the municipality or parish council comes into being, they impose this poll rate, or any other rate, on whom? Compulsory education provisions are not applied to Africans, and if the Africans want to build a school it will be a racial levy for Africans alone or for the Asians alone, so far as the boys go. That particular levying will be on a racial basis—something as we had in the past—Asian education cess or European education cess.

This is of national importance. The educational service is not a local question. Then this racial provision now has been brought indirectly. I do not understand why it has been done now, when the people are out and out to create one nation, and that one nation cannot be created so long as the Government goes on providing places for various races such as has been done in clause 4. Leaving aside the election of aldermen, there are eight Asians and eight Europeans and then again four Africans and four Arabs to be elected while there is one Liwali, District Commissioner, four members to be nominated by Government and two other members and so on. So far as the Government nominees are concerned, I would not have bothered much; after all, they are supposed to represent various interests. But when provision is made for the Asians, for the Europeans, for the Africans and for the Arabs, then we can smell what is ahead. All this talk about this new group stunt—I call it definitely a stunt because when it comes to putting into practice their ideas they always go for racial dividing and even subdividing! Now, look at the amendments just circulated. As my learned friends at my back just now pointed out, the Asian seats are subdivided into four and four. Is the Muslim or non-Muslim going to propose in the Mombasa Municipal Council that the dustbins of the Muslims should not be cleared, that the waterpipe of the Muslims should be closed up and that of the Europeans should go on. What is all this nonsense for where the municipal services are concerned? Why is there this division and subdivision and counter-division? I cannot understand the reason why this new provision was agreed to. I understand that Mr. Khamisi who has just

[Mr. Travadi] been speaking, the very first speaker, agreed to a part of what you are suggesting. Well, if the African Members go on being a party to such things I think the other Members would take a lesson from them on how to tackle the composition of the Legislative Council when it comes up for discussion. I draw the attention of the African Members when they ask and ask for independence and when they want the other non-African Members to return to be on their side that they should be very careful—

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): Order, order. We are discussing amendments to the Municipalities (Amendment) Bill and you must not refer to political parties outside or to constitutional changes. It is quite out of order, as these subjects have nothing to do with this Bill.

MR. TRAVADI: Thank you, Mr. Speaker. Now, coming to clause 7 where the parish councils are to be created in the urban municipalities and boards, I would have welcomed this new innovation entirely but my difficulties are not one but many. I was, when I came to this House this morning, under the impression that when the composition of these parish councils would be in operation—and I took a tip from the Minister when he spoke the last time at the Study Circle—that it would be one man: one vote and I took it for granted that it would be something like a common roll at the bottom. But looking at the composition of the municipal councils and boards I feel very strongly that those persons sitting there where there is a statutory majority of one race over the other would never allow such a thing to go through and then my fears began to intensify. I also welcome that the control of these parish councils would be controlled directly by the Minister and not through the municipal boards as I said before where there is a statutory majority of one race over the other. But there too as well in various municipal towns and cities there are restricted covenants on certain lands and estates and leases where there would be hardly any Asian residing in or occupying anything unless by some indirect method of becoming a manager and then owning

everything just as many people do by investing in Nairobi and other places but what we are debating is the real racial restriction and the Government are conniving at it. That is a different thing entirely. But in those places where the municipal parish council will be created it would be entirely wrong that it should be composed of only one race and one race alone in the majority and so on. Otherwise my idea of this parish council was that it would be a training ground for the citizens of various urban cities to train themselves to be ready to participate in the central Government. But all being handicapped as they appear to be, the composition of the top bodies—such as the municipal councils and boards—would never allow the common roll or non-racialism to operate in these parish councils. Therefore, instead of favouring this clause, I oppose it. Otherwise I feel that the Minister at the moment has no power to dispense with or to drive away any majority race who is in power when the municipal councils are sitting overnight and he will have to wait and wait for a number of years by the time that happens and by the time the common roll comes into being. So that being the case, I feel that I must oppose this new innovation of introducing parish councils in the urban areas.

Mr. Speaker, I would not like to take the time of the House much more than the circumstances demand but I would when sitting down add that this Bill too likewise should go to a Select Committee when the people or the citizens of the various communities concerned will have more time to consider and submit their views to the Minister and to the Select Committee so that much of the difficulty that confronts the Minister in the recent memorandum circulated now and many other things to follow can be avoided.

I beg to support—

MR. PANDYA (Eastern Electoral Area): Mr. Speaker, Sir, first of all I would like to congratulate the Minister for his clear exposition in explaining to the House the salient features of this Bill which indeed, Sir, in my opinion has been long overdue particularly as far as Mombasa is concerned. The Government necessarily having long ago realized the importance of raising the Municipal Board of Mombasa to the status of a council and indeed

(Mr. Pandya)

I am glad, Sir, that this opinion has been endorsed by several Members in this House to-day.

I would like to refer to clause 2 which has been the subject of controversy today referring to a scheme of education. I, personally, Sir, am opposed to the introduction of this clause as, in my opinion, it is too early for education in any manner whatsoever to come under a local authority. I do not think the local authorities have developed to any appreciable extent, and once these powers are vested with the local authorities they will be forced to exercise them against their own will.

I did hear, Sir, the Minister say that it would give an opportunity to the various communities to make finance available in their areas. Indeed, Sir, many communities have been contributing on a fairly substantial scale already by the building of grant-in-aid schools. Another difficulty would be, as was rightly pointed out by the hon. Member for Central Area, taking into account the racial structure of education in the Colony today, that it would be very difficult to divide what is collected for the benefit of the different races in the various compartments. On these grounds, Sir, I feel that it is premature to introduce this clause. I strongly urge the Minister that the clause should be deleted and this, in fact, would also mean the deletion of clause 20 which authorizes the local authority to levy a poll rate.

Now, Sir, referring to clause 4 of the Bill which has also been the subject of some comments in this House and which refers to the constitution of the proposed Mombasa Municipal Council, I was hoping to say that it was important to note that this was the result of agreement amongst the different communities in Mombasa and that there was an example of successful joint endeavours after prolonged negotiations. But I find, Sir, that there has been some disagreement over the proposed composition expressed by the Member for Mombasa Area who, I understand, was a party to the discussions at the time the proposed constitution of the Municipal Council was agreed. However, Sir, I do want to emphasize the fact that it was the result of agreement and it was after long negotiations that the proposed constitu-

tion was agreed. I would like to refer to clause (c) which refers to eight Asian members to be elected. In my opinion, Sir, it is a pity that it has been found necessary to further divide Asian seats with reservations, but it seems inevitable in view of the pressures and the selfish and troublesome people who would break the harmony and the unity of the Asian community.

I would like, Sir, here to refer to the use by the Minister of the words "not of the Muslim faith" which, as known, is a negative description of a fairly substantial and important part of the community. The Mombasa Municipal Board, at its last meeting, agreed to use the nomenclature "Indian" and I am sure the Minister must be aware of this decision that was arrived at early this month. In view of this, Sir, I hope in future that whenever the reservation has to be made in a proclamation that he will use the words "Muslim" and "Indian".

Of course, it is a great pity, Sir, that while we are endeavouring to implement the principle of common roll in other spheres—indeed, the Minister himself expressed a desire to have this first in the proposed parish councils, although on a restricted franchise—we are introducing further divisions in the number of seats that are to be provided.

Now, Sir, I would like to refer to clause 7 of the Bill which introduces a completely new section and a new idea and that is, of course, the power of the Minister to establish parish councils. In my opinion, Sir, the development of local government is still in its infancy and any moves such as forcing the parish councils on the municipal councils would retard development, which is contrary to the views that have been expressed by the Minister that he envisages the strengthening of the local authorities subject to the minimum of necessary control by the central government. I feel, Sir, that enough time must be given to the municipalities to stabilize themselves before this matter is discussed with them in greater detail.

Now, Sir, Mombasa has legitimate fears that the extension of the municipal boundaries would be made conditional upon the creation of parish councils within the proposed enlarged area. I trust, Sir, that the Minister will not tread

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on this dangerous ground. There would also be difficulties in administering the two-tier system that is proposed under this Bill.

I would like to strongly suggest to the Minister that the Government grants, which I understand have been earmarked for certain areas, should be given on the extension of the municipal boundaries and not be made conditional on the creation of these parish councils as it would force the municipal councils to accept the principle of parish councils much against their will and against their decision and would simply accept this proposition to take advantage of the financial assistance that would be offered by the Government.

We should also be careful, Sir, to see that the necessary independence of local government should not be endangered by wide powers proposed to be vested in the Minister; that control should be exercised discreetly and that it should be the objective of the Minister to interfere as little as possible into the affairs of the local government and thus create confidence amongst the officers and members of the local government.

Referring to the remarks of the Minister on this clause, although he did agree to bring an amendment to the effect that at the request of a substantial number of people of a certain area he would consider the creation of a parish council, I think this would undermine, to a certain extent, the authority of the municipal council and I, personally, feel that as a compromise, although I am personally in favour of a complete deletion of this clause, that instead of the words in 15A, "... the Minister may by notice in the Gazette after consultation with ..." I propose the deletion of the words "after consultation with" and the introduction of "at the request of"; that the municipal council should request the creation of parish councils and then the Minister should set in motion the machinery when he intends to elicit opinion in that particular area.

Now, Sir, referring to clause 9 of the Bill, I personally cannot see any advantage in the deletion of this requirement that the mayor and the deputy mayor should attend all meetings of the committees. In my opinion, Sir, it is essen-

tial that these two important officers should attend meetings of all the committees, take interest and participate in the detailed work of the council while they hold these high offices. And if sometimes they are unable to attend for some reason, that is a different matter, but I suggest that the words that are proposed to be deleted should be retained as the officers would also therefore be able to appreciate the background of decisions taken in the committee in the full meeting of the council.

With regard to clause 12, Sir, that refers to the power to enter into contracts, and particularly with regard to clause 12 (3) that refers to the nomination of contractors I intended to oppose this procedure, but in view of the fact that the Minister proposes an amendment to set up a panel to whom contractors who have been rejected can go to make an appeal, I think this will meet the requirements of the situation.

Finally, Sir, I would like to congratulate the Minister on accepting the view of the Mombasa Municipal Board that in the interim period from the time that the Board acquires the status of a council that he has accepted the recommendation that Mombasa should have a mayor. I personally could not see any good reason for the granting of the position of a chairman and not of a mayor. If Mombasa was good enough for a mayor next year I could not see any reason why it should not have been granted that dignity as was suggested by one hon. Nominated Member this year. And I am glad, Sir, that he has accepted this recommendation which removes the slight indignity that Mombasa may have suffered for a few months.

And finally, Sir, I would like to oppose the reference of this Bill to a select committee. Members are aware that it is quite urgent in the interests of Mombasa that it should be created a municipal council and I do hope the Minister will not accept the suggestion and in the most will delay the Committee stage of the Bill until next week if he finds it necessary so to do.

With those observations, Mr. Speaker, I beg to support the Bill.

CADR. GOOND (Nominated Member):  
Mr. Speaker, apart from the issue of the representation on the Mombasa Council, concerning which I am most

[Commander Goord] certainly not going to speak, the main issues are those of the financial provisions, the parishes, the poll rate for building schools, and the powers of the Minister.

Turning first to the question of the financial provisions, the hon. Member for Nairobi West suggested that this Bill should have been held up so that it could have incorporated financial measures arising from the conclusions of the Advisory Committee. I can only assure him that if that had been the case and if that had been done that the Bill would have been held up a very long time. And in view of the relatively minor nature of the financial provisions—the true financial provisions—which are contained in the Bill, I am quite certain there would have been no justification for that. The points on financial control and contracts raised by the hon. Member have been met, I think, completely by the amendments which the Minister will bring forward. I do think that perhaps the hon. Member for Nairobi West had some little complaint—a true complaint—at having these amendments thrust into his hands at the last moment, but I would like to point out to him that the municipalities only finally made up their minds on this issue last week, and there has virtually been no opportunity for discussion before the talks took place yesterday afternoon.

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

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

MR. ALEXANDER: Time is always short!

CMR. GOORD: Now, Sir, I would like to say a few words about this question of the poll rate. This issue is referred to in the definition as a "scheme of education" and I think that this definition is perhaps an unfortunate one. The intention is not, as several Members have, perhaps inadvertently, suggested, to provide an education service. That is quite clear from the context of the Bill. The object is to enable the people of a locality to help themselves—a fundamental function or responsibility of local government.

Now, I must accept a certain amount of personal responsibility for this particular issue, because some two years ago now in a certain county council we found that although a very large proportion of the rates were being expended on services mainly for the benefit of the African, the money was still ministered; and we did suggest to the Minister that the African population in particular—but not necessarily only the African population—might like to help themselves through a special levy for special purposes, and one of the purposes which the African people themselves were insistent that they required, was the purpose of building a school; of building a building, not providing a service. It is quite different.

MR. ALEXANDER: A school building?

CMR. GOORD: A school building. That is not a service, it is a building.

Now, naturally any such decision to build a school would have to be taken in very close consultation with the district education boards and in our experience they are very much prepared to play ball. And if a similar provision is included in the County Councils Ordinance it will enable a certain locality very quickly to obtain facilities for secondary education very much sooner than they would otherwise obtain them; so we are back to implementing the principle of local effort by a community, to improve itself.

Now the fears are that Government will force council to take over educational responsibilities. I think it is clear from the Bill, if not from the definition, that there is no such intent in the Bill, and I think this is a complete bogey. The Minister will, in his reply, I am quite certain, give most emphatic assurances on this point.

The other fear is that perhaps an undue financial burden may be placed on one section of the community. Here again the Minister has powers, it is impossible to legislate for every eventuality and I think, somewhere, you have got to trust the Minister to use those powers to ensure that no injustice is done.

I would further say on this one, that I notice that in the agreed amendments it is proposed that the money so collected should be handed over to an educational authority to build the school. I am not

[Commander Goord] quite certain that the county councils, when the same thing comes to their Ordinance, will want that. I am not at all certain that they will not want to own the school, put their name up on the school and manage the school. It might well be. The whole thing is in accordance with the principle of the community helping itself to better itself, and I suggest, Sir, that exactly the same principle applies to the proposal on parish councils. In the county councils we have recognized that the decentralization to a second tier is an absolutely vital feature of the system. It is the basic requirement that a purely local function must, in so far as possible, be performed by the local people, and I would go further than that and say that it is of the greatest importance not only that as much local powers as possible should be given to the local people, but that as many of the local people as possible should be brought in to the working of local government.

I do, Sir, of course, recognize that there are very considerable differences in the municipalities, but I think that some of the larger municipalities at least would be very hard put to it, honestly to, deny that there is a certain remoteness in that strong centralized control which they naturally like for administrative purposes. There is a certain remoteness which should not exist if it can be got over—and I think that the parish council idea may be one way in which we can get over that remoteness.

Particular reference was made by the last speaker, to Mombasa in connexion with the parish council, I would like to point out that if Mombasa does extend its powers over the mainland it will, in fact, become something more analogous to a county council than to a pure municipality, and I believe that under those circumstances the second tier will be absolutely essential.

Another bogey that has been raised is that the institution of parish councils means fragmentation. Now it does not mean anything of the sort. The Municipal Council retains its main powers over the whole field in major services. It may delegate certain local services to the parishes, but the main power remains at the centre. It is not fragmentation—it is

decentralization, which is an entirely different thing.

One Member suggested—the hon. Member for Mombasa Area, I think it was—that parish councils would not result in better services. But in point of fact the whole object of having a parish council with its own rate, which would be over and above the basic municipal rate, would be to provide an improved service in those local things—like sitting lamp-posts and similar ancillaries in which the local people are really interested! I do suggest, Sir, it is yet another step in schooling the people in the art of self-government.

Now the hon. Member for Nairobi West raised what I thought was a very peculiar hate. He suggested that if there were a parish council in Nairobi, the City of London might lose confidence in it.

MR. ALEXANDER: Mr. Speaker, I said nothing of the sort. I did not say the City of London would lose confidence—I said the City of London would ask where their security had gone to when they see assets transferred to a parish council.

COMMANDER GOORD: I suggest that the assets are still there.

MR. ALEXANDER: Owned by a parish council?

COMMANDER GOORD: What assets would be held by the parish council? I suggest that any assets there were would continue to be owned by the main council, other than those which came into being subsequent to the initiation of the parish council itself.

Now, Sir, another point which was raised was the question of the introduction of a second tier causing dissension. Well, Sir, all I can say is that that is not, in fact, our experience in the counties, and I cannot really see why it should be so in a municipality. I do think that we must not be too conservative in our local government in Kenya. We must not be too bound to English practices, I suggest, Sir, that we have to find our own way. We must be dynamic. The thing may not work, but let us, at any rate in one or two cases, try it.

Now, Sir, turning to the question of the Minister's powers, he has given an



[Commander Goord] assurance on the question of the introduction of parish councils which is contained in the amendment which will be seen by everybody tomorrow. The one on which I, and many other people are doubtful on, is in section 25—17 (b); but to my mind there is no question that there is a need for a power of this nature, and its need was underlined, I think, today by the Member for Nairobi Area. But I do feel that possibly some amendment to that would be a good thing—provision for some sort of enquiry before these powers were actually used. Here, Sir, perhaps I could just diverge for one moment to say that one hon. Member referred—it was the Member for Nairobi Area—referred to the conflict which was always taking place between the local authorities and the Minister. Well, Sir, I know from experience that local authorities do use the Press as an instrument for trying to influence Government policy, and to my mind it is a perfectly legitimate manoeuvre. But as a matter of personal opinion I believe that such criticism should be directed towards the Government as a whole and never towards the Minister as a person.

In conclusion, Sir, some critics would have us legislate for every conceivable eventuality. Others, on the other hand, would have us give complete discretion to the local authorities. In fact, I would suggest that both courses are, in fact, impossible. We must accept the intent of the Bill, and particularly the intent in the cases where measures are of an enabling nature, and the intent that they should be enabling—and that we must accept that the Minister must have power at his discretion in certain circumstances. Somebody has got to be an umpire sometimes.

I beg to support, Sir.

MR. ALEXANDER: On a point of information. Does the security of assets transfer to the parish. The provision is in clause 7 (3), and it reads: "The parish council of . . . be a body corporate with perpetual succession and a common seal, and shall by such name be capable in law of suing and being sued and of entering into contracts." That is a normal provision empowering an authority to own assets.

MR. OLE TIPIS (Central Rift): Mr. Deputy Speaker, Sir, I rise to make a

few general observations on the Bill before the House.

Now, first of all, Mr. Deputy Speaker, we have been told time and time again in this House and also outside this House by various responsible people both within and without the Government, that the local government institutions in this country should provide a good training ground for the various communities residing in this country to solve their various difficult problems with all the mutual understanding and co-operation. Now, Mr. Deputy Speaker, I am at a loss to see how on earth one can preach a gospel which he does not believe in and expect to convince the other person. In this respect, Mr. Deputy Speaker, we have had it said on several occasions that we should move away from any racial feelings or any racial ways of thinking of what is good for our country, and here the Minister of the same Government which, in a way, has more or less been accusing some other people of being racist comes before this House to introduce a Bill which, if it is not a racial one, I do not know what else you could call it.

Now, Mr. Deputy Speaker, first of all, I would like to touch on this point of education levy which under clause 20 the local authorities are empowered to collect funds for this purpose. Personally, I have said it before, and I am going to repeat it again, that the Africans have no objection at all to paying levies on a specific purpose to help their own people. But if we look into the composition of some of these local government bodies where the African has no direct say whatever, then, I told the Minister before, and I am going to tell him again, that he will meet with the strongest opposition if he thinks that the African is so ignorant as to accept being forced or asked to pay something in which he has no direct control in the distribution and the expenditure, and the money which he has contributed is going to be put.

Now, on the other hand, I have heard quite a bit of opposition from some Members on this side of the House. They argue that since the Central Government is not transferring the education into the hands of the local government, or in other words, the local government authorities are not becoming the educational

[Mr. Ole Tipis] authorities, then they do not see any reason why these local government bodies should be allowed to levy these taxes. I am afraid, Mr. Deputy Speaker, that I cannot agree with them. In some of the African district councils you find a special educational levy imposed by the local authorities, and when that money is collected it is paid into the district educational board or the Central Government, which is the educational authority for the expansion of educational facilities in those areas, what my hon. friends here have failed to disclose in the open is what is worrying them—their fears—and I would ask them to come out into the open and disclose their fears. Their fears are to my knowledge that they might be taxed, and this tax will go into the provision of educational facilities for the Africans and the like. I would have thought that surely it is the duty of the stronger members of our society to help their fellow brothers and sisters who through no fault of theirs are weak, but when they go on trying to evade the issue and the realities, then, of course, they fail to convince anybody.

Now as far as the health services are concerned, I was delighted to hear from the Minister that a certain percentage will be forthcoming from the Central Government to aid the local authorities in providing the various health services. Of course, we have seen quite a lot of trouble from the fact that when the health services were transferred from the Central Government to the local government in some areas without adequate financial aid, the health services of certain areas have very much deteriorated, and if the Minister wants to check it he might as well check on a few hospitals up-country and their registers before this same health service was transferred to the local government and find out the actual number of intakes in those dispensaries or hospitals compared with what it is today, and we cannot allow the health of our people to be overlooked because of the transfers. I would ask him in all sincerity to see to it that no more health services are transferred to local government authorities unless he is pretty sure that those authorities can financially stand on their own, or at least maintain the present standards and allow for room for expansion.

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havlock): On a point of order, Sir, The Bill does not mention the Health Ordinance. I think the hon. Member is referring to county councils and other local authorities.

MR. OLE TIPIS: I know what I am talking about, Mr. Deputy Speaker. What is all this questioning about?

THE DEPUTY SPEAKER (Mr. Bechgaard): You must confine your remarks to the Bill under discussion.

MR. OLE TIPIS: Mr. Deputy Speaker, I agree with your ruling, but if I may say so have we not got any municipal councils who are in a way the health authorities? If so, then in all fairness I think I am quite right in referring, or making the remarks I made.

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havlock): Mr. Deputy Speaker, the hon. Member said that I must see that health matters and responsibilities are not transferred to any other local authorities until I can be sure the money is sufficient, but all municipalities are health authorities. There is no other to which I can transfer health matters.

MR. OLE TIPIS: Well, that is a bit funny, Mr. Deputy Speaker, and I think I might as well drop it, but the Minister should not overlook the remarks I have just made.

The other thing, Mr. Deputy Speaker, I was really surprised to hear my hon. friend, the Nominated Member defending what he calls "a very great advancement in the way of African representation in these municipal councils". Well, I am sorry, I would be the last to agree with him for the simple reason that if I may describe it in my own way, the African representation in these areas for some years past, right from the start up to now, has been quite inadequate, and what prompted my hon. friend to call it an advancement, if I may say so—is this—the other races as far as the question of representation in the concerned have been sitting right on the middle of the African head? Now simply because they have accorded one or two additional members, which means that they have now moved on to one side of the head, although all the weight is still on the head or the shoulder, and the African is feeling it

[Mr. ole Tipis]

very uncomfortably if you like it or not, this is a fact, and he, the hon. Member calls it an advancement, I do not agree.

Well, I should have thought that if we are out really not only speaking with two tongues as we have been trying to do most of the time, I do not see why this same Government should just ignore a very strong case from the majority of this country's inhabitants that they should be represented on an equal basis with the other races, and as such we should do away with any nominations of African Members to these local government bodies and give the Africans the right to elect their own true representatives. We have heard it more than once here, or somewhere else, that it so happens that in some areas you cannot find an African suitable or capable to fulfil his duties in this body to be elected. Now that is very, very illogical. Where does the Government or the local authority find the African whom they nominate to take seats in these councils? If they can find somebody to nominate surely that somebody might as well be elected so as to enable him to serve the community he is supposed to represent knowing full well that he has the mandate and full support of his people. Otherwise nomination has entirely outwitted its life, and it is time, I think, we did away with it.

Now, one final word, if I may say so, because I heard the Minister say that with the composition of the new Municipal Council of Mombasa the Indian, or Asian, representation is going to be divided into Muslim and non-Muslim I am not qualified to say very much over this one but if I may make one comment, which is, we are out in this country to build a nation, and as long as our Government has no courage to stand on what it thinks is right, irrespective of any pressure from any quarters, then it is no good them trying to tell us that so-and-so is a racistist and is not co-operating, whereas the same Government is the initiator of racialism and non-co-operation in these matters.

Now, Mr. Deputy Speaker, I would ask the Minister to go ahead with trying to devise ways and means in which the constitution of the local government bodies in this country could be modified so as to provide the main democratic principles, because I am sure that is the

only way in which we can find a solution, but as long as he insists that the Africans who are outnumbering the other races all over the country should have one or two or three nominated representatives, then he would not blame the Africans at all and I think the Minister would not be right or justified in saying that it is the Africans who are not co-operating, but it is the Government which is trying to ignore the African masses, and as such the time has come when we will not at all give in to any unjustified treatment at all or any sort of discrimination whatever.

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

MR. USHER: Mr. Deputy Speaker, Sir, coming in late I find that most of my points have been covered. I would like to say on the subject of parishes that I was astonished at the interest taken in that subject, and particularly in the parish that is contemplated for Mombasa, by people from the outer spaces. I should like, Sir, to correct one or two misapprehensions in regard to what is proposed there. It has been well understood, I think, for some time that if a parish were created there it would not be an enclave of rich people. It would comprise land and people of moderate means and land bearing very small charges, so that all might get the benefit of the land which would be of higher rateable value. I imagine, Sir, that perhaps the Minister might care to say, in order to remove any fears on the subject, that he would refuse to authorize the formation of a parish if it were such an enclave as has been suggested.

The other thing I would like to say about parishes is that I was comforted by the amendment which he proposes to move to clause 7 of the Bill, in so far as I have been able to study it and understand it while other people were talking. This is one very good reason why I would ask the Government to agree not to take the Committee stage until next week.

I would like also to mention on the subject of parishes, for the information of those who do not know, that a great deal of Mombasa Municipality is truly rural and when it is extended it will be even more so; and in fact the greater part of it will be rural.

[Mr. Usher]

If I may now pass to education, Sir, I would say quite frankly that I do not like these provisions and I would prefer to see them removed. In dealing with clause 2, Sir, I find it very difficult to understand why it is necessary to include the provision for buildings which are part of the compulsory education scheme. I feel, Sir, that there is something a little sinister in this. We have to remember that, there has been reference to the ministerial authority to require local authorities to carry out and to give effect to their powers—in other words, that those powers will become duties; and I do not know of course what the present Minister or his successor might have in mind in the way of putting the screw on local authorities to undertake what we at present regard as the obligations of the Government. There are of course a great many difficulties in this regard concerning the scheme which might be put before local authorities. I would take an extreme one. I imagine that the Minister would not look favourably upon the suggestion that a European nursery school should be set up at Nyali and paid for by all residents of the Municipality. But, Sir, if you proceed from the extreme you will find that there are difficult cases for him to deal with, and I would have preferred myself to see certain principles imported into the Bill itself. I can understand the reluctance of the Government to speak of racial schemes, but I think it is possible that they might have been a little more forthcoming in the legislation itself in regard to what is the position of a section of the community which requires a particular educational service, and I should have thought it possible to put in some such provision as that the local authority should, in dealing with that, go by the vote of the section concerned alone. There are a number of ways in which one could lay down the way in which these matters should be dealt with and I personally would like the opportunity to think out some way in which these matters could be written into the present legislation. There is, of course, Sir, no provision here at all whereby a section of the community which has no hope of getting its representations passed by the local authority can promote an entirely reasonable scheme. That again I should have thought might have been

foreseen. It all really does lend support to the view of those who feel that perhaps the whole matter has been better dealt with under other legislation.

I do not wish to say much about the constitution of the Mombasa Municipal Council because that has been a matter of agreement; but I would like, however, to support what was said this morning by my hon. and gallant friend the Nominated Member, Captain Hamley. We both of us are well aware that African interests have been very favourably considered in the past and particularly the representations of the African Advisory Council and I am sure that they will continue to be so. We heard this morning from the hon. Member for Nairobi Area an eloquent outpouring, but I do not think it was necessary on this occasion for the lion to roar and for the tiger to lash its tail, because this is a matter not of major politics. I myself am not an aspirant to civic dignity. I do not wish to wear a gown or a chain of any kind. I regard myself in this matter as a ratepayer. As such, what I, and most of us, really want to see is businesslike people who will spend the available funds to the benefit of all. It is not likely, Sir, that as we have given way to the demand for democratic institutions we shall get men of that type. We will be far more likely to get people who are not particularly versed in local government affairs but who are men of a certain political persuasion. Therefore I am personally rather glad to see that the Elected Members will at this stage be limited to four. They will get their experience and I feel sure that with the passing of time we shall get Africans who will be civically minded and who will be just the kind of men who will spend my rate money as I want to see it spent.

Sir, I beg to support.

MR. NGALA (COAST RURAL): Mr. Deputy Speaker, Sir, I would like to emphasize a few aspects of the Bill. First, I must congratulate the Minister for bringing in the section 2 of the Bill. A poll rate for education is something that has been awaited for by Mombasa Africans for a very long time. There has been some capital expenditure on primary and intermediate schools, but African interests have not been fully considered. I should have thought that those who feel that perhaps the whole matter has been better dealt with under other legislation.

(Mr. Ngala) themselves, voluntarily, but they were very handicapped by the absence or lack of such a provision, and I am glad that this provision has now been made by the Minister and so it will be possible for the Africans in Mombasa to contribute to the capital expenditure of their education. I am glad that this provision is given or spread to all the races in Mombasa and I hope the citizens of Mombasa will appreciate the provision.

Now, Sir, one point which I would like to raise with the Minister is, what provision will be made. The local government body will probably collect the money but I think some provision should be made whereby the local government would share in seeing how the money is going to be spent. It is clear that money will be passed on to the education authorities; but in the Bill there is no provision to show that the local government or the local authority will have some representation so that they can see how the money is going to be spent on whatever there is in that area. I think it is a very important aspect that should not be overlooked by the Minister because it is true that many people are going to criticize the local authority if the money is not spent properly to their expectations, but the local authority should have a way of being able to reply to this criticism. I do not know whether the Minister would consider having some kind of advance education committee which would probably be in a position to see that such money is properly spent.

The Member for the East Area has said that this section is premature. Now, I quite differ from him, Sir, because I feel that this section has been long awaited by people in Mombasa, and since there is no proposal of making the local authority an education authority I think that it is not premature at all. I think that it is quite in time and in fact it is overdue.

Now, the other aspect which I would like to emphasize is the question of the constitution of the Municipal Council of Mombasa. Now, the Minister knows very well the feelings of the Africans there and he knows also the number of representatives here as shown is low. We Africans feel that the minimum the Minister could do would be to raise

the number from four Africans to eight Africans. We are going to move an amendment on this, Sir, and I hope the Minister will be sympathetic enough to consider this.

On this question of the constitution, Sir, I think that the racial aspect of it is something that should be deplored, and I would like the Minister to think of a way whereby the Municipal Council of Mombasa can be an example of people working together and representing a council as a council regardless of the different races they belong to. I believe, very strongly that this is a possible approach in Mombasa and the Minister would probably service not only Mombasa but probably the whole country and change the attitude of several other people in the country if he started this approach in Mombasa.

The other aspect, Sir, which I would like to touch on is the question of poll rates for social services. Now, although the Africans in particular welcome the poll rate for education I think there should be a very careful selection on the type of social services that people would have to pay for out of a poll rate, because I believe that as there are some social services in the municipalities which should be the duty of the Government, or the municipalities, without having to levy a special poll rate on the people. So I think the emphasis on the poll rate should be on education and not so much on social services.

Now, I would like to support my hon. friend the Member for Mombasa, Mr. Usher, when he mentions that the poll rate should not be on compulsory education. I believe that it is right that whenever Government imposes compulsory education on a community it is up to the Government to pay for the compulsory education, and I think it is wrong to suggest a poll-rate on compulsory education on any section of a people. Therefore, I think section 2 (b) should be deleted in the Bill.

Now, Sir, so far as the parish councils are concerned, I think this is a point which needs a very thorough investigation and I would support my hon. friend Mr. Pandya when he suggested that a thing should be requested by the Municipal Council itself and not be forced from up above the municipal level.

(Mr. Ngala) With these few remarks, I beg to support the Bill, Sir.

SIR CHARLES MARKHAM: Mr. Deputy Speaker, very briefly, on two subjects. I feel that certain Members, both from this side of the Council and the other side of the Council, have forgotten what we are discussing today. My hon. Nominated friend Commander Goord gave us a long discourse about the county councils and then, Sir, we found that we were discussing municipalities, the Municipalities (Amendment and Miscellaneous Provisions) Bill. I think that the misunderstanding perhaps, Sir, is because of the amendments which the Minister proposes to move in the Committee stage. Although he mentioned them in his speech, I do not know where these mysterious copies are in this Council, and it is very hard for us at the last minute to be given these amendments, particularly if some are important. I would suggest that under the circumstances he should agree to the request made from this side of the Council to take the Committee stage next week, because I think he will agree, Sir, that there is a fair amount of digestive processes needed on this particular Bill in order to assimilate some of the intentions behind the clauses of this Bill.

Now, Sir, regarding parish councils, I would like to support the hon. Nominated Member Commander Goord when he talks about the devolution down to the small areas such as we know in the urban or the district councils *vis-à-vis* the county councils.

(Mr. Deputy Speaker (Mr. Bechgard) left the Chair)

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

But at the same time, Sir, I am concerned with this particular amending Bill because it does not specify the details of the parish councils. Under the County Councils Ordinance there is detail in the Ordinance showing how that local district or urban district council is to be made up. Here, if I may say so, Sir, it is very vague, to say the least. I would have thought that having been the chairman of a district council for two years,

which I do not think anybody on that side of the Council has been, that we were working to an Ordinance which was clear, with few exceptions. Then we went to the Minister or his staff and asked them for clarification. But when you get down to this parish council idea I find, Sir, there are many aspects which, concerning powers, are vague. For example, Sir, it says under clause 7, which refers to section 15 of the principal Ordinance, "The Minister may, by notice in the Gazette after consultation with the municipal council or board as the case may be, establish one or more parish council in any municipality." I then goes on, Sir, through the various sections to define the powers of the parish council but not nearly so clearly as is defined or are defined under the County Councils Ordinance. I would have thought it would have been very much better, in view of the expert who is almost the Minister's stand-in in this Chamber, if the Minister wants to have parish councils he should take the advice of the Chairman of his Advisory Committee and substitute legislation similar to that set out in the County Councils Ordinance, because I believe, so far as my own personal experience is concerned, having served in both district council and in a municipality, that in many ways the former was more efficient than the latter when it came to parish pump work. Now, Sir, the Minister may reply that the powers exist, and he may also reply that there is no necessity for provisions such as I have suggested to be enacted in this legislation. But, Sir, in his speech this morning, the Member for the Nairobi Area asked some specific questions and I think those questions require an answer. He asked about the constitution of these parish councils and where or how they should be set up. If I may take, Sir, the example of Nairobi for a moment as opposed to Mombasa, to take the example of Nairobi with four parish councils, say one at Makadara, which is a very popular area for the Member for Nairobi Area, one for Parklands, another, we will say, on Bernhard Estate, and perhaps one in a central area. The constitution of those councils would require detailed examination, I believe, even down to the stage of the number of wards within that parish council and the elections, or how the election would take place for members

[Sir Charles Markham] in that council. But I suggest, therefore, Sir, that if the Minister proposes such an idea—and I support such an idea—then I believe there should be a separate Bill brought before this Council which could be called, you might say: the Parish Council (Municipalities) Ordinance. Then we would have the time to go through it in detail, look at the implications of it, rather than putting it in, as the Minister said in his own speech, as part of omnibus amending legislation.

I think, Sir, the reason why there has been opposition from this side of the Council is that few, if any, Members of this House, particularly, Sir, from some of my friends on my left, have had any practical experience in local municipal government, and I was interested to hear a bitter attack made on the question of the composition of the Mombasa Municipal Board by the hon. Member for Nairobi Area, particularly in view of the fact that his own colleague, who has been a nominated member on that Board, had opened the debate from this side of the Council. I had always thought, Sir, that the hon. Member for the Mombasa Area had been a very efficient member of the Mombasa Board, but having heard the remarks made by the hon. Member for the Nairobi Area I had quite obviously been misinformed!

Now, Sir, I think it is wrong for this Council to use, perhaps for a political angle or political axe to grind, the question of any single council. We were told in a speech by the Minister, and again it was confirmed by the hon. and gallant Member, Capt. Hamley, that agreement had been reached in Mombasa concerning this council. Therefore, Sir, I think that instead of using Mombasa as the whipping horse, in this case, for the political aspirations of certain Members, we should let them alone to work out what we hope will be a successful council.

I think, Sir, that if I may use the words of Lord Twining, "Nobbery" as he called it, the counting of heads, democracy as it is known and interpreted by certain people will not make local governments more efficient. What we have got to get, surely, Sir, are people to serve on local governments who are prepared to devote their time and energy

and indeed sometimes their own financial pockets to serve the people regardless of race to the best of their ability. I believe we are going to the other extreme when we talk about "the people" when really, Sir, we mean those few people we want to be called "the people". In other words, Sir, the political party aspect of local government such as exists in England.

Now, Sir, Mombasa has been quoted to this Council on numerous occasions as "Sea level and sanity". In fact, Sir, it was suggested by one eminent doctor that nobody who lived at the height of 5,000 ft. throughout the year could retain their sanity. I believe, Sir, that is confirmed quite often in this Council. Mombasa is, and has been, an example where the races have lived together in harmony, what seemed to me anyhow as a visitor and with a genuine desire for progress. If, Sir, the hon. Member for Nairobi Area and his colleagues who have attacked this clause had levied their attack on the whole question of representation on all municipalities then, Sir, my support might have been forthcoming. (I use the word "might" very advisedly.) Sir, I do not believe that Mombasa should be quoted as the sole example. What I would like to see, Sir, is that if the parish council idea, as this Bill suggests, is brought to fruition—and I want to know a great deal more detail before I will support it in entirety—I believe that is the time when there should be a completely non-racial approach regarding the members of those parish councils. I do not believe you should have racial quotas at all. But I also believe, Sir, that there should be a qualification there of property and property owners so that those people who are voting on a parish council will be those people who have a very material interest in their council.

Now, Sir, I have talked enough on this subject of councils except, Sir, that I want to finish on this particular subject with one plea to my hon. friends on my left particularly regarding this aspect of racial quotas. I would like to ask them, Sir, in all sincerity, to accept this experiment to see how it works. As the hon. and gallant Member, Capt. Hamley, said, this is a great improvement on what they have had in the past. Let those members, Sir, the four African members with their alderman and

[Sir Charles Markham] perhaps the one or two appointed by the Minister, let them prove to the community they represent and the other races that they are willing to devote themselves and their energy to the pursuit and the furtherance of the Mombasa Municipal Council. Having got that far, Sir, and proved, and obtained the confidence of all races, then is the time, Sir, to come back—perhaps, we hope, Sir, in a very short time—to come back to this Council or to the Minister and ask for increased representation. And I, Sir, as far as I am concerned will be one of the first to support them in their demands.

But let first things come first and let them, Sir, prove that they are willing to spend this time.

As a matter of interest, Mr. Speaker, I asked a prominent African why he would not allow his name to go forward to be a member of a local authority situated quite near this Council. And he turned round to me and he said he could not see why he should join or even allow his name go forward because if he joined "Legco," as he called it he got substantial pay. If he joined a local authority, he got a lot of abuse. And frankly, Sir, having been in the local authority and achieved the abuse without the pay I now find myself in the happy position of achieving the abuse with the pay in this Council.

Sir, there is only one final remark I wish to make on this Bill and that is this; that with the two sections which I have mentioned, in the main, this Bill is a technical Bill for those people who have studied the Municipalities Ordinance. There is a danger, however, that legislation which we may pass in this Council sets a precedent for other local authorities, both the county councils and the African district councils. I would suggest therefore, Sir, that certain of these clauses are revolutionary—without the bloodshed, I hope!—revolutionary in their idea, particularly, of parish councils; again particularly of some of the financial control clauses of this Bill.

All of us, Sir, on both sides of the Council, I feel certain, want to see local authorities working in the most efficient manner possible so that the majority of the people regardless of race can achieve

happiness and satisfactory conditions under that local authority. I, Sir, have the honour to be a member of the committee set up by the Minister to deal with the financial arrangements of local authorities. But I am wondering, Sir, whether the time is not come for the Minister to set up what you might almost call a commission within a commission, a commission to go into the whole question of the future of local government in this country; not only on the financial powers because they are only a detail but on some of the very aspects mentioned in this Bill. We have, Sir, our experts, who are still busy on local government on this side of the Council and I feel quite certain that their advice would or might be valuable. Nevertheless, what we are worried about is that there is an atmosphere being created in this country where local authorities are fighting with the Minister and, the Minister's staff of the Local Government Department, Sir, we deprecate such events. We deprecate the fact that we receive memoranda from the associations. We deprecate what we read in the Press, particularly of the people who made such remarks about parish councils whose salaries, I notice, are paid by the Kenya Government—a three-quarter grant to chief officers' salaries but I thought it was rather ironical when they accuse the Minister of being almost stupid in his outlook and yet at the same time their salaries are paid indirectly or three-quarters of them—

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (MR. HAVELOCK): One-third.

SIR CHARLES MARKHAM: One-third. I beg your pardon, by the self-same Minister's Department.

Now, Sir, I do not know who is right, whether the Minister or the other side of this Table is right or whether the Association of Municipalities is right. But I am concerned at this controversy which exists and was mentioned this morning by the Member for Nairobi Area. This controversy will do a lot of harm to local government throughout the Colony and I would urge the Minister to think again perhaps and take more people into his confidence, if that is the answer, in order to make sure that when legislation is brought before this House it has the overwhelming support of those

(Sir Charles Markham)  
 Members of the local authorities who are affected by this legislation, I think, Sir, that the Minister has had a very difficult task in trying to put forward his views and obviously he has, to my way of thinking, failed to get agreement on some of these more controversial clauses. All I would say to him is this. There are always two sides to every question but sometimes misunderstanding at the start can undo the good intention behind legislation? I would urge upon him therefore, Sir, that if he will not agree to a select committee on the controversial aspects of this Bill, to defer until next week the Committee stage of this Bill in order that certain vital amendments suggested to us by the Association of Municipalities can be put forward.

Subject, Sir, to my reservations on parish councils, Sir, I beg to support the Bill.

MR. MUIMI (Kitui): Mr. Speaker, Sir, I would just like to make a few observations on two aspects of the Bill. The first is the question of education tax which has been made mention of by almost every speaker throughout this debate; and the second point is the attack made on the views expressed by the African Elected Members by the Member for Ukamba.

In regard to the question of education tax to be levied by the municipalities and for this matter the Mombasa Municipality as suggested by the Member for the Coast Rural Area, this has been awaited for a very long time by the Africans, not only in Mombasa but also, I believe, in other towns in the country. Judging from the practice that is followed by the African district councils in certain districts—the practice is that the African district councils collect education tax through the Government tax collectors and the amount so collected is given to the district education boards who deal with the money as they feel the money should be spent. And although mention has been made that careful examination should be made in the way the money is spent I have no doubt that having served on some of the district education boards they are so careful to make sure that the people who pay the money or who contribute the money are satisfied with the way the money is spent.

I do not see where the fear of my friends from this side of the House comes because if what we advocate to do in future to try and educate every child or to give at least primary education to every African child in the towns to start with and later on in the country, I do not see if we are trying to attain our objective if we oppose such ideas as are provided for in this Bill where a municipal board is empowered to collect money towards this kind of effort.

Mr. Speaker, I do not know whether what the Member for Ukamba said is true, that a great many of us are not very conversant with the methods by which these local governments work, but I would like to tell him that I have served on my own African district council for the last 14 years and I am sure that during the 14 years of my service in my African district council I have learned something of what is happening.

SIR CHARLES MARKHAM: Municipalities!

MR. MUIMI: I am sorry.

I am grateful for that correction, but I believe it was a general remark which I believe included the African district councils.

Now, Sir, coming to the question of representation in these municipalities, I for one hate very strongly the idea of racial quarters if what we are aiming at in this country is to have people who forget the countries of their origin, their colour or their creed, and to have people in such boards as the municipalities who think in terms of the good of this country. But, Sir, looking at clause 4 you find that this Bill is encouraging that kind of racial representation, and if my hon. friends who have spoken on the question of representation on this side of the House and on the opposite side, and those who have advocated that Mombasa is an exceptional piece of country where people work very harmoniously, where they have agreed between themselves before this Bill was brought up, I should have thought that they would probably suggest a better method of proving to the rest of the country that Mombasa is such, and in this regard I would suggest to them that the best thing to do, and the one that has been so much advocated, is that the local authorities should be the training

(Mr. Muimi)  
 ground for showing that people of different races can work harmoniously and not specify the number of any one race to be represented on this board, but to say that apart from the nominated members of this municipal board there should be so many and so many elected people. Then, if the people of Mombasa have reached that stage where they can elect themselves without having regard to racial quarters, let the people of Mombasa elect the agreed number of people to represent that island on this vote irrespective of any number of Europeans, any number of Asians, any number of Arabs or others, and then we shall understand something, but as it is, and I speak with some experience having worked on the island myself, the problems facing the Africans in that island are very numerous, and apart from the suggestion that we are bringing political aspects in this Bill, I should like to draw the attention of Members to the example set by Mombasa which people might follow elsewhere.

I sometimes feel very much disappointed when you find in a district where there are a number of other races living in that district and they are not in any way represented. Well, I think I am right in saying in all African district councils in the country, apart from the officials, no person of any other race is represented on those African district councils, and I believe the Minister will correct me if I am wrong. Well, then, we would like the example of Mombasa to be followed by the African district councils, and to have the Europeans, the Asians and the Arabs living in the African district council areas represented in the African district council. Then we shall understand something of what the Minister is going to do for us.

Mr. Speaker, with those few words I beg to support.

MR. NGOME (Nominated Member): Mr. Speaker, before I give my speech, I want to give a short picture of Mombasa because many Members have touched on Mombasa.

The first time I saw Mombasa was 50 years ago, and the municipality at that time was called a conservancy department, with one European officer, a few sweepers and two clerks. It is only ten

days ago that I was taken round by a friend on the opposite side—Mr. Harrison—round the Municipality building, and I was nearly lost there because the building is as big as Legislative Council building and why I mention this is the difference, Mr. Speaker, between 50 years ago and today. I must say that much has been done for all races. Mr. Sanderson was the officer who ran the conservancy department at that time, and today there is a big change, and if we are not satisfied with this change, not only Africans but all races, Europeans or Asians, our duty is to wait in the same way as we waited 50 years ago, and during the 50 years' time what development has taken place.

I am told, and it is a fact, Mr. Speaker, that the followers of Moses were promised by God that they would have the promised land, and that was in a command, and I am also told that the journey from Egypt to Canaan was a matter of a few weeks, if not a few days, but it took 40 years for these people who were followers of Moses, 40 years in the wilderness, and they did not reach the promised land, and most of those people who were promised the land died, and their children and grandchildren saw the promised land, and the difficulty, the problem at the time was disobedience between the people who were promised by God that they would inherit the promised land, why they took 40 years instead of a few weeks is a quarrel between them and Moses, God's messenger, and today, perhaps, it is our duty to see whether what Government has promised, we shall achieve in a short time, or by giving the same spirit of those people how long it will take—whether we shall see much development after a short time, or a very long time depends on the patience, but slow and sure we shall win. I remember when I was a schoolboy I had the story of slow and sure. I liked the story because far back we read the story of the hare and the tortoise, and the conclusion of that story is given there that slow and sure wins the race. That is for the people who are ex-schoolchildren, they must remember that, story, and it is my duty, as an African today, to draw this picture of how far back the local government started and what stage we have reached today. It must be accompanied by slow and sure

[Mr. Ngome]

to succeed to what we have been promised by this Bill. It is no use quarrelling with the Bill and saying we must have this and that.

With the permission of this House, Mr. Speaker, I will give another picture of the story between 1919 and 1939 when the last great world war finished and it was amazing in this country when the Germans demanded the return of Tanganyika. We all know that from reading the newspapers from 1919 to 1939 brought another second world war, and during that time people thought that Tanganyika would have to go back to the Germans, until the 1939 war broke out. Well, we know what happened, and where is Tanganyika today? In whose hands are the Tangahyika people? I would warn my African people inside this House and outside that whatever we demand we must use the proper method of approach whether we like it or not. We must demand to put the right foot first, and then we shall reach the goal. If not, well the consequences will result in the same thing as I have already said, the 40 years from Egypt to Canaan instead of a few weeks or a few days. The journey was not very long, but due to a quarrel with God's messenger the journey had to take 40 years, and those who were promised never saw the promised land.

Mr. Speaker, I do not want to give a long history here, but I just want to draw the attention of this House to what happened with the Municipality of Mombasa 30 years ago and what is going on today, and I say we have African officers on a high level like Mr. Harrison, who is a deputy African Affairs officer there because a post was created and he was promoted, and there are more officers in Mombasa Municipality. There are also African Affairs officers in Nairobi, and one by one we shall achieve what we want to see—perhaps a town clerk in some years to come—and all that we shall achieve by patience and confidence.

Mr. Speaker, I beg to support.

MR. BOMPAS (Kiambu): Mr. Speaker, Sir, I beg to move that the Minister be now called upon to reply. I feel, Sir, that we have had a very good airing of views in the House this afternoon, and

we are now getting on to the repetitive stage.

MAJOR DAY seconded.

THE SPEAKER (Sir Ferdinand Cavendish-Bentick): I think that this subject has been thoroughly debated and therefore the Motion proposed would in no way constitute an infringement on the rights of Members. I shall therefore put the question.

Question proposed.

The question was put and carried.

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): Mr. Speaker, I have not really had time to put the points in order so I will have to go through the hon. Members in the order of their speaking and try and deal with the points as they came up.

The first hon. Member, Sir, who spoke after I had moved was the hon. Member for Mombasa Area, and he put up the case, or said that the Africans put up the case for eight Members of the Mombasa Municipal Council, and indeed later another speaker, I think, gave notice that an amendment might be moved to that effect, I presume at the Committee stage. He said that he accepted it reluctantly. I am glad that he was quite open with the Council concerning the fact that he was involved in the discussions at the time we agreed the constitution, and I have no doubt that he was disappointed, but he did in the end reluctantly agree, and he indicated the reasons of the conditions on which he did agree. The first condition was that there should be an African alderman, and I would like to say here, Sir, that he disappointed me very considerably, and this is very relevant to the remarks made by a number of hon. Members opposite with regard to the non-racial approach to the constitution of Mombasa. At least I thought at the time when I started discussions on the constitution of Mombasa that the aldermen could be non-racial, and that is what I suggested. In other words, they would be people who would not be allocated; there would be no racial allocation of aldermen. They would be people elected by the councillors and therefore elected by all races. But I was doomed to disappointment. All groups—all groups—insisted that a minimum

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number of racial representatives should be written into the Ordinance regarding the alderman bench. I would like the hon. Members to take the remark of mine very seriously. I can assure you, I can assure hon. Members, that as far as Mombasa is concerned the people there and their representatives were not even ready to accept non-racial aldermen. So I had to write in the provisions which are in clause 4, that there shall be eight aldermen of whom not less than two shall be European, not less than two shall be Asian, not less than one shall be Arab, and not less than one shall be African. Of course, there had to be two Asians; we had to do that because it was insisted that there should be one Muslim and one non-Muslim. The only thing I could persuade the councillors to accept was the fact that there should be two floaters. That was as far as I could get in all my negotiations towards the non-racial approach. There will, in fact be two aldermen whose race is not designated and not laid down in the Ordinance. Well, therefore, Sir, the hon. Member for the Mombasa Area can be assured by what appears in this Bill that there shall be an African alderman.

He also asked with regard to the nominated members, the members to be nominated by me, and said that he really made the condition that at least one should be an African. Well, that is not the sort of thing that one should write into an Ordinance, or at least I do not think so, but I will give him this assurance, and place it on record, that at least one will be an African. It may be that more than one may be. So, Sir, if more than one were an African the African representation on the Board would be four elected, one alderman, definitely one nominated, possibly another, making seven in all. I would suggest to the hon. African Elected Members who have been discussing this subject and who bring this matter up, that they have not got sufficient representation, that even the provisions that I have just stated have got very near to their target of eight, and it would seem to me that it might be best for them to reconsider their suggestion of moving an amendment at the Committee stage. However, that is up to them, of course.

Now, Sir, the subject of parish councils was also mentioned by the hon. Member for Mombasa Area and of course by a large number of other hon. Members. He thought that the parish councils might lead to more expense and less services. He thought the area of the Mombasa Municipal Council, the new area, should not be too large for the Municipal Council to administer. All I would like to say on that second point, Sir, is to stress what I said in opening, that it may be that the whole area can be administered, but the character of the area is very very different, with the rural area on the one side and urban areas on the other, with high density and low density, and so on. I also consider that the amendment which hon. Members, I hope, will have time to tread, which I will suggest at the Committee stage, will help very much in regard to the setting up of the parish councils. I would also like to make a point here, and this ties in with the remarks made by the hon. Member for Mombasa, that it is certainly not my intention to set up parish councils which are definitely on a racial line. In fact, Sir, I can say to this House that the area that I was thinking of first in Mombasa would be the north coast area, and it would not just consist of a strip of bungalows along the beach but it would have to go right in, in order to take in the poorer areas in the hinterland as well. So, I hope hon. Members will clear their minds on that fact.

Now, Sir, he then went on to welcome the special rates for education and he hoped that the money would not be placed in the coffers of the Government but used for the schools as it is contributed. This again was a matter of considerable contention amongst hon. Members opposite. Some said that they wished the provision to be completely deleted. Others welcomed it. I think I am right in saying that all hon. African Elected Members welcomed the provision and it is indeed, anyway, in the first place, for their benefit, that this provision was brought in. I have no intention of deleting it. The only point I will consider is the point which the hon. Member for Mombasa brought up with regard to the scheme of education, meaning a scheme to provide for compulsory education, whether that should be subject to a poll rate. I will give consideration to that before the Committee stage. I think there

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may be some validity in the point raised. I think other hon. Members supported the hon. Member. I can also say to the hon. Member for Mombasa Area that certainly the money will not just be kept for six years. It will be spent as it comes along. I would foresee that probably schools, and so on, will be built from a loan which will be repaid over a period of six years.

Now, Sir, if I may, I will turn to the hon. Member for Nairobi Area. He spoke very fluently and very emotionally, and made rather wide accusations against the Government based mostly on this matter of communal representation. He started off by quoting a lot of occasions on which he thought that lack of understanding and the lack of agreement between the Government and the local authorities had led to confusion and to the suffering of the ratepayers. I just will not accept, of course, a number of remarks which he made, especially those about the housing scheme. He said it was all a matter of argument as to who should do what. It was not that. It was a matter of argument as to who should pay for what. That is nearly always the basis of disagreement between the Central Government and the local authorities. It is quite a natural thing, quite a natural matter. The local authorities naturally wish the Government to pay more so that they need not put a heavier rate on their ratepayers and thereby get the odium and unpopularity. But of course if the Central Government does pay more it means that the Central Government has to tax the citizens of the Colony more heavily and the Central Government will get the odium of unpopularity. There are a number of functions, which, as I see them, are the proper functions of the local authorities, to carry out on their own; there are others for the Government and the local authorities to share; and others that the Government should undertake. Although those functions have not really been completely defined they are generally defined as local authorities' functions. For instance, local authorities should have some responsibility for child welfare. That brings me to the next point which the hon. Member for Nairobi Area made.

'Nobody' can be more disappointed than myself at the delay in the contributions being made to the Nairobi branch of the Child Welfare Society to continue and develop their operations which are so necessary. On the other hand, I myself feel very strongly that the local authorities and ratepayers do have a certain responsibility for that sort of function, and the Government is well prepared to pay their contribution. That is where it breaks down, and I would like to emphasize again that this is only the City of Nairobi, the Mombasa Municipal Council, or Board, the Nakuru Municipal Council have all accepted this. They have paid their contributions and accepted the grant and everything is going along as it should. So, I do suggest to hon. Members that it is not always the Government which is at fault. There are certain principles which we indeed have to try to protect. Somehow, something will have to be done, thought, about the Child Welfare Society's branch in Nairobi. I feel so strongly about this that I would rather pay out of my own pocket than let things go on as they are. Yet we cannot give way over the principle. I do hope that hon. Members see that.

I am sorry to have to go into all these matters but they were raised by the hon. Member and they do need answering. The hon. Member for the Nairobi Area has said that the health services, since they had been transferred to the City, so far as I could gather, had not come up to standard, and the Government should have considered that an increase in the contributions to the health services of the City would be necessary. Well, Sir, hon. Members must be misinformed, or they must be without the knowledge. First of all, the dispensaries which were built were replacements of the old general dispensary which the Government ran, and here there is a responsibility understood and undertaken by all local authorities to run dispensaries, health centres, and maternity centres. Those dispensaries were built with Government money, to start with anyway, and the next thing that happened, after considerable discussion, was that the Government agreed to pay a 95 per cent grant towards those dispensaries, an annual grant, diminishing as the county council grants diminished.

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So they have been going for one year now and the Government has paid 95 per cent of the cost. Next year they will pay 80 per cent, then 60 per cent, or 65 per cent, then 60 per cent, and so on. It will take seven years to get down to a 50 per cent grant which the Government will pay, anyway, for all health services. I do suggest, so far as that is concerned, Sir, that the Government has not been ungenerous.

Again, over the past four years, and I think these figures might be of interest, in 1955 the health grant to the City was £73,000, in round figures; in 1956 it was £84,000; in 1957 it was £92,000; and in 1958 it was £112,000. Those again are all in round figures. In 1959 the amount will be pegged at near £112,000 as possible. I do suggest that those figures show that the Government is not mean on this particular matter.

The hon. Member for Nairobi Area stated that the African population of Nairobi could not bear even the slightest increase of 10 cents on dispensary charges. Well, I agree, and it is very high—the present dispensary charges are very high. On the other hand, Sir, I would say that a very large number of the African population in the City of Nairobi are helped by their employers to pay for these charges. But I certainly would also give this assurance. First of all, I would make one statement. The actual standard of services the City Council of Nairobi provide through these dispensaries is higher than any standard the Government or any African district council, or any other local authority, provide. The hon. Member can shake his head if he likes, but the standard is higher here because the people are being attended to by much higher-qualified people than elsewhere. I have had long discussions with the City Council on this matter. All I can say is that I certainly would not agree to the fees being put up any further. I think they are very high already and in some way or other the cost must be brought down so that the service can be expanded and this matter is under discussion with the City Council now.

This gives me the key to the next point, that is accusations of disagree-

ment, battles, fighting etc. between my Ministry and local authorities. I deny it, completely and absolutely. Of course there is publicity and the hon. Nominated Member, Commander Goord has stressed that. Of course local authorities take advantage of the Press. Of course they do; and so do we in this Council, of the Press are inclined to publish what we say here, sometimes they cannot, but that does not matter; they may take advantage of the Press and they may publish their criticisms one day, but surely hon. Members do not think it is just left at that. They come and see me and we talk about things and then we sort matters out, and then the next time something blows up, again they take advantage of the Press, and they publish all their complaints, and then they come and see me and we talk matters out and we settle them. That is the way things go on, but I know from the public point of view it may appear that we are always at sixes and sevens; we are not. We have the closest co-operation and we are trying to build it closer and closer.

Now, Sir, the hon. Member mentioned this matter of the extended period of registration by one month, but I think at just about that point, Sir, you ruled him out of order, so I had better not go on with that.

Then the hon. Member said if the Minister wants more powers, and in this he was talking in the context of what I have just been saying, that is with regard to disagreements between the Government and local authorities—if the Minister wants more powers, let him take them. In other words, he says to me—if there are disagreements between myself and local authorities, take the powers, bash the local authorities over the head and make them do exactly what I want. I do not think that is the way that local government can be developed, and it is certainly not the way in which other hon. Members have expressed themselves. That is always the difficulty which I have outlined to this Council before, that one has got to try to keep the balance of giving certain responsibilities and autonomy to local authorities and at the same time keeping in the hands of the Government (a) the powers to enter in when the local authority really falls down completely on

[The Minister for Local Government, Health and Town Planning] his job and become a nuisance and a danger to the public at large—which can happen—and secondly, in this stage we are in at the moment, for the Government to keep in their hands the power to interfere, and to protect and help those who are represented in a minority way on local authorities. I want that understood—those who are represented by a minority in local authorities, and that is one of the reasons why power is retained in the Minister's hands; and that is one of the main reasons why I have to take the initiative and interfere where I think that races represented on a minority basis are being done down. Hon. Members will realize that, as numbers of them have come to me themselves with complaints on these matters.

The next point which I think the hon. Member for Nairobi Area made was that he was worried with regard to the poll rate for education and that there might be a lack of agreement in the matter of administration and clarity as to who was responsible for what—local authorities or the Government. Sir, the responsibility for the collection of the rate, at the request of the people concerned, lies with the local authority. After that they hand it over to the education authority. If the education authority is the Government, then Government will take it over. If the education authority is somebody else in due course, that somebody else will take it over. I made it quite clear in my speech that there is no responsibility for the local authority to administer the educational institution concerned.

Now, some hon. Members, and again there was conflict on the Benches opposite—considerable conflict—and some hon. Members said that local authorities should have responsibility for administering that money, other hon. Members said that they should not have. As usual, the Government takes the middle way, as it has, and it is just going to be as I described. Local authorities will have the responsibility for collection and the education authorities will have the responsibility for the administration and I do not really see any other way of doing it. I do hope that hon. Members will see that Government is always fair, and

always tries to meet most people a little way if they cannot all the way.

I have dealt with the points of racial parishes. The hon. Member then said that the parent body will be responsible to decide the amount of authority which the parish council will have. That, of course, is not so. Under the amendment which hon. Members will be able to study, it will be that the parish council will be set up after an enquiry by a Commissioner—but the last word, although the municipal council will have a great deal to say, the last word will remain with the Minister. Therefore the parent body will not have the last word on the authority of the parish council.

He then went on, as other hon. Members did, on the question of representation, and there is only one point here. He was quoting a lot of numbers of population in Mombasa—90,000 Africans, 20,000 Asians and 2,000 Europeans, or something like that. This matter has been thrashed out in this Council before, Sir, often. We cannot only take the numbers. First of all we have got to take the numbers of people who are interested enough to register—and that will be seen in Nairobi fairly soon—and secondly we have got to take, I believe, the element of rates—in local authority administration, the ratepayers, and they are not the be all and end all by any means; thirdly, we have got to take into consideration whether the people concerned are proper citizens of the area—that is whether they have made their homes in that area and look upon it as more or less permanent. Then, as far as the constitution of local authorities is concerned, my main objective is to obtain agreements as I have done in Mombasa, and not impose things on areas which they do not want.

Now, I have outlined to hon. Members the other day my suggestions that were turned down at Kisumu. But I do not think it is right that I should impose. Let the hon. Members of this Council decide on what sort of constitution they want first for themselves to give me a lead anyway as to what sort of constitutions might be adopted for local authorities. I think hon. Members are putting the cart before the horse myself.

Sir, I am not particularly impressed with the suggestions put forward that we should scrap all this and make it

[The Minister for Local Government, Health and Town Planning] one man one vote, completely non-racial, at Mombasa at this time, I am much happier to accept the advice of the people of Mombasa.

The hon. Member for Eastern Electoral Area—may I thank him for his kind remarks about me—and I am sorry about the division between the Muslims and non-Muslims, but there again, following the principle that it was a unanimous request to me by both communities, and I do not see that I should refuse them. I have dealt with parish councils and the special fear of his about the poor people and the rich, and also the relationship between the Minister and local authorities.

I now turn, Sir, to the hon. Member for Nairobi West. I am certainly not going to comment on his implied criticism of his own colleagues, but he did say that it was unfortunate that these measures were introduced at this stage when the Committee is sitting and looking into financial matters. Well, I do not consider myself that any of the financial provisions in this Bill really go against any particular financial principle which is either in the present legislation, or which might be considered as an amendment after advice from this Committee. I do not think that the financial implications are very important, and in any case they were discussed, and have been discussed with local government experts before they were put into this Bill.

He then went on to ask me, I think it was just before he exploded completely, to enlighten the Council on the financial relationships between the Government and local authorities. Sir, I cannot launch into a lengthy debate now on financial principles between Government and local authorities, and I think it is most illogical of him to ask me to do this on the one hand, and on the other hand to criticize that this Bill is coming forth without having been referred first to the advisory committee. The advisory committee is already sitting on matters of financial implications, and surely it is better for them to sit and advise me before I make explosive pronouncements.

I will admit that I am inclined to agree with his remarks that block grants

are not necessarily the right things for local authorities of all types in this Colony.

He then went on to provide me with suggestions as to how revenue could be raised other than in the way suggested by the poll tax—I did not quite understand that because he said that revenue could be raised by taxes, by entertainment tax, by motor vehicle tax and so on, as an alternative to poll tax. There again, I do not think these are matters which we can consider at this stage, and I believe that the poll tax suggestion which has been put forward and which has the full support of many Members of this Council, is the right one for the time being.

One thing I think I had better put on record—he said that local authorities will not shirk their responsibilities for education. Local authorities are not backward in accepting their responsibilities. All I can tell the hon. Member is that whenever I mention the word "education" to any local authority they run away in fright; no one wants to take it on. However, the hon. Member for Nairobi West seems to think differently, but I would warn him that he would not get much change out of local authorities on that point.

He then went on to say on the matter raised by the hon. Nominated Member, Commander Goord, with regard to the security of say, the City of Nairobi being damaged because parishes are set up in the City of Nairobi, and the property on which the loans which the City of Nairobi raise in London, or the property which forms some part of the security for those loans, might be transferred to the parish council and therefore the investors in the loans of the City of London might feel that their security has been diminished, and therefore the whole of the system of bringing in parish councils was completely wrong, and should be left out of the Bill. I think that is just about what he said. Well, of course, it is absolute rubbish. I beg your pardon, Sir, of course, that is slightly misleading. There would never be a necessity for a municipal council to transfer its capital assets to a parish council, and if ever they thought of doing so I have no doubt that they would take into consideration the security for loans which they had borrowed in



[The Minister for Local Government, Health and Town Planning] past years. It may well be that the parish councils may create their own assets, and that is why there is a clause in this Bill to provide that they shall be public bodies corporate and able to own such assets. The hon. Member for Nairobi West seemed to think that because of that particular part of the Bill it meant that capital assets will be transferred from municipal councils to parish councils, which, of course, is not so.

He then made a certain request that the Bill should be confined to Mombasa only. Well, of course, that is quite impracticable. There are many parts of this Bill which have been suggested and asked for by other municipalities, and the references to Mombasa are in only a comparatively small portion. He then went on to talk about the peaceful climate in Mombasa: it struck me then—I wonder why the real name of Mombasa is Mvua? He then went on to claim that there had been no time for people to consider the very important provisions in this Bill.

Sir, I would like to put this on record. All municipalities were informed in a circular from my Ministry, dated September, 1955, that a Bill would be prepared (1) to amend the scheme of social welfare to include education; (2) to include the other amendments, including the financial control—which the hon. Member said was most important in the Bill; and (3) to include the direction clauses—to which a number of hon. Members have taken objection. All municipalities were warned in September, 1958. In a subsequent letter dated April, 1959, they were told all about the suggestion for parish councils. I really cannot accept the suggestion that, at any rate, the municipalities have been left out of the picture and out of consultation. But it was, in fact, not until after the Bill was published on 9th June that the Municipalities Association began to consider the provisions and to raise objections. However, again, as I have said before, being thoroughly reasonable, the municipalities having raised their objections at that time, the Government is prepared to accept quite a number of them.

Now, Sir, the hon. Member for Central Area spoke about the racial aspect

of this Bill and he pointed his finger at the clause in regard to education and said the poll rate would have to be racial because education is racial—something on those lines. All I can say is as far as the provisions of this Bill are concerned it is entirely non-racial—sects, classes, areas and so on—it is entirely non-racial, and as far as I am concerned it does not worry me how it will be done. Sir, I do not think that objection can be taken on those grounds in this particular Bill.

The hon. Member also had his doubts about parish councils and said that, looking at the composition of the municipal boards or councils, they would not allow the common roll. Well, Sir, I want to reiterate what I said just now in answer to another hon. Member. The Minister has the last word, so therefore, if it is practicable to have a common roll and the Minister agrees it should be so, it can be so. As he quoted me talking elsewhere, I would merely like to say that I have put this suggestion that at the parish council level it may well be feasible to have a non-racial roll. I have done that, but when I did it I was knocked down by all communities except the Indian. The African and the European and the Muslim said "No", "No", "No".

Now, Sir, the hon. Member for the Eastern Electoral Area, Mr. Pandya, brought up a number of points, and I thank him for the remarks he made as well. He emphasized this was an agreed constitution for Mombasa. He was a bit worried, I think, about how the money raised from the poll rate might be distributed. I think that might have been his point—I can hardly read my writing—but I can assure him that it will go to the education authority, whoever they are. It will be the Government, of course. I do not think he need worry about it.

Social welfare. I am not quite certain—I know one hon. Member raised the question as to whether social welfare should be precluded in projects on which a poll rate could be expended. I am not quite sure whether it was this hon. Member. I think I might as well take the point now. The point at issue was what is social welfare, and I think the hon. Member was a bit worried as to what it actually meant. This is in the

[The Minister for Local Government, Health and Town Planning] Ordinance: "A scheme of social welfare includes any scheme to promote the well-being and recreation of all or any class of persons for the time being residing in a municipality and in any scheme to provide instructions in domestic science or home industry, the establishment of, maintenance and carrying on of community centres, social halls, libraries, day nurseries, women's clubs, child welfare centres, sports grounds and stadia and swimming pools and such other activities or the provisions of such further amenities as the Minister may from time to time approve." That is what it all means, and personally I think they are justifiable activities on which to spend this money if people wish to have themselves rated for it.

I agree with the hon. Member about the phrasing "not of the Muslim faith". I am sorry about it myself, but I understand that we cannot alter that phrase until an Order in Council is amended.

Then a great deal more was said about parish councils, which I do not think I need deal with, although I did notice the hon. Member himself said the Minister should interfere as little as possible in the affairs of local authorities, which is rather in conflict, as I have pointed out, with the hon. Member for Nairobi Area.

I do not agree, I am afraid, with the hon. Member that it is essential that the mayor and deputy mayor should attend all committees. They can; if the municipal board and council concerned wishes them to, then they can elect them to all the committees. They can do so but I do not think it should be laid down in the Ordinance that they must. Again I do suggest to the hon. Member it is rather interfering in the affairs of local authorities.

The hon. Member for Rift Valley—I do not think he raised anything I have not already dealt with. He was asking about the advancement of African representation in municipal boards generally. I think the hon. Member should really be fair. Taking Mombasa, it is true there are at least six, probably seven Africans. Nairobi City Council—it has been increased. At the moment I am in discussion with Nakuru where there is a

suggestion for a quite considerable increase of African membership. I will bring the matter before this Council in due course. The same applies in Eldoret, and we are in discussion about Kitale. It is going on in some time. Every few months in some municipal area or another there is a change of constitution which leads to extra African representation.

I think, Sir, that I have dealt with the hon. Member for Mombasa, although he asked for an opportunity to think out an amendment and I hope he will be able to do so. I know he is a very quick thinker.

The hon. Member for the Coast Area welcomed the poll rate. He also, I think, rather brought up points that other Members brought up. He was the hon. Member who wished social welfare to be defined, which I have just done.

The hon. Member for Ukamba also asked for more time, which I will deal with in a minute. He also thought that the powers were pretty vague, or rather the whole scheme for parish councils was rather vague, and said it should be on the same basis as county councils and county district councils, where the Ordinance is clearer. It is not. There are certain provisions in the County Councils Ordinance laying down certain regulations for membership of county district councils, but the detail is all done by a scheme which is submitted to the Minister, and that is exactly what I have in mind for parish councils, just as I have suggested in the new amendment, that a commissioner should enquire and submit a scheme, and it is a very, very parallel suggestion.

The hon. Member then said he wanted property owners only as voters. I do not think we can go into that at this moment, but property owners are not the only people who have a right to vote in local authority areas. Just because a man is paying rates directly, it very often means he is not paying them indirectly. In fact, the owner of a large property will include the element of rates in the rents he charges to the people who rent his offices or his building, so it is passed on. I do not believe we can make direct rate paying the only qualification.

He also talked about local authorities fighting the Minister, and I think I have dealt with that.

[The Minister for Local Government, Health and Town Planning]

The hon. Member for Machakos, I think it was brought up, I think, almost the same points. Oh yes, he said that in all African district council areas there are persons of other races living in those areas, but they have no representation.

MR. MUMBI: Not Machakos, Kitui.

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): The hon. Member for Kitui, I thought he was going to correct me in what I said. I would like to point out that those persons who are living in African district council areas, who are not Africans, do not pay anything towards the African district council. They do not pay rates.

MR. MUMBI: I know that.

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): That is the whole point. If they do pay rates then they should have representation, and that is what I have advocated in this House before now, that townships and trading centres should be taken into the African district council areas and those who pay rates there should have representation on the African district council. The same applies here.

I think that I have covered most of the points except the main one, that a number of people have asked for. Firstly, some people said we should delete some clauses. I do not think that that is right. I think they are all required, and curiously enough every clause that has been put forward is supported by a number of people in this House. Secondly, other people have suggested that there should be a select committee. I think that that, under our present time schedule, would be very difficult indeed. The third suggestion was that the Committee stage of this Bill should be taken next week instead of now.

I have a great deal of sympathy, Sir, with hon. Members, and I apologize to hon. Members for having circulated the suggested amendments at such a late date. I have consulted with the hon. Chief Secretary who has agreed, Sir, that the Committee stage could be taken next week, if you would agree.

I beg to move.

The question was put and carried.

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

### ADJOURNMENT

THE SPEAKER (Sir Ferdinand Cavendish-Bentick): That brings us to the end of the business on the Order Paper. I therefore adjourn Council until 2.30 p.m. tomorrow, Thursday, the 23rd July.

*The House rose at forty-five minutes past Five o'clock.*

Thursday, 23rd July, 1959

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

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

### PRAYERS

### ORAL ANSWERS TO QUESTIONS

#### QUESTION No. 165

MR. KHAMISI (Mombasa Area) asked the Minister for African Affairs how many persons (men and women) have been convicted in the African tribunals in Mombasa, Nairobi, Kisumu, Nakuru and Eldoret during the years 1957 and 1958 for failure to pay personal tax?

THE MINISTER FOR INTERNAL SECURITY AND DEFENCE (Mr. Cusack on behalf of the Minister for African Affairs): Mr. Speaker, Sir, I beg to reply.

The strictly correct reply is "None", as under section '19 of the Personal Tax Ordinance' the recovery of personal tax and penalty is deemed to be a civil debt and therefore the question of conviction does not arise.

I think, however, that the hon. Member may wish to know the number of persons who were committed to prison or detention camp by the African courts for non-payment of personal tax, and the figures for 1958 are as follows:—

|         | Men | Women |
|---------|-----|-------|
| Mombasa | 880 | Nil   |
| Nairobi | 381 | 2     |
| Kisumu  | 6   | Nil   |
| Nakuru  | 204 | Nil   |
| Eldoret | 34  | 8     |

As the Personal Tax Ordinance was only introduced on 1st January, 1958, I cannot give figures for 1957.

MR. KHAMISI: Would the Minister tell us of the two women whether they were employed or unemployed.

THE MINISTER FOR INTERNAL SECURITY AND DEFENCE (Mr. Cusack): I have no other information than that this particular number of women were committed for failing to pay tax.

#### QUESTION No. 156

MR. ALEXANDER (Nairobi West) (on behalf of Sir Charles Markham) asked the Minister for Internal Security and Defence is the Minister aware that at the moment anybody with a current driving licence can start a driving school? Will the Government state whether they propose to introduce legislation to control such activities?

THE MINISTER FOR INTERNAL SECURITY AND DEFENCE (Mr. Cusack) Mr. Speaker, Sir, I beg to reply.

(a) Yes.

(b) The Government will keep the matter under review.

MR. BLUNDELL: Arising out of that answer, Sir, may I ask the hon. Minister how long he proposes to continue to keep it under review in view of the danger to the public which may arise from a denial of proper examination of people who have driving schools.

THE MINISTER FOR INTERNAL SECURITY AND DEFENCE (Mr. Cusack): Sir, oddly enough at the moment neither the Government, nor the Kenya Police, nor the London Metropolitan Police share the hon. Member's view about the danger to the public which may arise from this.

MR. BLUNDELL: I may assume from the hon. Minister's answer then that anybody who has just passed a driving test is competent to teach other people how to drive, is that the hon. Minister's view or the view of the Government?

THE MINISTER FOR INTERNAL SECURITY AND DEFENCE (Mr. Cusack): I accept that the hon. Member himself is entitled and perfectly able to teach a friend or anybody else to drive.

MR. MBOYA: What protection is there for minors, children under 16, who have been cheated out of their money by people running these schools.

THE MINISTER FOR INTERNAL SECURITY AND DEFENCE (Mr. Cusack): I am afraid I do not really quite understand what the hon. Member is getting at. Children under 16 are not entitled to have driving licences.

MR. BLUNDELL: I want to ask the hon. Minister, Mr. Chairman, oddly enough

THE MINISTER FOR INTERNAL SECURITY AND DEFENCE (Mr. Cusack): "Odd" applies to the hon. Member's views.

MR. MBOYA: Mr. Speaker, Sir, I do not know whether I was clear, but the point I made was that children under 16 go to the driving schools and are cheated out of their money when they do, not qualify for a licence.

THE MINISTER FOR INTERNAL SECURITY AND DEFENCE (Mr. Cusack): I can only repeat what I said, Sir, that children under 16 are not entitled to have driving licences. If they are being cheated, well that is a matter for a civil action.

MR. MBOYA: Mr. Speaker, what protection is there. Does not somebody inspect these licences?

THE MINISTER FOR INTERNAL SECURITY AND DEFENCE (Mr. Cusack): It is up to the parents of the children to take action if children under 16 are being induced to try to get driving licences which under the law they cannot obtain.

MR. BLUNDELL: Would not the hon. Minister agree that arising out of the remarks of my hon. friend on the left that *prima facie* there is a case for control of these driving schools?

THE MINISTER FOR INTERNAL SECURITY AND DEFENCE (Mr. Cusack): Sir, I think I have already dealt with that showing that no such case has been found by the London Metropolitan Police or by the Kenya Police.

MR. SLADE (Specially Elected Member): Mr. Speaker, Sir, does the Minister realize that the question is directed not merely to everybody who teaches other people to drive but to those who set out to teach them for reward?

THE MINISTER FOR INTERNAL SECURITY AND DEFENCE (Mr. Cusack): Yes, Sir, I do realize this. Please do not think that I am merely being obstructive about it. I am not. I have given it careful thought. Could I suggest that at some appropriate time when speeches can be made this matter should be raised and Government will certainly give proper consideration to what is said? One of the main difficulties is that if you insist upon a qualification for a paid instructor, it is extremely difficult to allow that a private

person who is teaching his sister or friend or anybody else can be allowed to do so without a similar qualification.

THE SPEAKER (Sir Ferdinand Cavenish-Bentinck): I think that there have been sufficient supplementary questions on this subject, which moreover are developing into speeches. If any hon. Member is not satisfied with the replies given he has the right to raise the matter on the adjournment.

MR. BLUNDELL: I only wanted to ask the hon. Member whether he would apply his last remarks to playing a piano?

THE MINISTER FOR INTERNAL SECURITY AND DEFENCE (Mr. Cusack): Sir, I lack the good fortune of the hon. Member. I am unable to play one and cannot reply.

THE SPEAKER (Sir Ferdinand Cavenish-Bentinck): The Acting Chief Secretary, Mr. Griffith-Jones, wishes to make a statement.

#### MINISTERIAL STATEMENT

##### STATEMENT ON *HOLA*

THE ACTING CHIEF SECRETARY (Mr. Griffith-Jones): Mr. Speaker, Sir, with your permission I would like to make a short statement. As you are aware, Sir, the Secretary of State is today laying in Parliament in the United Kingdom a White Paper, which will contain the report of the disciplinary committee which sat on proceedings arising out of the tragedy at *Hola* on 3rd March, and also copies of despatches exchanged between His Excellency the Governor and the Secretary of State.

It is my intention, Sir, to make available to hon. Members, simultaneously with the release of that White Paper in England, copies of the documents concerned, which will be done by placing them in Members' pigeon-holes at six o'clock this evening. The record of evidence heard by the disciplinary committee is not included in the White Paper and will not be included in the documents circulated individually to Members. It is a lengthy record and I therefore propose to place a considerable number of copies in the Library of this House. Sir, for reference by Members as they please.

#### COMMITTEE OF THE WHOLE COUNCIL

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

##### IN THE COMMITTEE

(D. W. Conroy, Esq., O.B.E., T.D., Q.C., in the Chair)

##### *The Registration of Documents (Photostatic Copies) (Repeal) Bill*

Clause 2 agreed to.

Title agreed to.

Clause 1 agreed to.

##### *The African Courts (Amendment) Bill*

Clauses 2, 3, 4, 5, 6 and 7 agreed to.

Clauses 8, 9, 10, 11, 12 and 13 agreed to.

Title agreed to.

Clause 1 agreed to.

##### *The Protected Areas (Amendment) Bill*

Clauses 2, 3 and 4 agreed to.

Title agreed to.

Clause 1 agreed to.

##### *The Money-lenders (Amendment) Bill*

Clause 2

MR. SLADE: Mr. Chairman, I have heard very much at the eleventh hour, of considerable anxiety on the part of the Law Society of Kenya with regard to the retrospective effect of this clause, which amends the definition of "money-lender" in the original Ordinance. I am afraid I am too late to move any amendment. I understand, Sir, that the original draft Bill was designed to give this amendment retrospective effect as far back as 1935. I see that, in the Objects and Reasons it is stated that the amendment in the Bill before us in this clause is now so worded as to give it retrospective effect, but I must confess I do not quite follow in what way the clause as it now stands has retrospective effect. I would be very grateful if I could receive explanation and assurance that in fact it will have the retrospective effect that the Law Society, so much desires. I understand that they doubt themselves whether it has such effect.

MR. WEBB: This matter was given considerable thought, Mr. Chairman, when the Bill was being drafted and the Law Society were involved in that discussion. They expressed themselves as satisfied to me that the clause as redrafted gave retrospective effect in the way in which it has now been drafted.

MR. SLADE: Mr. Chairman, the hon. Temporary Solicitor-General could explain to us exactly how it has retrospective effect perhaps.

MR. WEBB: I do not think with respect, Sir, that that is a thing that I can embark upon at this stage of the Bill in Committee of this Council. It is a matter for legal argument elsewhere.

MR. SLADE: Mr. Chairman, we are here presented with a Bill and we are told that it is so worded as to give retrospective effect. Surely those responsible for the Bill can tell us how it does that. Surely the Minister responsible for this Bill is going to tell us how exactly it achieves what it purports to achieve.

THE MINISTER FOR FINANCE AND DEVELOPMENT (Mr. Vasey): The Minister responsible for the Bill, Sir, would not dream of embarking upon the legal argument between my hon. friend the Solicitor-General and the hon. Specially Elected Member, Sir; I shall listen with interest to the outcome of the discussion.

MR. SLADE: Mr. Chairman, we are really in the position that no one on the Government side can tell us how this Bill achieves what it purports to achieve by its Objects and Reasons.

MR. ALEXANDER: Answer, answer!

MR. WEBB: Mr. Chairman, I suggest, Sir, that the hon. Member reads the way in which the various paragraphs of the new definition of money-lender have been drafted and they will suggest to him the way in which the retrospective effect has been effected by referring to the fact that building societies and banks have been carrying on business before the commencement of the various laws under which they are entitled to carry on business.

MR. SLADE: But it is amended with effect from today or from when this Bill becomes law. It excludes building

[Mr. Slade] societies who were registered at a certain time or who carried on business at a certain time. But it only excludes them from the date when the amendment of the definition takes effect.

**THE ACTING CHIEF SECRETARY (Mr. Griffith-Jones):** Mr. Chairman, in view of the doubts which have been raised by my hon. and learned friend opposite—and I am certainly not in any position to resolve those doubts for him off the cuff—may I suggest that the consideration of this Bill in Committee be deferred? I think the correct procedure would be for the Committee to report to Council that it has made some progress—perhaps, we might add, not very much—in the consideration of this Bill and ask leave to sit again.

**MR. SLADE:** I am most grateful for that suggestion.

**REPORT**

*The Money-lenders (Amendment) Bill*

**THE ACTING CHIEF SECRETARY (Mr. Griffith-Jones):** Mr. Chairman, I beg to move that the Committee do report to Council that it has made progress in the consideration of the Money-lenders (Amendment) Bill and ask leave to sit again.

**MR. WEBB** seconded.

*Question proposed.*

The question was put and carried.

*The Price Control (Amendment) Bill*

Clauses 2, 3, 4, 5, 6, 7, 8 and 9 agreed to.

*Title agreed.*

Clause 1 agreed to.

*The Cereals Finance Corporation (Amendment) Bill*

Clauses 2, 3, 4, 5, 6 and 7 agreed to.

*Schedule agreed to.*

*Title agreed to.*

Clause 1 agreed to.

*The Loans (United Kingdom Government) Bill*

*Clause 2.*

**MR. ALEXANDER:** Mr. Chairman, this does enable the Government to borrow

money from Her Majesty's Government by this means. I understand that the arrangement is that Government having passed these funds into the Consolidated Fund is thereby enabled to pass on to local government their particular capital requirements. But I would like information, Mr. Chairman, whether that applies to all local authorities including the City Council of Nairobi, because, as we know, the City Council of Nairobi have financial autonomy in respect of borrowing from Britain and if there is no arrangement for the City Council of Nairobi to participate in any of this borrowing then indeed they are denied every source that there might be available to them because for some three or more years now they have been unable to get on, like the Government itself, to the normal financial market in the City of London, and my guess is that at the moment they are perhaps some £2,000,000 in arrears on their development programme with a very substantial programme ahead of them for the next five years of perhaps £8,000,000 or £10,000,000. It would be useful if we could have explained under this clause just what arrangements are available to organizations placed in the same position or organizations like the City Council of Nairobi and any others that there may be. I have not referred to others, but there may be others. The Minister is aware who should have an arrangement like this.

**MR. TYSON (Nominated):** I think it might be convenient if I raised my points before the Minister speaks. I am concerned about the question of guarantees from the United Kingdom Government. I am thinking at the moment from the point of view of the Railways Administration. In August, 1956, there were some meetings in Switzerland with the object of raising loans from the Swiss Government; and in one paragraph of the report of the proceedings which took place it was obvious from what the Secretary of the Swiss Banking Corporation said that, under the pressure of necessity, the United Kingdom Government guarantee would be forthcoming. His view was that the United Kingdom Government should find themselves in no difficulty in supplying such a guarantee if they had any faith in their own colonies. Now, what I would like to know, and perhaps the Minister will be

[Mr. Tyson]

able to tell us when he replies, is under this Loans' Bill, is it intended that the British Government should guarantee loans. I am not thinking so much at the moment of the Kenya-loans but I am thinking rather of the loans for the development of the railway which will involve considerable sums. I realize that we are talking at the moment in terms of Kenya alone, but I would like to know from the Minister what is the position in regard to these guarantees. Are we, as the Kenya Government, joining in a guarantee to enable either this Government or the Railway Administration to raise loans in, for example, Switzerland?

**THE MINISTER FOR FINANCE AND DEVELOPMENT (Mr. Vasey):** Mr. Chairman, I must respectfully point out that this is a Bill which deals with the borrowing by the Government of Kenya from the Government of the United Kingdom of sums required to finance the development programme. Now, Sir, neither the East African loans situation nor the Nairobi City development programmes come within the scope of this Bill. I think, Sir, that I should be completely out of order to go on now embarking on an argument on principle, which indeed I dealt with in reply to the main debate. If the hon. Nominated Member, Mr. Tyson, likes to have a talk with me afterwards I shall have very great pleasure in pointing out to him, in fact, that Her Majesty's Government has no authority from the House of Parliament to give any such guarantee, and it is extremely unlikely that they would ask for that authority, and that—if they have not got the parliamentary authority—they cannot act.

Sir, I do not want to embark on that, and the same thing applies to the hon. Member for Nairobi West. There is nothing in this clause 2, Sir, which deals with other than the development programme of the Colony.

Now, Sir, if the finance required and the projects on which it is to be spent have been approved by the Government, then it will be in the development programme and will be part and parcel of an overall loan. If it is not within the Local Government Loans Authority operations, if it is completely indepen-

dent of the Government, both in the projects which it wishes to put forward and it wishes to remain outside the Government's development programme, then indeed it is not affected by this Bill at all. This is purely a Bill, clause 2 of which says that, the Government of Kenya may borrow from Her Majesty's Government in the United Kingdom.

**MR. ALEXANDER:** Mr. Chairman, I do suggest that it was quite reasonable of me to ask, under this clause; I agreed when I started speaking that this only concerns the Government, but it is reasonable, I consider, to ask, under this clause, what institutions like the City Council are going to do because they are, in the same way as Government, starved of capital.

**THE MINISTER FOR FINANCE AND DEVELOPMENT (Mr. Vasey):** I am sorry I cannot agree with the hon. Member at all. There was plenty of time in the main debate to raise a question of this kind when dealing with principles. In so far as the Nairobi City programme is concerned, there is plenty of time indeed at the present moment to ask the Nairobi City Council as to what they propose to do, because they are, as the hon. Member said, an autonomous body. They do not, in fact, come within the purview of the development programme of the Colony and, indeed, they have, I understand, no desire to do so. So that, Sir, I am sorry that as far as I am concerned I must come back to the fact that the only thing in this Bill and, indeed, as far as I can understand, the only thing in the Act of Parliament, is that the Government may lend direct to a Government. We have no idea what they will do with regard to any outside institution except that I can say that I feel almost certain that they will insist that the whole of the finance comes through the Government of Kenya.

**MR. ALEXANDER:** Mr. Chairman, notwithstanding that explanation, I do think the Minister is being somewhat obstructive here, because of course although the City Council have autonomy, as he knows very well indeed whatever they do in the way of borrowing has to have his final approval, and he must know what the plans are without expecting us, on this side of the House, to have to go to the City Council. We must look to him for this type of explanation.

The CHAIRMAN (Mr. Conroy): Order, order. I think this is irrelevant to the section we are dealing with in particular, and to the object of this Bill in general. The object is set out in the Long Title, and that is to authorize the Government of Kenya to borrow money from the Government of the United Kingdom to finance the development programme of the Kenya Government. The development programme of the Nairobi City Council does not fall within the ambit of this Bill.

Clause 2 agreed to.

Clause 3.

Mr. ALEXANDER: Clause 3, Mr. Chairman. When I was speaking on this particular system of finance the other day, I quoted figures and the Minister chose to question them. In fact the inference in what he said was that my figures were either inaccurate or incorrect. I just want to assure the House, Mr. Chairman, and the Minister that before I brought the figures to this House I had them checked by two other chartered accountants in my office. After the debate I had them checked by two more chartered accountants and an institution that deals in this type of finance, and I can assure you that they are entirely correct.

The MINISTER FOR FINANCE AND DEVELOPMENT (Mr. Vasey): If the hon. Member will look at what I said, he will see I said this was not a matter of simple arithmetic. The trouble in this case is that the hon. Member has applied his mind to this on the grounds of simple arithmetic and has tried to reconcile two completely different methods of raising money over longer and different periods.

Mr. STADE: I seem to remember the Minister saying that he did not agree with the hon. Member's arithmetic.

The MINISTER FOR FINANCE AND DEVELOPMENT (Mr. Vasey): And I went on because "this is not a matter of simple arithmetic".

Mr. ALEXANDER: It is a matter of very, very simple arithmetic.

The MINISTER FOR FINANCE AND DEVELOPMENT (Mr. Vasey): So simple that the hon. Member cannot grasp it.

Clause 3 agreed to.

Clause 4 agreed to.

Clause 5 agreed to.

Title agreed to.

Clause 1 agreed to.

#### The Rent Restriction Bill

Clause 2 agreed to.

Clause 3

The ASIAN MINISTER WITHOUT PORTFOLIO (Mr. Madan): Sir, I want to move an amendment to subsection (a), but I understand my hon. friend, the Member for Kiambu, wants to move an amendment to clause (a). Perhaps we could dispose of that first.

Mr. BOMPAS: Mr. Chairman, Sir, the list of amendments which I would like to move in respect of clause 3, has been circulated to hon. Members, and the whole purport of those amendments is slightly to accelerate the progress of gradual decontrol which the committee of enquiry recommended, and which the Government has, in fact, accepted as a policy; and I do seek, with those amendments, to accelerate the processes to make up some of the time lag that has elapsed and will continue to elapse before this Bill finally passes into law.

So, Sir, if I may claim your indulgence, I would like to speak in slightly general terms in respect of the whole of the amendments to that clause, then possibly, Sir, as you may rule, deal with the amendments specific to each paragraph. I must take your direction on this, Mr. Chairman.

Mr. Chairman, at the conclusion of the debate on the Second Reading, it became very apparent to me that the House was by no means fully in agreement with the views expressed by Government as to the necessity for the continuance of rent control. Those views were expressed to me by some of the Government Back Benchers. It seems quite obvious to me, Sir, that the suggestion that the Arabs, for example, require the continuance of control, is somewhat erroneous.

This Bill is not, Sir, a matter of high Government policy, and I would ask that when hon. Members consider these amendments of mine, Sir, that any Government whip that may be on, could be withdrawn so that Members can deal with it purely on a matter of experience and conscience. In fact, I challenge

[Mr. Bompas]

Government to withdraw their whip in his regard.

It was suggested—I think I should mention this—that I should have declared an interest when this matter was debated previously. I gladly do so now in this sense, that I have no interest either directly or indirectly (to the best of my knowledge), in any rent controlled property, and my interest is purely that of a citizen who sees a tap running and seeks to turn it off.

If I may deal specifically with the proposed amendment to clause 3 (a), I should like to move, Sir, that clause 3 of the Bill be amended by deleting the words "seven thousand two hundred" in paragraph (a) thereof and substituting the words "four thousand eight hundred" therefore; that is, reducing the rent ceiling from £36 a month. I think I am tight in saying, to £20 a month as the stage at which a house could become decontrolled. It takes full account of Government's representation that their desire is to protect the underdog. I submit that if anyone is living in a house and can afford to pay £20 a month he is not an underdog, and the law of supply and demand could take care of that aspect.

Mr. Chairman, do you wish me to proceed?

The CHAIRMAN (Mr. Conroy): I think the most convenient way to deal with this, Mr. Bompas, is—you having explained the general purpose—we will move the amendment individually and deal with each separately.

Mr. BOMPAS: Thank you, Mr. Chairman. That is my amendment 1 (a).

Question proposed.

The ACTING CHIEF SECRETARY (Mr. Griffith-Jones): Mr. Chairman, Sir, I must, before my hon. colleague deals with the substance of this Motion, reply to the challenge of my hon. friend opposite by saying that I cannot possibly agree that on a Government Bill it would be appropriate that I should withdraw the Government whip. I am afraid, therefore, that we shall not be able to join him, as he would wish, in a tap-turning exercise, but if he cares to invite us to the taproom, that will be another matter.

The ASIAN MINISTER WITHOUT PORTFOLIO (Mr. Madan): Mr. Chairman, I think it is necessary to draw the hon. Member's attention to the fact that there are three types of houses which are controlled: houses of which the standard rent was fixed on the prescribed date, which was 31st September, 1939; houses of which the standard rent came into being on 31st December, 1945; and another category of houses of which the standard rent was fixed between 1945 and 28th February, 1954. Of the latter two categories, the rents are quite high. It may sound that the sum of Sh. 7,200 is high, but in fact it is not so in relation to the actual rents being paid by tenants.

I explained yesterday, Sir, that I had been requested by the Mombasa Rate-payers Association that this figure should be reduced to Sh. 6,000. That is Sh. 1,200 more than the figure now suggested by the hon. Member. On the other hand, the Chairman of the Central Rent Control Board has suggested that the figure should be increased to Sh. 8,400 per annum, and I said, Sir, that the committee, after giving the matter very careful consideration, had arrived at this happy medium. I still think, Sir, it is a reasonable figure to insert in the Ordinance, but I would draw the hon. Member's attention to his own amendment, the effect of which will be that tenants paying a rent of Sh. 400 a month would not be protected any more.

In his very next amendment he seeks to decontrol premises occupied by persons whose income is about Sh. 3,000. If you take into account the total income of the first category in relation to the second category, I am sure he will see the inconsistency between the two. I do suggest, Sir, that he would do well to accept the recommendation of the committee of enquiry and stick to the figure of Sh. 7,200. I reassert Government cannot accept this amendment.

Mr. BOMPAS: Mr. Chairman, I am sorry that the Acting Chief Secretary could not accept my challenge, and I do extend my invitation to the taproom so far as he is concerned.

I am sorry that the Minister will not accept this amendment, and he has actually moved on to my next amendment and suggested there is no inconsistency. I suggest there is no inconsistency because my next amendment deals

(Mr. Bompas) with the total income and not taxable income, and I had acquired the thought that the total income of £2,000 does approximately to the 25 per cent of income which would normally be paid; and I may add, Sir, that I am fully aware there are three classes of houses rent controlled.

The question that the words to be deleted be deleted was put and negatived.

MR. BOMPAS: Sir, I would like to move my amendment (16), that clause 3 of the Bill be amended by deleting the semicolon after the final word "names" in paragraph (c) and substituting therefor the words "or persons having a total income as defined in the East African Income Tax (Management) Act, 1958, in excess of shillings forty thousand".

Sir, my reason for moving that amendment is that it is quite illogical to retain under rent control those properties which happen to be occupied by, shall we say, a rather wealthy bookmaker in his own name or a wealthy member of your own profession, Sir, in his own name; to remove that type of premises from control and at the same time for somebody in the category, shall we say, of a florist, who happens to have rented premises in the name of a company, which might be in a very small way of business, to be in property no longer controlled. I would suggest, Sir, that this amendment looks after the underdog, but does not leave the wealthy individual in a position to continue to occupy a house merely because it happens to be a cheap one and does not comply with the other exemptions which lie under this section 3.

I beg to move.

#### Question proposed.

MR. MAXWELL (Trans. Nzoia). Perhaps I should not have spoken when I did, but I was dealing with all the proposed amendments at the same time. Surely the true rental value of a property is not dependent in any way on the fluctuating income of a person and to imagine that you could enter into a lease with a public body or corporation or partnership or person on the basis that your rent would vary in relation to income is, I suggest, quite illogical, and I cannot in any way support the hon. Member for Kiambu in his arguments in this connexion.

THE ASIAN MINISTER WITHOUT PORTFOLIO (Mr. Madan): Sir, the hon. Member for Trans Nzoia gave reasons why this amendment should not be accepted. To that I would like to add that this clause contemplates the letting of houses by public bodies, corporations, etc., to their employees, and it is not anticipated that such corporations and bodies will be of a small nature as he thinks. It is expected they would be large organizations who can well afford to find accommodation for their employees if they want to give it to them, in the free market. I regret, Sir, I am unable to accept the amendment.

MR. SLADE: Mr. Chairman, I think the Minister has really made a point in answer to the Member for Nyanza that I wanted to make. What the amendment now proposed refers to is not the value of the property concerned, but the extent to which the tenant needs protection. Now that is what paragraph (c) of clause 3 is dealing with. As the Minister has pointed out certain kinds of tenant do not need protection and the hon. Member for Kiambu is suggesting that people with incomes of £2,000 or more should not need protection in the tenancy of any particular dwelling-house.

I beg to support.

MR. BECHGAARD: As actually worded the amendment refers to persons having a total income at what time or when for one year or two years or three years? There is the practical difficulty that you cannot usually determine what a person's income is in 1958 until 1959, and if material for 1959 it would not be possible to ascertain the income before 1960 at the earliest. Another practical difficulty would be this, that there might be one person in the house with an income of £2,000 as contemplated here. Is he better off than another house with three persons each having £800 all contributing towards the house exchequer. While appreciating the motives underlying the Member for Kiambu's suggestion, I submit that this suggested yardstick is utterly impracticable.

CAPTAIN HAMELEY: Mr. Chairman, on a point of order, could we ask Members to speak up. We are having a very thin time on the Back Bench here. We hear fleeting references to "little b's and little c's" but that is about all.

THE CHAIRMAN (Mr. Contoy): The Members on the Back Bench on either side cannot hear what Members on the Front Bench on their own side are saying, and I would ask Members to speak up for the instruction of their own Front Bench.

MR. BECHGAARD: Interjection.

MR. BOMPAS: Sir, there are happily no big "b's" to my amendment. May I say, Sir, that I recognize the point which has just been made by the hon. and learned Nominated Member, and I was not myself entirely happy as to my method of achieving the purpose I desired and feel there might be probably legal complications such as we bumped into a little earlier this afternoon, but I do, Sir, repeat that the thought in my mind is that a man with an income of £2,000 a year does not require the protection any longer of the law of rent control, and such a man, Sir, ought to be prepared to pay the rent which his income suggests he should pay. It was very much in my thought also that the clause would be governed by the income of the man at the time the letting transaction took place.

MR. TYSON: Mr. Chairman, are we not overlooking the fact that all these points have been gone into by the committee of enquiry that went into this question, the working of the Increase of Rent Ordinance, and are we not just going over the whole ground again? We have had the report of that committee, and I do suggest, Sir, that that committee, which was a very able committee that travelled the country and went into the various points which have been raised in the course of this debate, and we are just going over the whole ground again. It seems to me that we are throwing away the value of the recommendations which were made by that committee on which this revised Ordinance has been based. I do suggest, Sir, that we ought to pay some regard to the recommendations which were made by that committee.

MR. BOMPAS: Mr. Chairman, I have regard for the work of that committee. They did an excellent job in my opinion, but their report is obsolete as I have said, 18 months have elapsed since that committee did its job, and I am now

trying to bring the excellent work of that committee up to date.

MR. MAXWELL: Mr. Chairman, I would like to point out to the hon. Member for Kiambu that he is endeavouring to relate income to the true rentable value of a property. If a property say costs £5,000 or £10,000 it is surely worth a certain return to the owner of that property, and you must surely divorce that from the income of the person who intends to rent that property. If a person say has an income of £2,000 a year, then the argument put forward by the hon. Member for Kiambu—he suggested that 25 per cent of a man's income is possibly reasonable in regard to the rent he should pay—and therefore his maximum payment should be £500—but assuming there is a house that costs say £10,000 the owner cannot be expected to base the rent on a tenant's income. I feel, Sir, it is quite inconsistent and quite illogical to tie up a man's income with the true rental value of a property.

THE ASIAN MINISTER WITHOUT PORTFOLIO (Mr. Madan): Mr. Chairman, I would not agree with the hon. Member for Kiambu that the report of the Committee is out of date now. I think that it is still very much in point. I have kept in constant touch with rent control matters, and I am satisfied, Sir, that the views they expressed still apply to present day conditions. If I might ask the hon. Member for Kiambu a question, how is he going to find out what the tenant's income is? Are we going to impose a statutory obligation on the tenant to make a declaration of his income month by month to the landlord. As my hon. and learned friend Nominated Member has pointed out, the suggestion is utterly impracticable, and I do not think we would be wise to accept it.

#### Question proposed.

Question that semi-colon proposed to be deleted, be deleted, put and negatived.

THE ASIAN MINISTER WITHOUT PORTFOLIO (Mr. Madan): Mr. Chairman, I beg to move that clause 3 of the Bill be amended by inserting in paragraph (d) thereof immediately after the word "which" the words "at the commencement of this Ordinance".

Hon. Members will see that the application of the Ordinance is excluded in respect of dwelling-houses erected on

[The Asian Minister without Portfolio] of one acre or more. It was possible, Sir, under the existing Ordinance under clause 5 (1) (g) to excise land for the purposes of development, and in order to ensure that land which has already been excised will not be taken into consideration for the purposes of subclause (d) it is proposed to introduce this amendment. The amendment will ensure that only those dwelling-houses which are built on an area of land of one acre or more at the commencement of this Ordinance will be decontrolled.

I beg to move.

*Question proposed.*

MR. BOMPAS: I am in some difficulty for I have an amendment which is not affected by the amendment which the hon. Minister has just read out, and which I am perfectly happy to accept, but what I cannot do is to vote on this amendment and accept the clause.

THE CHAIRMAN (Mr. Conroy): Your proposed amendment occurs two words later than Mr. Madan's amendment, which he has just moved, and therefore his amendment is dealt with first. After his amendment, whether you vote on it or not, your amendment will be called, and it is not until we have completed the whole clause and the Committee has voted that the clause as amended stands part of the Bill that we cannot have any more amendments to that clause, so we deal with the amendments in order as they occur in the different places in the clause. Does anyone wish to speak on Mr. Madan's amendment?

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

MR. BOMPAS: I beg to move that clause 3 of the Bill be amended by inserting in paragraph (f) between the words "exceeds" and "one" the words "half of", the purpose being to reduce the acreage of land from one acre to half an acre. Sir, I do not think I need elaborate on this at all. Again my contention, Sir, is that the average person in the urban areas who can afford to live on more than half an acre does not require the protection of this Ordinance.

*Question proposed.*

THE ASIAN MINISTER WITHOUT PORTFOLIO (Mr. Madan): I would have liked to meet the hon. Member's point, but I

wonder if he realizes that he might be defeating his own object. Might I read out to him from the report of the committee. When they made their recommendations they said—page 6: "We make this recommendation in the knowledge that in certain residential areas in Nairobi City Council by-laws make it a requirement that land built upon should be at least one acre in area. It may be noted that this proposal will, in effect, constitute a measure of decontrol by zones since housing of this density will in general be situated in specially allocated areas." I suggest to him, Sir, that the amendment I have moved should meet his point of view, and it would assist landlords to obtain a greater number of decontrolled houses than by the method which he suggests.

MR. TYSON: Mr. Chairman, may I ask the hon. Member to speak up so that some of us can know what he is talking about. I would like to refer to clause (f) dwelling-houses the area of which exceeds one acre which he is now suggesting should be amended by the words "half of an acre", but surely we do not deal with dwelling-houses on the basis of acreage. What we do deal with houses on is the basis of plinth area and the clause as it stands, Sir, I suggest, is quite ridiculous, and I would like the Minister to consider whether we should not amend clause (f) by talking about a square footage area instead of acreage.

THE ASIAN MINISTER WITHOUT PORTFOLIO (Mr. Madan): Might I draw the attention of the hon. Nominated Member to the definition of the expression "dwelling-house" which means any house, or part of a house or room used as a dwelling or place of residence and includes the site of the house and the garden and other lands and buildings let therewith and not as a separate entity or source of profit. I think the hon. Member will agree that his point is covered in the definition.

MR. BOMPAS: It is one of the strange idiosyncrasies of legal draftsmanship that you turn land into buildings and vice versa, but I think the point is quite clear, as the Minister says; but I do not agree with the Minister that the amendment he has proposed does in fact fully meet my point, it may do so in specific instances, but not in general, and I do

[Mr. Bompas]

ask him to accept in all seriousness the thought that one will remove from rent control a large number of houses that do not require to be controlled if he will accept the half acre. Indeed, I will be prepared to make a bargain with him. If he will accept this I am fully prepared to withdraw the rest of my amendments because I do not wish to be tedious, and the House is obviously not awfully interested anyway.

THE ASIAN MINISTER WITHOUT PORTFOLIO (Mr. Madan): However much I would like to oblige the hon. Member for Kiambu, I do not think we should depart from the recommendations of the committee of enquiry who went into this matter very thoroughly, and recommended that houses on an area of one acre or more only should be decontrolled. I regret, Sir, I am unable to accept.

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

THE ASIAN MINISTER WITHOUT PORTFOLIO (Mr. Madan): Sir, I beg to move that clause 3 of the Bill be amended by inserting in paragraph (f) thereof immediately after the word "Ordinance" the word "or". This is a drafting amendment, Sir. The word has been left out inadvertently. I apologize to the House for it, and I beg to move.

*Question proposed.*

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

MR. BOMPAS: Mr. Chairman, if I might speak to paragraph (g) which does not constitute one of my amendments. I do so again in the spirit of what I said earlier on, I do not wish to be tedious by dragging the House through these amendments of mine. Paragraph (g), Sir, provides that the Governor-in-Council and Ministers can exempt areas, dwelling houses and so on. If I could have an assurance from Government that in the very near future the whole of this problem will be studied by the proper quarters, and that the matter can be considered with a view to possible removal of certain classes and sections of houses from control so that the present situation can be reflected I would be very happy to withdraw the remainder of my amendments, Sir, but I look for

some such assurance from Government that this matter will be kept constantly under review.

THE ASIAN MINISTER WITHOUT PORTFOLIO (Mr. Madan): I am sorry, but I think I must draw the hon. Member's attention to the provisions of subclause (2) of clause 2 whereby we have agreed that the provisions of this Ordinance will remain in force up to 31st December, 1961, and I would not like the hon. Member to have any misconception in his mind as far as the date of expiry is concerned, but the provisions of subclause (g) of clause 3 have been included in the Ordinance with that very object, that if it is felt that in any particular area rent control is no longer necessary, the Governor-in-Council should be able to make a declaration. I can assure him that the position will be kept constantly under review.

MR. TYSON: Mr. Chairman, I take it that the object of the hon. Member for Kiambu is that we should aim at removing rent restriction completely at the earliest opportunity. We all realize that for the time being there it is necessary to protect certain sections of the community, but surely the aim, and I think that is what the hon. Member for Kiambu has in mind, is that we should aim as quickly as we possibly can at removing the restrictions completely so that there is a free market for residential and for commercial properties generally, and that, I think, is the assurance that the hon. Member for Kiambu is asking for from the Minister.

THE ASIAN MINISTER WITHOUT PORTFOLIO (Mr. Madan): Mr. Chairman, Sir, I doubt if I can give that assurance in such categorical terms because I am bound by the provisions of subclause (2) of clause 2 but I can give this assurance that if it is felt in future that in any particular area the necessity for rent control has disappeared, Government will consider taking the necessary action under the provisions of subclause (2) of clause 3.

MR. BOMPAS: Mr. Chairman, I am very sorry if that is the situation. I feel that I will have to pursue these further amendments, excepting one consequential amendment, which I have given notice of, Sir.

THE ASIAN MINISTER WITHOUT PORTFOLIO (Mr. Madan): Clause 2 already approved.

THE CHAIRMAN (Mr. Conroy): Mr. Bompas do you want to move a further amendment?

MR. BOMPAS: Yes, Sir, I would like to move that clause 3 of the Bill be amended by deletion of the word "six" in proviso (f) and substitution of the word "three". That means that a landlord is required to give his tenant three months' notice, Sir, instead of six months' notice.

*Question proposed.*

THE ASIAN MINISTER WITHOUT PORTFOLIO (Mr. Madan): Sir, the effect of this amendment will be that the notice required to be given by the landlord to a tenant will be reduced by a period of three months. Again, I would respectfully remind the hon. Member for Kiambu that the committee considered this aspect of the matter very carefully. What we want to avoid is certain dislocation and social upheaval as a result of possible, I say, wholesale evictions. The necessity for this legislation exists because of housing shortage, and in order to give ample opportunity to tenants and their employers to be able to find alternative accommodation, the period of six months has been written into the Bill. The hon. Member will note that it is considerably shorter than the period of notice required to be given under certain other clauses of the Bill. That was done because it was felt that people of the type who are affected by the provisions of subclauses (c) and (d) are more capable of looking after themselves than the others. For that reason the period was reduced to six months, and I suggest to him that it is a reasonable period.

MR. BOMPAS: I deny that a housing shortage of the calibre that is suggested by Government continues? Government have got their heads in the sand over this matter and I repeat that, as I have said several times, there are houses standing empty in Mombasa, there are houses standing empty in Nakuru, there are houses standing empty in Nairobi—in Eastleigh—I have seen them with my own eyes and it seems to me quite ridiculous if I may say so, Sir, to continue to take this protection through where it is

no longer necessary. However, Sir, I am going to give up the unequal struggle because there is no point in prolonging the agony.

THE ASIAN MINISTER WITHOUT PORTFOLIO (Mr. Madan): Sir, it is necessary to remind the hon. Member that the houses that are perhaps standing empty in Mombasa are houses probably built after 28th February, 1954, which are not subject to control. The owners and the public are free to deal with them in the open market. We are not concerned with those houses. We are not concerned with protecting people who want to get into new houses. We are concerned with protecting the sitting tenant, usually of a poorer class. That is the position.

The question was put and carried.

THE ASIAN MINISTER WITHOUT PORTFOLIO (Mr. Madan): I am not sure, Sir, that the way you put the question was understood clearly.

THE CHAIRMAN (Mr. Conroy): I do not think that I could have put it more clearly, Mr. Madan.

THE ASIAN MINISTER WITHOUT PORTFOLIO (Mr. Madan): Well, Sir, if your ruling is that the word "six" is to be left out, then I must ask for a division. Could you not put the question again, Sir?

THE CHAIRMAN (Mr. Conroy): I do not think I can. The question has been put. It was put as clearly as I could put it. Hon. Members did not speak up; it is their fault if they did not.

MR. BLUNDELL: With all due respect, Mr. Chairman, would not the hon. Minister be in order in calling for a division if he wishes to dispute your ruling? In effect what it boils down to, Mr. Chairman, is that you have ruled on the feebleness of sound which emanated from the benches opposite. If the Member wishes to dispute the degree of sound then he can only do so by asking for a division.

THE CHAIRMAN (Mr. Conroy): I did not rule only on the feebleness of sound. I ruled on the fact that a number of voices to my right said "Aye".

THE ASIAN MINISTER WITHOUT PORTFOLIO (Mr. Madan): I submit, Sir, that there was a misunderstanding.

THE CHAIRMAN (Mr. Conroy): Well, your remedy, Mr. Madan, is to call for a division.

THE ASIAN MINISTER WITHOUT PORTFOLIO (Mr. Madan): Divide.

THE CHAIRMAN (Mr. Conroy): I think that as a division having been called for, Mr. Speaker has ruled that on such an occasion I can put the question again and I propose to do so. I should be grateful if hon. Members would pay attention to the question when I put it.

The question was put a second time and negatived.

MR. BOMPAS: Mr. Chairman, I do not propose to move these further amendments. I do not know whether I have to seek the permission of the House to withdraw. I have not given notice of it. I do not propose to move any further amendments.

Clause 3 agreed to.

Clause 4

THE ASIAN MINISTER WITHOUT PORTFOLIO (Mr. Madan): Mr. Chairman, Sir, I beg to move that clause 4 of the Bill be amended by inserting in the definition of "landlord" in subsection (1) thereof, immediately after the word "tenant", the words "in possession". It has been pointed out, Sir, that there can be cases where the tenant himself is the landlord and by the use of the expression "other than the tenant" it is possible that the tenant who himself is the landlord might be excluded from taking action under the provisions of this Bill. In order to remedy that, Sir, it is proposed to insert the words "in possession" after the word "tenant".

*Question proposed.*

The question was put and carried.

Clause 4 as amended agreed to.

Clauses 5, 6 and 7 agreed to.

Clause 8

THE ASIAN MINISTER WITHOUT PORTFOLIO (Mr. Madan): Mr. Chairman, Sir, I beg to move that clause 8 of the Bill be amended by inserting at the end of paragraph (a) of subsection (2) thereof the word "or". This is purely a drafting amendment, Sir, and I beg to move.

*Question proposed.*

The question was put and carried.

Clause 8 as amended agreed to.

Clauses 9 and 10 agreed to.

Clause 11

THE ASIAN MINISTER WITHOUT PORTFOLIO (Mr. Madan): Mr. Chairman, I beg to move that clause 11 of the Bill be amended by inserting immediately before the word "accepts", in both places where it appears therein, the words "demands or".

The purpose, Sir, is to make it an offence for a landlord to demand more than the authorized rent. These words, I think, will improve the provisions of this clause and I beg to move.

*Question proposed.*

The question was put and carried.

THE ASIAN MINISTER WITHOUT PORTFOLIO (Mr. Madan): Mr. Chairman, I beg to move that clause 11 of the Bill be amended by substituting for the words "the rent or advance" the words "any rent or advance accepted". This is, Sir, consequential to the amendment which the House has just approved.

*Question proposed.*

The question was put and carried.

Clause 11 as amended agreed to.

Clauses 12, 13 and 14 agreed to.

Clause 15

THE ASIAN MINISTER WITHOUT PORTFOLIO (Mr. Madan): Mr. Chairman, I beg to move that clause 15 of the Bill be amended by substituting for the first paragraph of paragraph (g) of subsection (1) thereof a new paragraph as follows:—

The tenant has, without the consent in writing of the landlord, at any time after 1st December, 1941, or the prescribed date, whichever is the later, assigned, sublet or parted with the possession of the premises or any part thereof.

Sir, there is no question of principle involved in this amendment. It is a tidier and a more concise way of putting the same thing as that which paragraph (1) of this subclause purports to say now and I beg to move.

*Question proposed.*

MR. NAZARETH: Mr. Chairman, I fail to understand the reasons for this



[Mr. Nazareth] amendment proposed by the Minister. He says that it is a more concise method of setting out what has been contained in the clause as put in the Bill. But really it has quite a substantial effect.

According to the provision in the Bill as it stands, if a tenant sublets a portion of the premises between the period 1941 to 1949 he does not infringe the provisions and therefore does not become liable to an order for possession. As regards the periods subsequent to September, 1949, even if he sublets a portion he infringes the Ordinance and becomes liable to an order for possession. In fact, I was rather wondering when I read the original provision why the Bill was legislating so far back as to cover a period from 1941 to 1949 which is from 18 to 10 years ago.

I would suggest to the Minister that in fact the Minister is legislating retrospectively. He is now depriving of protection those who have sublet even a portion of the premises during the period from 1941 to 1949; that is the effect of the amendment although perhaps it is not obvious or plain to him but that is in fact the amendment and it deprives retrospectively of protection those who have sublet only a portion of the premises during that period.

I would suggest to the Minister that if he wants consistency without retrospectivity he should just alter the words in his draft "1st December, 1941" to "6th September, 1949" and he will achieve his object of expressing more concisely what he seeks to achieve and avoid legislating for a period from 1941 to 1949. I do not suppose there is any tenant who has sublet the whole of the premises during that period, who is now likely to be proceeded against by his landlord. If there are persons who have sublet the whole of their premises during that period, then in that case there must have been new tenancies coming into existence or a waiver of previous infringements but whatever it is I suggest to the Minister that he let his draft stand but substitute the words "6th September, 1949" for the words "1st December, 1941".

THE ASIAN MINISTER WITHOUT PORTFOLIO (Mr. Madan): Sir, the intention in introducing this amendment was to insert into the Bill a more simplified way of

saying what the present first paragraph of clause (g) states. If there is any legal doubt about it I am, of course, prepared to discuss it but I should doubt very much that there exists now any cases where a tenant has sublet a part of his dwelling—part of his house—in which the landlord has not taken the necessary action or does not intend to. As he said it is a matter in the past. But it has to be related to the prescribed dates and those are given in the Schedule.

I have, I must admit, Sir, not quite got what exactly would be achieved by inserting the words "6th September, 1949" for the words "1st December, 1941". Perhaps the hon. Member would explain?

MR. NAZARETH: All I am saying is that you are dealing with an unreal situation. It has an effect in this respect that if a tenant has continued in possession and rent has been accepted and he is what we call a statutory tenant, if there is such a tenant and there may be quite a number of such tenants, then in that case if he has sublet a portion of the premises during that period but not sublet the whole, that is, in the period from December, 1941 to 1949, such a person could be proceeded against because it is held that mere acceptance of rent by a landlord does not waive any infringements of the obligations of the tenancy. This is, in fact, retrospective legislation because you are depriving of protection a person who is not under the protection of the law as it stands.

I think perhaps that the suggestion that I made has got to go a little further in that the words "or the prescribed date" will also have to be deleted and also the words "whichever is the later" and the amendment, if it is to be sensible, will have to read: "at any time after 6th September 1949 has assigned or sublet or parted with the possession of the premises". As the amendment now stands as put forward by the Minister it is undoubtedly retrospective legislation.

THE ASIAN MINISTER WITHOUT PORTFOLIO (Mr. Madan): May I, Sir, draw the attention of the hon. Member to the words that appear in the last line at page 720 of this Bill where it says "assigned or sublet the whole of the premises with the remainder being already sublet". I think what he has in

[The Asian Minister without Portfolio] mind is the case of the tenant who has sublet a portion of the premises but retaining a part for himself. It is possible, Sir, that such a tenant has been made a statutory tenant and there is no intention on my part to deprive him of any protection that he enjoys at the moment. If the effect of my amendment would be to do that I am, of course, prepared to reconsider it but I am not satisfied, Sir, at the moment that that is what the result will be.

The question was put and carried.

THE ASIAN MINISTER WITHOUT PORTFOLIO (Mr. Madan): Mr. Chairman, I beg to move that clause 15 of the Bill be amended by adding at the end of paragraph (f) of subsection (1) thereof the word "or".

Again, Sir, this a drafting amendment and I beg to move.

Question proposed.

The question was put and carried.

THE ASIAN MINISTER WITHOUT PORTFOLIO (Mr. Madan): Mr. Chairman, Sir, I beg to move that clause 15 of the Bill be amended by deleting the words "by the landlord" where they first appear in paragraph (m) of subsection (1) thereof.

It is quite possible, Sir, that a tenant may be deprived of possession of his premises by a person other than the landlord. In order to cover such cases it is proposed to delete the words "by the landlord" where they first appear.

Question proposed.

The question was put and carried.

MR. BOMPAS: I would like to make an enquiry of the Minister regarding sub-clause J in that same section, Sir. I see a difficulty here because it says that a landlord can recover possession of a dwelling-house if he acquires the right to occupy more than one place of residence at the same time. Could it be defined where that place of residence is. Surely it is the intention that it must be a place of residence that is incapable of being resided in. Does it mean that it is a place of residence in Tooting or another place of residence in Bombay that applies?

THE ASIAN MINISTER WITHOUT PORTFOLIO (Mr. Madan): I think, Sir, that is related to the provision of sub-clause (e) of subsection (1) and it is related to the jurisdiction of the courts to which the application is made.

MR. BOMPAS: And what happens if you have a man owning a house in Kisumu who lives in Mombasa?

THE ASIAN MINISTER WITHOUT PORTFOLIO (Mr. Madan): If he required the property for his own occupation or the occupation of his wife or children he would have to apply to the court at Kisumu and he would have to satisfy the provisions of sub-clause (e) before he could get possession.

Clause 15 as amended agreed to.

Clauses 16 to 26 agreed to.

Clauses 27 and 28 agreed to.

Clause 29

THE ASIAN MINISTER WITHOUT PORTFOLIO (Mr. Madan): Mr. Chairman, I beg to move that clause 29 be left out of the Bill. The hon. Member for the Central Area (Mr. Travadi), drew my attention to it yesterday and I said that I would consider his remarks. He suggested that, in view of the provisions of sub-clause (f) of clause 3, clause 29 was no longer necessary, and I agree with him.

I beg to move.

Question proposed.

MR. TRAVADI: Mr. Chairman, may I take this opportunity of thanking the Government, and in particular the Asian Minister without Portfolio, for accepting my suggestion.

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

Clauses 30, 31, 32, 33, 34, 35, 36, 37, 38, 39 and 40 agreed to.

Schedule

THE ASIAN MINISTER WITHOUT PORTFOLIO (Mr. Madan): Mr. Chairman, I beg to move that the Schedule to the Bill be amended by the substitution of the figures "1941" which appear in the second column thereof in relation to the Municipality of Eldoret for the figures "1940". This, Sir, was a printing error

[The Asian Minister without Portfolio] and I am grateful to the hon. Member for the Central Area, Mr. Travadi, for drawing my attention to it.

I beg to move.

*Question proposed.*

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

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

Schedule agreed to.

Title agreed to.

Clause I agreed to.

THE ACTING CHIEF SECRETARY (Mr. Griffith-Jones): Mr. Chairman, I beg to move that the following Bills be reported to Council: The Registration of Documents (Photostatic Copies) (Repeal) Bill, the African Courts (Amendment) Bill, the Protected Areas (Amendment) Bill, the Price Control (Amendment) Bill, the Cereals Finance Corporation (Amendment) Bill, the Loans (United Kingdom Government) Bill, and the Rent Restriction Bill as amended.

Bills to be reported with amendments. The question was put and carried.

*Council resumed.*

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

### REPORTS AND THIRD READINGS

#### *The Registration of Documents (Photostatic Copies) (Repeal) Bill*

THE TEMPORARY MINISTER FOR LEGAL AFFAIRS (Mr. Conroy): Mr. Speaker, I beg to report that a Committee of the whole Council has considered the Registration of Documents (Photostatic Copies) (Repeal) Bill and has approved the same without amendment.

MR. WEBB: Mr. Speaker, I beg to move that the Registration of Documents (Photostatic Copies) (Repeal) Bill be now read a Third Time.

THE ASIAN 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 African Courts (Amendment) Bill*

THE TEMPORARY MINISTER FOR LEGAL AFFAIRS (Mr. Conroy): Mr. Speaker, I beg to report that a Committee of the whole Council has considered the African Courts (Amendment) Bill and has approved the same without amendment.

THE TEMPORARY MINISTER FOR LEGAL AFFAIRS (Mr. Conroy): Mr. Speaker, I beg to move that the African Courts (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 Protected Areas (Amendment) Bill*

THE TEMPORARY MINISTER FOR LEGAL AFFAIRS (Mr. Conroy): Mr. Speaker, I beg to report that a Committee of the whole Council has considered the Protected Areas (Amendment) Bill and has approved the same without amendment.

THE TEMPORARY MINISTER FOR LEGAL AFFAIRS (Mr. Conroy): Mr. Speaker, I beg to move that the Protected Areas (Amendment) Bill be now read a Third Time.

THE MINISTER FOR COMMERCE AND INDUSTRY (Mr. Hope-Jones) seconded.

*Question proposed.*

The question was put and carried.

The Bill was accordingly read the Third Time and passed.

#### *The Money-lenders (Amendment) Bill*

THE TEMPORARY MINISTER FOR LEGAL AFFAIRS (Mr. Conroy): Mr. Speaker, I beg to report that a Committee of the whole Council has considered the Money-lenders (Amendment) Bill, concerning which it wishes to report progress and beg leave to sit again.

#### *The Price Control (Amendment) Bill*

THE TEMPORARY MINISTER FOR LEGAL AFFAIRS (Mr. Conroy): Mr. Speaker, I have to report that a Committee of the whole Council has examined the Price

#### *[The Temporary Minister for Legal Affairs]*

THE TEMPORARY MINISTER FOR LEGAL AFFAIRS (Amendment) Bill and approved the same without amendment.

MR. MACKENZIE: Mr. Speaker, I beg to move that the Price Control (Amendment) Bill be now read a Third Time.

THE ASIAN 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 Cereals Finance Corporation (Amendment) Bill*

THE TEMPORARY MINISTER FOR LEGAL AFFAIRS (Mr. Conroy): Mr. Speaker, I beg to report that a Committee of the whole Council has considered the Cereals Finance Corporation (Amendment) Bill and has approved the same without amendment.

THE MINISTER FOR FINANCE AND DEVELOPMENT (Mr. Vasey): Mr. Speaker, I beg to move that the Cereals Finance Corporation (Amendment) Bill be now read a Third Time.

THE ASIAN 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 Loans (United Kingdom Government) Bill*

THE TEMPORARY MINISTER FOR LEGAL AFFAIRS (Mr. Conroy): Mr. Speaker, I beg to report that a Committee of the whole Council has considered the Loans (United Kingdom Government) Bill and has approved the same without amendment.

THE MINISTER FOR FINANCE AND DEVELOPMENT (Mr. Vasey): Mr. Speaker, I beg to move that the Loans (United Kingdom Government) Bill be now read a Third Time.

THE ASIAN 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 Rent Restriction Bill*

THE TEMPORARY MINISTER FOR LEGAL AFFAIRS (Mr. Conroy): Mr. Speaker, I have to report that a Committee of the whole Council has been through the Rent Restriction Bill and has approved the same with amendments.

Report ordered to be considered tomorrow.

### MOTION

#### ENDING OF THE EMERGENCY

MR. MULIRO (North Nyanza): Mr. Speaker, Sir, I beg to move, that in view of the importance of creating a democratic Government in Kenya, this Council urges the Government of the country to bring the Emergency to an end, so as to allow the formation of National Political Organizations irrespective of race, colour or creed.

MR. SPEAKER, Sir, in this country we have been very tired of the Emergency. It has been with us long enough, and I think this is the time, and the right time, to create a proper atmosphere in this country, and as such we require the State of Emergency to come to an end. I think that whatever I am going to advance today will lead to that end, and all hon. Members in this Council today and all sincere and serious people in this country who want to create one nation will agree with me that definitely it is high time that the State of Emergency came to an end.

If one goes back a little in our history we find that the State of Emergency was declared in 1952, this ended African political organizations and opinions. At that time the Africans, as a racial group, were organized under the Kenya African Union, a racial and political organization for all Africans in Kenya as such. During the Emergency this organization was proscribed and the political life, as far as the Africans were concerned, was never heard anywhere in this Colony other than in this House. It was only in this House that African Nominated Members, such as Mr. Mathu, were able to voice political views affecting the Africans in this country.

During the Emergency, I think it was in 1955, the Kenya Government lifted the political restrictions a little bit and they allowed the Africans to form district associations. When that came into

[Mr. Muliro] being the first district associations which emerged, were the Nairobi African District Congress, and the Central Nyanza African District Association. This has gone on until recently and in the past two years some more political associations of Africans have been formed. Now, all these political associations of the Africans are on a district basis, and as such they are tribal organizations except in Nairobi and in Mombasa where various tribes and various people are mingled together in urban life. There one finds associations which are not tribal but are truly African political associations on a district basis. Now, when one comes to the Asians and the Europeans in this country, the Europeans have got their Convention of Associations. It does not claim, and it has not said that it is, truly political but it is an organization which expresses various views on politics and various views on social and economic life in this country. As far as the Asians are concerned, they are in two groups. One group is the Kenya Indian Congress (for the non-Muslims) and the other group (for the Muslims) is called the Muslim League, which is both religious and political. Now, when one looks at these things, Sir, one wonders where we are actually heading. So what we find now in Kenya is the political maze.

When we come to this very house, Sir, the Elected Members have got various Elected Members' organizations. There is the European Elected Members' Organization, the African Elected Members' Organization and we have got the Asian Elected Members' Organization, sometimes called the Asian United Elected Members' Organization. Now, you will find that recently was formed the New Kenya Group of certain individuals who signed a certain declaration and also you find another group called the Constituency Elected Members' Organization. These last two were formed this year.

When one looks at all this one wonders where these political jumbles and the political mess are going to land us. Then above all this political maze we have various concepts in Kenya, politically. We have the ideas about partnership. Some people talk and say that what we want in this country is true

partnership. When one asks them what they mean by this true partnership they would never be clarified. Others talk of multiracialism. We want multiracial government. When one comes to underline this word "multiracial", Sir, one does not know what it means. In fact, all that it means to me is that various races come together. Well, we are to find all races of Kenya here. We are not multiracial here, probably, but the jumbled mess in which we find ourselves is not leading us anywhere at all. There are concepts, also, like co-operation. Other words, such as co-operation, Races and communities, and so on, can all co-operate, but do all these concepts lead us to nationhood at all? I think that the concepts of co-operation and all that promote ideas of racialism or tribal differences rather than the idea of human identity. Therefore, Sir, what I advocate for this country, and what we should all realize, and what every citizen of Kenya should realize, is that we are individuals in Kenya and not as tribes or races, communities, religious bodies, and so on. If we want to get anywhere it is time to realize that. Then, Mr. Speaker, in Kenya we find the European community, the Asian community, the Arab community and the African community, all melting in one pot. I do not know what kind of stew we are going to get out of this melting pot. It is going to be very tasty, I suppose, in the long run, but the sooner we come to our sense the better it will be for this country.

Now, Sir, there is another concept and that is the concept of integration into one democratic nation. Some people talk and say, "What do you mean by integration?" Some people are worried about this word because they feel uneasy. But that is not what is meant. The truth is that we want political, economic and social integration in one united democratic nation in Kenya. When one comes to talk about this, Mr. Speaker, the main and bitter issues are political, economic and social. In the political field, normally, Sir, people worry themselves very much about what type of franchise we want. So far as the social problems are concerned, the people worry themselves about education, all children going to the same schools. To many of us it looks the same, Sir, so far as the economic field is concerned. Economic opportunity

[Mr. Muliro] should be free to all in this country so far as land is concerned. Kenya land should be exploited to the fullest possible extent to create the necessary wealth for this country. Some people become worried about it and say "Look, what about the Highlands? Do you think that the Africans will come to these Highlands? Do you think that the Asians will come to these Highlands?" That is too much, but that is mainly due to the perpetuation of racial aspects—various chauvinistic and herrenvolk philosophies. All that does not get us anywhere.

I think, Mr. Speaker, all sincere Members in this Council and all sincere people in Kenya must realize now that whatever fears we have got in this country, these burning issues have to be faced by us, and be faced by us very boldly. Indeed, many of us who claim to be politicians and who are leading a political life will be wiped out in the coming general elections probably, simply because we commit ourselves to given philosophies.

Now should we worry about being elected by communally-minded people? I must appeal to the European community; I must appeal to the African community; I must appeal to the Asian community. How far are we going and how long are we going to appeal to this racial emotionalism? Indeed, Mr. Speaker, I think the only solution and the truest solution in this country is complete acceptance of the fact that whether we like it or not, this country is going to be governed by the people of this country, and everybody in this country, irrespective of his race, tribe, creed or country of national origin must accept an unqualified franchise—democratic franchise—as the only basis of confidence in the political life of this country.

Mr. Speaker, I am quite averse to the question of oppression, domination of any individual by other individuals or of a community by other communities. It is very clear that oppression as oppression is indivisible, whether that comes from a European or from an Asian, whether that comes from the Colonial Office or is dictated by Nairobi; and therefore, bearing that in mind, we have to work in such a way so as to create a society equal to the people and

not inferiors and superiors. We must accept the inevitability of the people of this country governing this country; and when that comes it must be borne in mind that black faces will be more in this House, probably, but those black faces that will be more in this House should be actually working for the interests of everybody in this country, irrespective of their skin, colour, creed or race or country of origin. When that final day comes, probably those who will be alive will be able to take part on that day, and some of us might not be able to see it.

Mr. Speaker, I say this because what ruins Kenya politics now is that many of us politicians in the past and at present, including myself, want to play as the chief actors on the stage, not knowing that in the game of politics we are all on a stage and finally only when we come to find our seat, shall we know actually who has been the chief actor on this stage, and if we say this is the chief actor, or that one, or say, it is all falsehoods which are not true.

Mr. Speaker, the only way I see, and what I have advocated here, is the formation of national organizations. Now in this Motion there is reference to the ending of the Emergency and that was taken by the Kenya Government and everybody as the key and operative word. We all want the Emergency to come to its end, but what should be noted and what is operative in the whole Motion, Mr. Speaker, and what hon. Members of this Council must realize, is the formation of national organizations irrespective of race, colour or creed; in fact, I should have added the word "tribe".

Now that is the most important thing. I feel there are fears in this country and these fears are very genuine because we have been nursing more of emotionalism in the past, more of racialism in the past, more of tribalism in the past, rather than nurse the idea of one democratic nation for all Kenyans.

Now if we want to wipe out these feelings, if we want to wipe out these fears, the only way which I see and which many hon. Members in this Council and respectable people in this country see is the formation of countrywide political organizations which stand completely across the barriers of race, tribe or religion. Anything less than that—any

[Mr. Muliro]

form of tribal or racial organization which is not based on true political policy to which individuals are permitted as such and for which they are prepared to fall or stand in any political bargaining in any elections in this country—will never carry us anywhere. Any person in this country who claims to be a politician, who claims to be democratic, must now realize that the time has come when after full national talks, that the time has come when actually even if the Kenya Government is wanting the Emergency, however long they want to prolong it, they should at this stage lift the ban on political organizations on a countrywide basis so that we can form a real balanced opinion in this country.

Mr. Speaker, if this Motion is accepted and people in this country dedicate themselves to the formation of one nation, I think we all in this Council and everybody in Kenya will move forward in confidence and dedication completely to the formation of one integrated, happy nation.

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

MR. JAMIDAR (Central Electoral Area). Mr. Speaker, I rise to second this Motion. I do so on a day when the Constituency Elected Members' Organization is about to launch a project for forming a nationwide organization.

Now, Sir, we come before this House in all humility for being granted the permission to go outside the limitations that this House imposes and form an organization in which people who are not members of this House also can become Members. In doing this, Sir, I am fully conscious of the great responsibility that the sponsors of this Motion must undertake, because we are asking for the lifting of the Emergency Regulations for the purpose of such organizations being enabled to be created and formed.

The purpose of this Motion is certainly not to create conditions in which law and order might break down and arson, robbery and so on might prevail. Sir, the reason behind the Motion is a noble reason. This Motion stems from a desire to unite rather than divide and to ensure the restoration and continuance of peace and prosperity for all and usher in this country a new era in which events undreamed of so far may come to fruition and flourish.

Sir, the beginning of these non-racial parties in this country is the greatest thing that has happened in this country and which cannot be repeated for a very long time to come. The New Kenya Group which was formed sometime ago, as the hon. Mover of the Motion has said, has put into the melting pot the three nations which so far have existed in this country. It will be the work of the Constituency Elected Members' Organization, through their new political organization, the Kenya National Party, to create a new nation which will be the fusion of all these nations and will be a genuinely national political party.

Sir, it is our ardent desire that all these differences and divisions prevailing in this country might now cease. It is our great desire that in this country we create a harmonious and peaceful and law-abiding nation which would work for ever for the continuing happiness and prosperity of all human beings in this country. Sir, it is a psychological fact that the human being is guided by instinct of survival. There is also another instinct, and that is an instinct for the annihilation of this egoistic survival and for merging the ego into larger and greater wholes, and for that purpose human beings have devised all through the ages, all throughout history, various means. We have created castes; we have created caste organizations; we have created tribes; we have created classes; we have created nationalities and we have finally thought a citizenship of the world in an ultimate aim to embrace infinity and to find a lasting peace in the arms of eternity.

Sir, it is in fulfilment of this very basic instinct that these larger and wider groups should be formed and have to be organized, and for that purpose there should be no obstruction placed in its way by a Government which itself has given blessings already to the idea of non-racial organizations in the country. Therefore I urge upon the Government, Sir, that this Motion be accepted by the Government or at least assurance be given by them that organizations of this type will be allowed to be formed and that we may now continue our work as we desire to do without any hindrance or let from the Government.

Sir, as I have said earlier, it is not our intention that law and order should break down, and if, in this country,

[Mr. Jamidar]

chaotic conditions do ever return, I would be the first man to support any policy which would employ the most ruthless measures available against such forces of disorder. But for a long time now we have not heard anything at all about *Mau Mau* or *K.K.M.*; rather we hear more about things like *Hola*, and in these circumstances and these conditions there is no justification whatsoever for the continuance of the Emergency. There is not anything more than normal crime—which prevails in any other country in the world—in this country. There is nothing abnormal; there is nothing out of the way; and whatever normal and usual crime that prevails in this country can be adequately met by our police force—by our adequate and very good police force that we have in this country. There is no need any longer for perpetuating these Emergency conditions, particularly when such Emergency would stand in the way of creating a nation.

I beg to second.

Question proposed.

THE EUROPEAN MINISTER WITHOUT PORTFOLIO (Mr. Harris): Mr. Speaker, Sir, I would like to congratulate the hon. Mover on the very moderate terms he used in proposing the Motion in his name.

I think, Sir, we should analyse this Motion rather carefully, and if we do we find, in fact, that it is in two parts. One part deals with the end of Emergency and the other part with permitting Colony-wide political organizations.

Now, Sir, dealing with the question of the Emergency, I must remind the House, Sir, that this Emergency is a security measure and has nothing to do with the creation or destruction of any form of government in this country. Its sole purpose is to protect the Government constituted in this country. Therefore, Sir, to lie, in the first line of the Motion, the need for a democratic form of government with the elimination of the Emergency is, in fact, illogical. The Government, Sir, on this question, stands on the statement made by the Secretary of State, I think, in answer to representations made by a delegation headed by the hon. Member for Nyanza Central in

April, when he said that it was his wish and the wish of the Governor of Kenya that the Emergency should be terminated as soon as possible, as soon as he was satisfied that it would not lead to a new state of emergency.

Now, Sir, before we can get to the end of this, there are three prerequisites that are essential. Firstly, there must be an assurance that there is no deterioration in the security situation. Secondly—and this is a most important point, Sir, which is very often forgotten by many people—quiet conditions must be maintained in areas to which detainees and restricted persons have been and are still being released. The third, Sir, is that we must make sure that we have legal powers to secure public order and public safety, particularly in the light of the experience we have gained over the last seven years.

Now, Sir, with regard to the assurance that there is no deterioration in the security situation, I must tell the House, although the hon. Member said he had heard nothing about *Mau Mau* or *K.K.M.* for a long time, I wonder, Sir, whether he has heard of *K.K.T.*? Because that is the latest one. It has nothing to do with the pre-first war song, either. Actually, Sir, *K.K.T.*, or *Kiamu Kiu Thuyu*, was discovered in Embu not very long ago. They were indulging in the same habits as the other secret societies we have had. Their paraphernalia and ceremonies were the same and their oaths included a desire to keep alive *K.K.M.* So, Sir, what we have is *K.K.T.* following *K.K.M.* and *K.K.M.* following *Mau Mau*, and it is quite clear that the whole time we have this epidemic progression of secret societies we cannot be assured that there will be no deterioration in the security situation.

With regard, Sir, to quiet conditions being maintained in areas to which detainees and restricted persons are being returned, I think it will be realized that as the number of persons remaining to be dealt with is reduced, those persons are more difficult and are becoming more difficult than any we have had to deal with, and we must ensure that there are settled conditions for their re-absorption on release, otherwise the alternative is that they will not be able to be released.

In regard, Sir, to the necessary powers that we must have in the light of the

[The European Minister without Portfolio]  
 experiences in the past years, paramount consideration must be that of preservation of security and we must have adequate power to ensure this in our substantive law.

For the reasons I have given, Sir, we cannot accept that part of the Motion which suggests that the Emergency is preventing the development of democratic Government in this country. On the contrary, Sir, I could make a very good case that when we can get a secure situation in this country, democracy will have a very much greater chance than it has at the present time.

But, Sir, it is not all negative. For many months the Government has consonant with security, been relaxing Emergency Regulations, and this relaxation continues. For so long time farmers on larger plots in the Central Province, providing security permits, have been allowed to go out from the villages and live on their holdings. This policy is now being accelerated and where people with no security history have holdings sufficient to maintain them, they will be permitted progressively to leave the villages and go out, and it looks as though the final pattern in Central Province may well be that about half the population will be in villages and half will be living out on their holdings.

I am also able, Sir, to announce relaxation of movement restrictions in Central Province. It is agreed that there should now be no restrictions on Kikuyu, Embu and Meru wishing to move within the area covered by the Meru, Embu, Nyeri and Fort Hall Districts. At present passes are necessary for all movement entailing spending nights away from home. The Kikuyu, Embu and Meru from Kiambu and Thika Districts will also be permitted to move about in the Meru, Embu, Nyeri and Fort Hall Districts without passes. But I should say that existing movement restrictions will continue to apply in respect of movement from the rest of the province into Kiambu and Thika and to movement into Nairobi. That is, day movement between Kiambu, Thika and Nairobi will be permissible at present, but Kikuyu, Embu and Meru elsewhere in the province will continue to need passes to visit Kiambu, Thika and

Nairobi. I give these two examples, Sir, of recent relaxations that have been made by Government in Emergency regulations, and these relaxations will continue to be made as the security situation permits and providing there is no sudden deterioration.

Now, Sir, on the question of the Motion implying the need for a national political organization, I would say, Sir, that just as the Emergency was not imposed to prevent development of democratic government, so the Emergency was not imposed to prevent the formation of countrywide political organizations. The Emergency was imposed to prevent violence, intimidation, the organization of poison plots and other conspiracies. The extent to which political organizations can be allowed must be measured by the degree of danger to security which they would present. That African political organizations on a colony-wide basis are prohibited at present by Emergency regulations is coincidental. But it is not a racial matter. Experience of the old Kenya Central Association and Kenya African Union that were mentioned by the hon. Member and their development into the violent and murderous conspiracy of *Mau Mau* postulates the need in the interests of the law-abiding members of the community to ensure that the same pattern is not repeated.

Everyone will agree—everyone sensible will agree—that power must lie with the Government to control political organizations and to ensure that they do not develop as instruments of violence and threaten the security of the State. And that, Sir, is the policy of the Government whether there is an Emergency in force, or whether there is not.

I have tried, Sir, to show that this Motion is a mixture of confused ideas, and I propose, therefore, moving an amendment to eliminate this confusion and tackle what I hope is the essential feature.

I would like to move, therefore, Sir: That the words "in view of the importance of creating a democratic government in Kenya" be deleted, and also the words "so as to allow the formation of national political organizations irrespective of race, colour or creed" be omitted, and add at the end "as soon as

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 the interests of security permit". This means, Sir, that the new motion would read: "That this Council urges the Government of the country to bring the Emergency to an end as soon as the interests of security permit".

Sir, I beg to move.

Question proposed.

THE ASIAN MINISTER WITHOUT PORTFOLIO (Mr. Madan): Seconded.

MR. SPEAKER (Sir Ferdinand Cavenish-Bentinck): I think this amendment does differ rather considerably from the original Motion, so I am afraid I cannot rule that the two be debated as one Motion under Standing Order No. 62. The amended Motion is now before the Council.

MR. MAOYA: Mr. Speaker, Sir, the question of the continuation of the State of Emergency is one which has been placed before this Council practically every six months since 1957. The African Elected Members have tried to draw the attention of the Government and other people in this country to the hardships, the difficulties and the problems that have been created, not so much for those people who might have taken part in the *Mau Mau* violence, but more to those people who had nothing to do with it, and including those people who, in fact, helped the Government to fight against it; in other words, Sir, indiscriminately against everyone in this country regardless of whether he took part in *Mau Mau*, regardless of whether he supported, sympathized, encouraged or even had any knowledge of *Mau Mau*.

Mr. Speaker, in 1952 the Government argued, and could have argued that they had a situation on hand which demanded the use of Emergency powers; a situation on hand which was far beyond any measures, or the capacity or scope of the normal security forces to handle. In looking at the African Members' demands for a review, and the Government's attitude in this Emergency situation, I think it is important that we should look back to the day when it was decided to impose the State of Emergency and ask whether in fact we are dealing with a similar situation: whether

in fact today we have a situation which the local police force and all the security forces at hand cannot cope with. Whether we have any threats of violence or any crimes which, as the Secorder of the original Motion said, are not problems arising from any normal crimes. Normal crime, Sir, is to be found in any country and in every major city of the world; normal crime, Sir, which is not confined only to people with black skins: crime which is found in London, New York, or in any city: crime which can be committed by Europeans, Asians or any other person.

Mr. Speaker, one must ask, does the present state of affairs in this country continue to justify the wholesale indiscriminate imposition of Emergency regulations on our country and our people? It is saddening at times to see when Motions such as the original one are placed before this Council that the Government attempts to confuse issues and to grope around for excuses and possible explanations but which they know, and we know they could not possibly defend logically or otherwise.

We have been told in the course of the last six years by Ministers in this Council, and at one time, even by the highest Government executives in this country that there was no cause to worry, that the situation was left in hand and the Government had learnt from their past experience, and that there is no possibility with the security forces at hand of any other such developments as *Mau Mau*. Mr. Speaker, these assurances have been given almost every other week, and yet, when we come here the Government tells us that it is not possible to lift the State of Emergency; they tell us that the situation is still such that they must continue to use these Emergency powers. And what is even more disturbing is they have attempted during the last six years to introduce or transfer some of these Emergency regulations into the substantive law; to make them a permanent part of the legislative system of the country. There is an inconsistency in the argument that you need Emergency regulations to deal with an abnormal situation, and at the same time to pursue the policy of turning most of the Emergency regulations into substantive law.

[Mr. Mboya]

Is it really a question of security? Is it true to say that the reason why we must have restrictions on the movement of Kikuyu, Embu and Meru between the rest of the Province and Kiambu and Thika Districts; or between the Province and Nairobi is essentially and entirely the result of an Emergency situation? Mr. Speaker, is this not a wholesale and an indiscriminate condemnation of the entire Kikuyu, Embu and Meru tribesmen? It is suggested, Sir, that if there were criminal tendencies that these are limited only to these tribesmen? If not, why should they be the only people to suffer for the country's mistakes. I know I will be told that it was in this area that we had the State of Emergency, but may I also submit that it was in this area that we found some Africans who did more than anybody in this Legislature to fight against terrorism. Do they not deserve some consideration? Have they not suffered enough?

Mr. Speaker, is this really a question of lifting a State of Emergency as soon as the interests of security can permit? The Minister, in moving the amendment to this Motion, has stated that there was *Mau Mau*, followed by the *K.K.M.*, and that today, for the first time, we hear of a *K.K.F.* In consequence the interests of security do not permit for the lifting of the State of Emergency.

Now, Mr. Speaker, there is another side to this problem which the Government seems to ignore from time to time. The Government insists that in these areas of the Central Province, where you have had six years of misery; in this area where there is heavy reconstruction work going on, numerous problems arising from land consolidation, villagization schemes, unemployment and so on, yet they insist that the people of these areas may not have freedom of assembly, freedom of association—they insist on denying them the channels through which they may freely express themselves, and then come here and tell us they are surprised to find the development of secret societies. It is my submission, Mr. Speaker, that if the Government insists on continuing these conditions they must accept responsibility for the trend, or the attitude of people to resort to secret societies. That is their entire responsibility, and it is no good coming here and

saying that there are secret societies, and therefore they will not give people the freedom to speak. I say give them freedom of association, give them freedom of assembly; let them feel that their grievances and their frustrations can be expressed effectively without the fear of the headman or the chief or some other person going around and disturbing them because they spoke against the Government. Then let us see if there are secret societies. Are these secret societies really subversive societies or are they a manifestation of the denial of these people's rights freely to express themselves.

Mr. Speaker, when we say these things, some people on the other side of the Council are apt to jump up and say: "Do we sympathize with secret societies or subversive organizations?" We do not sympathize with secret societies or subversive organizations, but we say give our people the alternatives that they need, the alternatives to secret societies. Do not just come here for seven years confining them to reserves, and refusing them the right to move around and look for jobs; the right to move around and get a livelihood. You arrest people in the towns and send them back to the reserves without thinking for one moment as to how they are going to occupy themselves there. Then, when in their frustration they turn against the Government, you say we must have Emergency powers.

Mr. Speaker, Emergency powers were not meant for the purpose for which they are being used today: they were meant to deal with an Emergency situation, and it is our submission that that situation does not any longer exist.

Mr. Speaker, I humbly wish to suggest that we have here a Government that is panicking; a Government that is insecure; a Government that is so frightened that it does not really know what it could do without the false sense of security that it today derives from the arbitrary use of these powers.

Mr. Speaker, this sort of a Government cannot last; this sort of Government cannot enjoy the confidence of the people; this sort of Government will never satisfy the wishes of our people and it is bound, as has been proved everywhere else, to fail. Emergency powers will never instil in our people

[Mr. Mboya]

that sense of belonging that they need; that feeling of identification that they need if they are to become truly part and parcel of the citizenship of this country; if they are to become co-operative, productive and positive in their attitude in helping this country advance.

We can talk here until tomorrow about advance; about co-operation, about all sorts of things, and some people come to this Council and think that advance means when I sit on your head, I shift my foot and step on your shoulder—that is progress for you. That is not progress.

Mr. Speaker, if for nothing else but humanitarian reasons the Government should consider the thousands of people who are suffering—innocent people—children and women who are being penalized for nothing at all. Most of them as innocent as the Minister for Legal Affairs or the Acting Chief Secretary here, if, indeed, they are innocent at the moment. My submission is that they share the guilt—a guilt of continuing this State of Emergency and punishing people who have had nothing at all to do with the present state of affairs.

Mr. Speaker, I beg to oppose the amendment.

MR. BLUNDELL: Mr. Speaker, on behalf of the Group which I represent, I should like to say that much of what the hon. the Mover of this Motion said would meet with our agreement. We would feel, Sir, that the amendment moved by the Government begs in some respects the three issues which the hon. Member presented to this House.

He sought to establish three things—democratic development in this country, the wisdom of removing the Emergency regulations and finally, the establishment of non-racial political parties upon which a parliamentary system could eventually evolve.

Well, Sir, with all those three things the members of our Group have great sympathy. Indeed, if you read the policy statement which we have put forward there is much in what the hon. Member said which can be reflected in the views which we ourselves have presented. I would like to record, Sir, therefore, that we have great sympathy with the view that the Emergency regulations should be lifted as soon as possible. We would wish to say, Sir, that in judging the time, the

Government must obviously—we are in agreement with the hon. Minister without Portfolio—must obviously be actuated by the necessity of preserving public safety, and we would want to be assured that there was adequate legislation, particularly on two aspects of the matter.

The first would be that men detained for abominable offences, or for more than adequate reasons, can still be detained after the Emergency regulations have been lifted. And secondly, Sir, we would urge the Members of this Council to accept that it might be wise if we are to have freedom of association and freedom of speech to introduce legislation which would impose some discipline upon all of us in regard to the unwise hammering of racial or religious susceptibilities. Sir, if we are to have any real political associations, then I do not think that we can tolerate the two instances which I am going to put to this House. A Member of this House has, certainly on one occasion, initiated a public meeting by proclaiming in a blasphemous and distorted way the Lord's Prayer. That must offend deeply the religious susceptibilities of many members, the future citizens, of this country, and I would recommend to the Government that legislation is necessary to control such speeches. There is another Member of this House who on one occasion, to the best of my knowledge, made a speech in which he indicated that the time would come when one race would kick the buttocks of another race. Now, Mr. Speaker, those are not nice words, and if those words are going to be presented over this country on a national basis, then I think every reasonable citizen would say that legislation should be introduced to prevent such an inordinate projection of racial emotion, envy and hatred.

Now, Sir, that is all that I wish to say in regard to the lifting of the Emergency regulations. We would like to see those regulations lifted as soon as possible—the Emergency declared ended as soon as possible—subject to the remarks that I have made.

And the second point to which I wish to refer in this speech is the concept and practice of a parliamentary system. We, Sir, as a Group, have accepted that we should evolve in this country a parliamentary system based on democratic

[Mr. Blundell] We believe that there is no other alternative before the people of this country, but I would like to record one or two facets of such an evolution.

Democracy is not an end in itself. Many speeches are made which give us the impression that democracy is sought by some leaders as a means of grasping power. It is nothing of the sort. Democracy is simply and solely a means to an end—good government, and above all the replacement of the Government of today by an opposition which will become the Government of tomorrow. Now I have been disturbed listening to many speeches in this country and by events outside which appear to deny the true concept and meaning of democracy, which is the alternate flow of Government between opposing views. We, Sir, entirely support such an evolution and such a development, but we do not support the grasping of democracy by leaders basing themselves on an immature or uneducated and illiterate franchise solely to retain for themselves power.

Another essential feature of any democratic system, and I was pleased that the mover mentioned it in his speech—however powerful the Government of today, any true democratic system must understand and respect the legitimate rights and fundamental human rights of the opposition of the moment. There have been instances, I regret to say near to us in the Sudan. There are even signs of it in Ghana. That the true tenets and precepts of democracy are being undermined in favour of dictatorship.

AN HON. MEMBER: South Africa.

MR. BLUNDELL: Now, Sir, the hon. Member has interjected "South Africa" and I would agree with him. Sir, why is that happening? Why is that happening? It is happening because—

THE SPEAKER (Sir Ferdinand Cavenish-Bentick): I think I must remind hon. Members that it is improper in this House or any other Parliament to criticize or make adverse comments on the action or policies of other neighbouring friendly constitutionally elected Governments.

MR. BLUNDELL: Mr. Speaker, you are not referring to my remarks, Mr. Speaker? Thank you. Now Sir, the

reason for that is simple, that in evolving a democratic system the centrifugal forces of race, religion or tribe set up tensions which tend to destroy it, and we believe, Sir, that the practice and precepts of democracy can only grow slowly as the country evolves and matures, and it is essential to the people of this country to understand that no democratic system can work unless it is based on free discussion. Above all the severest criticism of the national leaders by reasonably educated people. If education is such a rare facility, as it is at the moment among many of our people then the great criticism in any democracy which is essential to make it work cannot be furnished and presented by those who have not had the benefits of education.

And lastly, Sir, a point I would particularly draw to the attention of hon. Members of this House, no democratic system can work which is based in any sense upon intimidation. Now I do hope and pray and trust that in the evolving of the democratic thinking of this country we shall not be faced with these issues of intimidation, but, Sir, if we read of events in neighbouring territories, we must accept that the evolution of this country towards a parliamentary system based on democratic principles suitable to our country must take time. Many people, Sir, advocate, and that is a difference between ourselves, I think; and the hon. Mover, a democratic system of government based immediately upon universal franchise. We feel, Sir, that it would be wiser to take the advance towards parliamentary principles rather slower and base it upon the much more mature and educated elements of the population. I would like to emphasize to hon. Members that it is easy to unleash the forces of democracy. What is most difficult is to control them, and they cannot be controlled unless those who have the possession of the vote can exercise maturity of thought which will result in the discipline of democracy as opposed to its incoherent dissipation, as has happened in the Sudan and is beginning to manifest itself, for instance, in Ghana.

So, Sir, there is much in what the hon. Member has said with which we would agree. We have accepted, and I

[Mr. Blundell] We, representing our group, have indicated quite clearly that in the parliamentary government of the future which we envisage, the majority of our responsible and educated citizens will be Africans, and I know, Sir, that the members of our group would find great community of thought with the hon. Mover when he said that "dark faces would be in the majority", but they would be national and not racial thinkers. And that, Sir, would be certainly the urge which we would present in this matter.

Finally, Mr. Speaker, I feel the amendment as moved by the Government does completely shut out two of the facets of the original Motion. The hon. Mover sought to establish a democratic development in this country, and further he sought to establish that such democratic development should be based on national and non-racial parties. The Government amendment as moved completely nullifies or eliminates any thinking on that matter, and I think that it would be wise of the Council to record that when the Emergency is lifted the future of this country will proceed on political and parliamentary lines, and I therefore, Mr. Speaker, would like to move that a further amendment which is the addition of the words to the amendment before the House "in order that the normal, political and parliamentary evolution of the country may continue", and I seek to establish, Mr. Speaker, by this amendment that when the Emergency is lifted we do not shirk the issue of evolving upon a parliamentary system which is suitable to the needs of our country.

I beg to move.

Mrs. HUGHES seconded.

Question proposed.

THE SPEAKER (Sir Ferdinand Cavenish-Bentick): This further amendment sufficiently approaches the terms of the original Motion to allow me to make use of my powers under Standing Order 62 to suggest that as long as we are discussing this amendment, the third amendment, that anybody who speaks to that is equally speaking to the original Motion.

THE ACTING CHIEF SECRETARY (Mr. Griffith-Jones): Mr. Speaker, Sir, speaking to the amendments both, and reserving, Mr. Speaker, my rights in respect of the main motion, I have heard in what has transpired so far in this debate a great deal of sound common sense and a great deal with which the Government is in sympathy, but, as the original Motion appears to the Government, the crux of it was the bringing of the Emergency to an end. The first part was in view of the importance of creating a democratic government. The second was so as to allow for the formation of national political organizations. Now the point of the Government amendment, Mr. Speaker, was quite clearly and quite simply this, that the bringing of the Emergency to an end does not affect one way or the other the creation of a democratic government in Kenya. It neither prevents it nor stimulates it. Neither does the existence, or the termination of the Emergency decisively affect in any way the formation of national political organizations, and I am in this difficulty, Mr. Speaker, that whereas the views and sentiments expressed by the last speaker are so closely in accord with our own, nevertheless, by his addition he adopts the position of postulating in the Motion, as it would stand if it and the Government amendment were both passed, that the bringing of the Emergency would allow normal political and parliamentary evolution of the country to continue, and would therefore imply that that evolution could not continue, cannot continue, so long as the Emergency remains in being. Now, Mr. Speaker, let us think back over the last five years. Let us think back and consider whether there has been any political or constitutional evolution or development in this country during the very period that we have had the Emergency on. There must surely be some logic in any motion which this Council passes on a matter of this degree of importance. We cannot, surely, as a House, and certainly we cannot on this side as the Government, lend our support, give our support, to a motion which implies that because there is an emergency there can be no political or constitutional advance, because it flies in the face of fact and reality. We have made in the last five and a half years,

[The Acting Chief Secretary] at any rate, in this country, years exclusively during the period of the Emergency, greater political and constitutional advance in this country than in the whole of its previous history.

For those reasons, Mr. Speaker, I very much regret Government must oppose the amendment.

THE SPEAKER (Sir Ferdinand Cavendish-Bentick): I am rather inclined to think, subject to what the House may desire, that it would make things easier if I put the latest amendment now and disposed of it. For this reason that I have ruled the amendment to the amendment sufficiently closely resembles the original Motion so as to justify my making use of my powers under Standing Order 62. I could not use those powers in the case of the first amendment in view of the very considerable difference of the amendment from the original Motion. I therefore think it might be easier to dispose of the amendment to the amendment and then we will be quite clear that we are discussing two points of view. I will therefore put the latest amendment and dispose of it.

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

MR. TRAVADI: Mr. Speaker, Sir, I rise to oppose the amendment moved by the European Minister without Portfolio. The amendment proposes to eradicate two or three fundamentals which have been incorporated in the original Motion. Fortunately, the word "democratic" Government in Kenya—the word "democratic" or "democracy"—is spelt "cracy" and not "krasi". So it is the Western type of democracy that the hon. Member has moved. What he wants is the end of the Emergency and that emergency was usually—in other words during the times of war—called martial law.

Now, today in peace time when some State comes forward to impose martial law it is a very soothing way of saying that it is a declaration of a state of emergency. But if I may be allowed to say so, it is nothing but a police state.

Now, the hon. Member of the amendment wants to also remove the freedom of movement of the national organiz-

ations in being and that freedom is not spelt freedom but it is freedom. So it is also a freedom of movement, the Westerners understand.

THE EUROPEAN MINISTER WITHOUT PORTFOLIO (Mr. Harris): On a point of order, Mr. Speaker, the hon. Member must substantiate what he says; I did not ask to eliminate any freedom whatsoever.

THE SPEAKER (Sir Ferdinand Cavendish-Bentick): We are now debating—I would like to make it quite clear—the amendment proposed by Mr. Norman Harris. Those who speak to this amendment may when it has been disposed of, again speak to the original Motion. I am afraid I cannot avoid that. There is a considerable difference between the amendment and the original Motion. I just want to make it clear that what is now before the House is the Motion as amended.

MR. TRAVADI: That is exactly, Mr. Speaker, what I am after. I was just explaining what actually the meaning, the implication, of the amendment would be. The third fundamental in the Motion was the formation of national political organizations and that free movement of that political organization is being eradicated by the amendment moved by the European Minister without Portfolio. So that is one of the important freedoms, freedom of movement, freedom of expression, freedom of view, anywhere and everywhere in the Colony that is being eradicated by the amendment moved by the Minister.

Now, democracy in Kenya and democracy cum Colonialism, I think, is a negation of democracy and I think it is a—(inaudible)—when he said it should be entirely removed from the original Motion and then we really see that there is no democracy in Kenya. Real democracy is that which vests authority in the people themselves and not in any one or two of three individuals. That is a real democracy. Now, does the present Government reflect the will of the public? I should say No. It is time that the target for a self-government date is fixed, its not even fixed by the New Kenya Group. We are just in a transitional period and we are having a time when people do not know

[Mr. Travadi] where they are. Up to now this is the fourth month when the views of the New Kenya Group policy were announced but we are still devoid of the real kernel which it was proposed to offer to the general public. Now, it was on 1st April, April Fools' Day, and this is the fourth month—July—and we are still waiting for that.

MR. BLUNDELL: The hon. Member must be responsible for what he says. Mr. Speaker, and I must ask him to withdraw: the date was April 2nd. I must ask the hon. Member to withdraw. I understood him to say that the policy which our group produced came out on April Fools' Day, 1st April, and I am drawing the hon. Member's attention that it was 2nd April and I would ask him to withdraw. Will the hon. Member withdraw?

MR. TRAVADI: Mr. Speaker, he may be right because it appeared on 2nd April in the newspapers. Naturally it must have gone to the press the previous day.

HON. MEMBERS: Withdraw!

MR. TRAVADI: Mr. Speaker, my learned friend, Mr. Blundell, having intervened he has broken my chain of thought but I would like to oppose the amendment moved by the European Minister without Portfolio.

MR. NYAGAH (Nyeri and Embu): Mr. Speaker, Sir, I stand here as a representative of the people from the area which has been described by the Minister twice in this House as the origin of and the source of K.K.M. and K.K.T.

It is disappointing to sit here and listen to the Minister who gets his information third-hand tell this House that the State of the Emergency will continue in this country just because new secret societies keep on springing up in Embu. Last time a review of the security state in this country was made by the Minister without Portfolio Embu came up for a K.K.M. in a certain area. I tried to dispute with the authorities concerned, Sir, that, in my opinion and the information I had, that was not the case. What the Minister did not tell us today was the result of the findings of the state of affairs in the area he described last time as infested with K.K.M. The other day,

Sir, I tried to trace the rumours about the K.K.T. Some of the people who should have told me what it was and, no doubt, who had the information, declined to tell me what it was. I was interested in trying to find if there was anything of the sort. But the information I have does not tally with the information that the Minister has. In order to help the Central Province people, it is the duty of this Government to try and get a committee of impartial people to go through and see the people and find out exactly what the situation is like. It is in Mwea where rumours of K.K.T. have originated. I reported these to the Minister for African Affairs when I heard about them; I went to see the district commissioner about it; and, as far as I am aware, there is very little to cause any alarm or to show that this is another insurgence of Mau Mau.

The Minister has told this House that restrictions on the movement of the Kikuku/Embu/Meru would be lifted for people to move freely within Embu, Meru, Fort Hall and Nyeri and not to come into Kiambu or Thika or Nairobi. Some of the people, Sir, who have left detention camps and some others are loyalists, Sir—who have been all these years unemployed without earning money have waited for the day when the Emergency restrictions would be removed. And today what they are going to understand is that they can move in a restricted area. The areas of employment are Thika Farms, Nairobi, the areas where they can come and do their trade unrestricted, bring their goods, fresh vegetables, is Nairobi. And now I find that these people will have to get passes, as before, to come.

Mr. Speaker, Sir, the aims of declaring the State of Emergency in 1952 were indeed very genuine. But in 1959 no one convinces me that there is a need for such. If you take the example given by the Minister that you have the uprising or the coming up or bubbling up of the old Mau Mau in the form of the K.K.T. or the K.K.M. in Embu; then I am convinced that we shall long stay under the State of Emergency in this country. There is unemployment in this area, a very serious state of it in Nyeri and Embu and in many parts of Central Province. People are frustrated. They are disappointed. And unless the Government



[Mr. Nyagah] can do something, people are going to be more and more against the creative forces of the Government.

Personally, I have done as much preaching for the Government and the good of this country as I could. But the time has come, Sir, when I shall have nothing to tell the people. I have appealed and I will appeal again to this Government that it is no longer necessary to have the State of Emergency, and I would like to invite the Minister without Portfolio to come along with me to my own constituency. Let us go and address meetings, find out from the actual people at first-hand what they think; and then we can come and give a report to this House.

Finally, Sir, I would also like to appeal to the Government that the War Council or the Security Council should be more representative so that we can get people from all walks of life and from various places who can give an overall picture of what the country is like.

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

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): You cannot support the original Motion. You can oppose the amendment. We are discussing the amendment. You can speak again on the original Motion.

MR. NYAGAH: I oppose the amendment.

MR. TRAVADI: On a point of explanation, Mr. Chairman, I have got a letter from the Specially Elected Members' Association about this policy group and it is dated 1st April, addressed to me.

MR. TOWETT (Southern Area): Mr. Speaker, Sir, I was not planning to speak this afternoon, but having seen what the Government's amendment looks like I think one is forced to say something about it.

I would like to ask the Government to tell us exactly what they have in mind in giving us this amendment. Does the Government, Sir, imagine that the Mover of the original Motion was not educated enough to see the difference between the Motion as he gave it and the present amendment?

Mr. Speaker, Sir, we all know and the Government knows very well that as soon as the interests of security permit we shall have the Emergency Regulations removed. Why are we told, then, that this Council urges the Government of the country to bring the Emergency to an end as soon as the interests of security permit? I mean, there is no point, I do not understand. Maybe, as I said before, I am mad or everybody else is mad.

Mr. Speaker, with earnestness I just do not understand what is implied, what is hinted, in this amendment. We are not so silly or so idiotic so as not to know that as soon as the interests of security permit the Emergency Regulations will be lifted. Who does not know that? Then why just give us this and call it an amendment?

Now, if I hid my way I would dare say nobody should speak on this amendment because it is just saying exactly what everybody knows both here and outside this House. Who does not know it? Was the Government planning, Sir, to go on with the Emergency even after the interests of security had permitted? Was the Government planning to continue the Emergency Regulations even after its time? That is what is implied by the amendment. Is that not it? It is. Now, I just do not know what the Government is trying to do for us. The Government is just trying to blind us and the more they try to blind and bully us the more we are estranged and the more our hearts are alienated from this Government. When we come here with clear ideas and we want something done by the Government, something that will get our support, now the Government holds it down and spoils it and blunts our hearts. How can we go on with this Government which does not show any signs of co-operation at all in this instance?

Mr. Speaker, Sir, I just do not know what to call the Government today. I feel that unless we, the Opposition, form a united front to overhaul this Government we cannot get far. We have got to take it to the garage and have it overhauled and have a better Government who will actually work co-operatively with us when we bring things here for improvement with clear intentions.

[Mr. Towett]

Now, Mr. Speaker, Sir, what was important in the original Motion was the formation of national political parties. That was all. When the Mover was drafting this that is what he had in his mind. Now, that is washed out completely—and what are we doing here?

With those few remarks, Mr. Speaker, and with the comments I have given the Government, I beg to oppose very briefly this amendment.

MR.—NAZARETH: Mr. Speaker, I agree with the last speaker that the amendment moved by the Government is meaningless. As he pointed out, it asks that this Council should urge the Government to bring the Emergency to an end as soon as the interests of security permit. It may be pertinent to ask whether the Government intends to continue the Emergency after the interests of security permit? What does this amendment mean? I find it very difficult to understand what the Government has in mind in proposing an amendment of this completely meaningless nature.

Now, the object of the original Motion was quite clear. It sought for the purpose of creating a democratic Government in Kenya to bring the Emergency to an end so as to allow the formation of national, political organizations irrespective of race, colour and creed. The paramount object of that Motion was to bring about a situation in which national political organizations, irrespective of race, colour or creed, could be allowed to develop, and the present position is that only the African community is not permitted to have national political organizations. All the other communities are permitted to have country-wide organizations and the object of this Motion was not to bring the Emergency to an end, or if it was to bring the Emergency to an end it was for the specific purpose of allowing national political organizations to develop on a free basis for all communities, including the African community.

Sir, we were told by the European Minister without Portfolio—I was not present during the earlier part of his speech—that really the Emergency is unrelated to the restrictions that are placed on national political organiza-

tions. Well, if that is so, then why do you prohibit or why do you hamper national political organizations under the powers given by Emergency legislation, those special powers that are possessed under the Emergency? If they are unconnected; if we are not using the Emergency to prevent the development of African national organizations, then why do you invoke Emergency powers to do so? These restrictions that are placed on national political organizations, so far as the Africans are concerned, are not under any Ordinance or ordinary legislation—they are under special Emergency powers, and if that is so it is impossible to divorce the Emergency from the restrictions placed on the development of national political organizations.

I have pointed out in previous debates that the Government, by imposing these restrictions on African organizations, was getting the worst of both worlds. The African community was able to achieve unity through the African Elected Members, to a large extent, and therefore they are able to present, and in fact they are in the position, these restrictions as a form of racial discrimination against them. What does the Government fear by allowing the Africans to have a national political organization? If they can achieve unity through the African Elected Members then what particular purpose is served by preventing them from having the organization on a national basis? Are they going to have a meeting once a year or twice a year on a national platform? Is the whole country going to meet in Nairobi? All that will happen is that a number of delegates from each district will come into Nairobi and assemble in one particular place. I do not know how that is going to affect security to such an extent that the Africans are to be prevented from joining together and having congresses or conventions just like the other communities have.

I was hoping to hear from the European Minister without Portfolio—he was apparently the leading speaker for the Government—some justification for continuing with this restriction on African political organizations. So far as I could gather from the tail-end of the speech which I heard he spent the earlier part of his speech in showing the progressive removal of the Emergency restrictions,

[Mr. Nazareth] but although that is also a part of this Motion the real object of it is to allow Africans to develop national political organizations. It is important at this stage that there should be a belief in Government's sincerity, and when Motions of this kind are put forward it is essential that Government answers the real point of the Motion, and I would suggest that so far as the speech of the European Minister without Puri-folio is concerned, and the speech of the Acting Chief Secretary, who has dealt with the real point of this Motion, we fully appreciate of course that you are vested with dictatorial powers—

THE ACTING CHIEF SECRETARY (Mr. Griffith-Jones): Would the hon. Member explain what the real point is. If there is a point, Sir, then why is it not in the Motion? Why does it need to be explained?

MR. NAZARETH: It is there and it is perfectly clear. The object of the Motion is—and it is perfectly clear if the Acting Chief Secretary will look at the Motion again—the importance of creating a democratic Government in Kenya. That is the brunt of the Motion. At the tail end you are told so as to allow the formation of national political organizations irrespective of race, colour and creed. Inasmuch as the Emergency powers have been invoked to prevent or hamper the formation of African political organizations they ask that the Emergency should be brought to an end for that purpose, and I cannot see anything wrong in that Motion or any obscurity that prevents the hon. Acting Chief Secretary from understanding what the Mover of this Motion intended when he set it down in that form.

THE ACTING CHIEF SECRETARY (Mr. Griffith-Jones): On a point of order, Mr. Speaker, I must insist that it is not what the Mover intends but what he moves that goes on the records of this House, as I explained in my speech on the amendment. I cannot accept for the Government a Motion which implies something which is quite untrue.

MR. NAZARETH: I thought I had made it sufficiently clear, Mr. Speaker, that the Motion on the face of it sets out what it seeks to do. It seeks to bring the Emer-

gency to an end for one purpose in order to enable national political organizations to be formed irrespective of race, colour and creed. That is as plain as a pike-staff if anyone looks at that Motion. It seeks to bring the Emergency to an end for one particular purpose and I cannot see any obscurity in that.

MR. MBOYA: This Government is not democratic.

MR. NAZARETH: I will answer that point—it is because of these words, "in view of the importance of creating a democratic Government in Kenya." Now, in a democratic Government in Kenya—

THE TEMPORARY MINISTER FOR LEGAL AFFAIRS (Mr. Conroy): On a point of order, Sir, is the hon. Member speaking to the Motion or to the amendment?

THE SPEAKER (Sir Ferdinand Caven-dish-Bentinck): I trust that he is speaking to the amendment. He is developing his argument, I presume, in opposition.

MR. NAZARETH: I am opposing the amendment because I suggest that it is quite meaningless. It means nothing at all. I am supporting the original Motion.

THE TEMPORARY MINISTER FOR LEGAL AFFAIRS (Mr. Conroy): On a point of order, Sir, that is just what he is not allowed to do. He is allowed to oppose the amendment but not to support the Motion.

MR. SLADE: On the same point of order, Mr. Speaker, I do suggest that the hon. Member is completely in order. He is opposing the amendment because it completely fails to deal with the essential substance of the original Motion. That is his argument. Surely he is entitled to use it.

THE SPEAKER (Sir Ferdinand Caven-dish-Bentinck): I must ask hon. Members to keep quiet and cease speaking when I rise. Whilst the hon. Member should not support the original Motion when speaking to an amendment, I must rule that, in opposing the amendment, the hon. Member has every right to explain why he is opposing it, for instance, on the grounds that it fails to cover certain points covered in the original Motion to which he attaches import.

MR. NAZARETH: The hon. the Acting Chief Secretary suggested or argued that

[Mr. Nazareth] the Emergency does not affect democratic development or national political organizations. Now, if the development of political parties is essential for a democratic government then anything that prevents democratic political parties from functioning or from being formed is something that prevents the development of democratic government. Now, the present position is that political parties, leaving out, of course, the New Kenya Group, which was recently formed, are really racial parties, and if we are going to move on to political parties from racial parties then it is completely wrong that one particular race should be prevented from forming the parties which others are permitted to form on a racial basis. They should therefore be permitted to form their own parties and then from that point onwards we can move on to political parties, and thus lay the foundations of democratic political development.

It has been suggested that political development or advance has been hampered by the Emergency. Now, that is something quite different. We are really concerned with, as I have explained, the formation of national political organizations and I cannot see how one is linked to the other, that, in fact, a certain amount of advance or constitutional development has taken place during the last few years. That has not taken place on a sound basis as long as one particular community is prevented from forming national political organizations.

I should like to support what the hon. Specially Elected Member had to say with regard to the importance of preventing offences to racial or religious susceptibilities and that legislation might be enacted for that purpose. I entirely agree with that sentiment—and that approach, but that does not prevent the Government accepting the original Motion as it stood. The precautions taken against such non-political incitement, incitement to racial feeling or to religious feeling, that is all in order, but I cannot see that anything can be based on that to support the present Government's attitude in opposing the Motion. Actually we have been told time and time again that they will relax the restrictions as soon as the interests of security permit, and in justification of

that we are told the number of restrictions that have been relaxed. But we have yet to be told, and I hope that in the course of this debate we will be told, what interests of security require that one particular race should be prevented from forming national political organizations, and until the Government has fully shown what justification there is for imposing these restrictions I suggest that the case for the Motion has been fully made out.

THE SPEAKER (Sir Ferdinand Caven-dish-Bentinck): I would still like to know whether you are opposing the amendment. You can speak on the original Motion later.

MR. NAZARETH: I thought I had made that clear by the whole tenor of my speech that I fully opposed the amendment and supported the original Motion.

MR. NGALA: Mr. Speaker, I stand to oppose the amendment.

First of all, Sir, I think the necessity for public safety is appreciated by everybody. But I think the Government is not being appreciative of the difficulties that the Africans and all the people in Kenya are having as a result of the Emergency Regulations. The African Elected Members have several times approached the Ministers concerned on this issue. We have pointed out that in Kenya, in many provinces, the people did not know what *Mau Mau* was and they did not know what was going on in other areas. These people have been put under the same umbrella of the Emergency Regulations, and for six years they have suffered under these Regulations. The Government has done nothing about releasing these people from the Emergency. All that the European Minister without Puri-folio is telling us is that there is a series of secret movements coming up in Embu and in the Central Province. I would like to ask what the Minister is doing in places like the Coast Province, for example, where people did not know anything about the *Mau Mau* and had no idea why it was necessary to maintain the Emergency Regulations in those parts. Why is the Minister not being helpful in coming forward even to start removing such Regulations in these areas so that we can know that the Government is taking progressive steps in removing these Regulations in the areas

(Mr. Ngala)

which knew nothing about the *Mau Mau*. The position is, Sir, such that even in these areas not even more than nine people are allowed to meet to discuss ordinary domestic affairs. This position is very much appalling.

I have much more to say, Sir, and I will continue, if you will allow me, Sir.

#### ADJOURNMENT

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): It is now time for the suspension of business and I adjourn Council until 9.30 a.m. tomorrow morning, Friday, 24th July.

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

Friday, 24th July, 1959

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

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

#### PRAYERS

#### PAPERS LAID

The following Papers were laid on the Table:—

The Price Control (Wajiri District, Maize and Maize-meal) (Amendment) Order, 1959.

The Price Control (Maize and Maize-meal) (No. 2) (Amendment) Order, 1959.

(By Mr. CONROY on behalf of the Minister for Finance and Development)

#### STATEMENT ON BUSINESS

THE ACTING CHIEF SECRETARY (Mr. Griffith-Jones): I wish to make a statement, Mr. Speaker, about business next week. Sir, the intention is that on Tuesday we shall take the remaining Committee stages, that is, of two Bills, the Money-lenders (Amendment) Bill and the Municipalities (Amendment and Miscellaneous Provisions) Bill and that then we should embark on the debate on the private Members' Motion—it is a group Motion—regarding *Hola*, and that we should pursue that debate on Wednesday afternoon, not sitting on Wednesday morning, and that at the end of Wednesday afternoon, Sir, we should adjourn until the rump sittings before the end of the Session.

#### MOTION

##### ENDING OF THE EMERGENCY

*Resumption of debate interrupted on 23rd July, 1959.*

MR. NGALA: Mr. Speaker, Sir, when the Council rose yesterday I had emphasized that Emergency rulings had been unnecessarily imposed in some areas in Kenya in 1952. I showed how the Coast Province even before 1952 was in safety and security and in good peace but in spite of all that as a part of Kenya the Emergency Regulations were imposed on the Province.

(Mr. Ngala)

This situation applies to other provinces—the Rift Valley, and Nyanza and many other parts of Kenya.

Now, the time has come, Sir, when Government should look into, the condition of the country very seriously so that such places are immediately released from these unnecessary regulations because there is peace already, there is security, and these things that have been going on in other places in the nature of *Mau Mau* have never been known in these places. We are suffering from "very" ridiculous rulings. Our permits for meetings, for example, have some aspects that are very undesirable. Holding a meeting in Kwale District last week I was told that one of the conditions of the meeting was that I should not allow other people from locations within the district to attend my meeting.

Now, this I was told, was an Emergency Regulation, Sir, you can see the absurdity of this very unnecessary regulation. I hope the Government, Sir, will see the need for looking into this position so that a progressive ending of the Emergency is implemented in the country.

Coming, Sir, to the Central Province. The Government has been telling us that the Emergency is ending and we have seen ourselves that the *Mau Mau* fighting is really over. Not only the *Mau Mau* fighting but even rehabilitation is almost over and I believe that Government can cope with the present normal condition with the present normal forces of police or the Tribal Police instead of having Emergency Regulations all over the country. Manyani, which had about 7,000 people, is now having, I think, less than 200 people and this is a situation which can be dealt with very easily with the normal police force that we have.

Again, in the Central Province people who have sincerely helped the Government, the Kikuyu, Embu and Meru, to see to the end of the Emergency are now through the Emergency Regulations finding that they are put in unnecessary hardship. They are jobless in the villages and Government does not provide for their living and they are refused from moving to places where they could get some work.

Now, I do not know what alternative the Government is expecting from these people because I maintain, Sir, that you cannot have a person with decency in character if he has nothing to eat. These people have been forced into stealing and have been forced into all indecent behaviour through the unreasonable regulations of the Emergency by Government. I strongly protest against this condition, and I think it should be looked into very carefully.

As far as the secret societies are concerned, Sir, there is much to be said. We do not all want secret societies, but I do not know exactly what they imply, and the Minister is only prepared to give us the names of these societies. He does not tell us exactly what he has found as to the insight and purposes and also how he could meet the desires of the members of these secret societies. I understand the last one that was mentioned yesterday was a society of peace. Now if it is a society of peace surely this society has much good in it probably which should be looked into seriously by the Minister so that he can—

THE EUROPEAN MINISTER WITHOUT PORTFOLIO (Mr. Harris): They want a piece of me and a piece of you!

MR. NGALA: Mr. Speaker, I think that is not the sense of peace I mean, but I feel very strongly that the time has come when the Minister, the European Minister without Portfolio, should analyze the country very carefully and surely give us the credit we deserve in helping to bring the Emergency to an end. I think there are many areas that find the Emergency Regulations today completely unnecessary and, in fact, an unnecessary nuisance to the peace and security of those places, and therefore in such places as the Coast and the Rift. Even in the Central Province some investigation could help the Minister in bringing release to those people who really intend to help themselves and intend to get jobs and earn their living. Otherwise, the Minister should tell us what else he could do to give these people an alternative of earning their living.

Now as far as the political union is concerned, Sir, we as Africans feel very much disappointed that the Government of Kenya is discriminating against us, and refusing us of forming a political

[Mr. Ngala] union as a race. This is a discrimination which I feel should be disturbing every politician and every citizen in this country because we have so often been told that the Government is non-racial in attitude and does not discriminate against any nation. Here we find ourselves discriminated against, and it is very unpalatable to us. We know that the district associations—political associations—for example, are not worth while because, in my own experience they more or less encourage tribalism, and as such I think they are useless as political units. What we want is a Colony-wide political union, and more or less as it is now we are even more progressive today. What we want is a non-racial political association covering all races, and with that view, Sir, the Government should be even more appreciative of our attitude and let us go. Now the question is, Government says that they are not opposed to such political movements on a non-racial basis, but we feel strongly that the present Emergency Regulations will seriously hinder us in our progress towards the formation of this because many sections of Africans who have serious concern about the political affairs in this country are very much behind the iron curtain as far as the regulations are concerned. And so we feel that the most important parts and most important attitudes that should be included in such a political association will be missed due to the existence of the Emergency Regulations, and for this reason, Sir, I would ask the Government to consider very seriously the removal of the Emergency and ruling the country on the normal forces that there are, so that we help the Government in forming the right attitudes among our people.

With these few words, Sir, I beg not to support the amendment of Government.

THE TEMPORARY MINISTER FOR LEGAL AFFAIRS (MR. CONROY): Mr. Speaker, Sir, several hon. Members yesterday in commenting on the Government's amendment said that the amendment was meaningless. In particular, the hon. and learned Member for the Western Electoral Area and the hon. Member for the Southern Area advanced reasons to show that the amendment was meaning-

less and that the Motion as originally presented to this Council was filled with every cogent argument based on logic. Sir, if I might take up the time of the House for a few minutes, I should like to show that the Government's amendment is based on logic, and that it is based on the most careful arguments which I should like to advance to you now.

If we look at the original Motion we find that it seeks to promote democracy and, it seeks to allow the creation of national political organizations, and the way in which it seeks to attain these two objects is by ending the Emergency. Mr. Speaker, with the greatest respect to the hon. Mover of this Motion, surely that is putting the cart before the horse. If hon. Members will go back, they will find that the Emergency was declared for the purpose of securing the public safety, the maintenance of public order, the suppression of rebellion and riot, and for the maintenance of supplies and services essential to the community. Now, Sir, to say that the Emergency is stultifying democracy just is not true. Sir, the simplest illustration is contained on the benches of this Council. In 1952, when the Emergency was declared, how many African Elected Members were there? How many are there today, Sir? There was none in 1952. There are 18 today. There has been an increase, too, in the Asian Elected Members. It is therefore not true to say that democracy could not develop during a period of Emergency.

Now, Sir, no one can argue, and I do not think anyone really seriously attempts to argue, that there was no good reason for putting on the Nairobi Area yesterday said this: "Government might have argued in 1952 that they had an Emergency on hand." Sir, it is always a pleasure to hear handsome concessions like that made in the course of debate. I should, however, like to go a little further and say that no one could possibly argue that it was necessary in order to maintain public order to declare an Emergency and to make Emergency regulations. Sir, if we all accept, as I think we do, that the Emergency was put on for security reasons, then the only reasons which can justify the removal of the Emergency are again security

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reasons. The amendment, however, does not base the need for the removal of the Emergency on security reasons. It bases the demand, I think that is the word used, the demand for the removal of the Emergency on the importance of creating democratic government, and the formation of national political organizations.

The hon. Member for the Southern Area yesterday said that it was known that the Emergency must come to an end when security conditions permit it, and therefore he went on to argue that the amendment moved by the Government did not make sense. But, Sir, if we were to accept the Motion and to reject the amendment then we would be saying that the Emergency must be removed before security conditions permit it, because there is no other way of looking at the Motion and at the amendment.

Sir, for those reasons I support the amendment and I cannot vote in favour of the Motion.

Turning to other aspects of this debate, Sir, there were matters put forward yesterday in statements made in the course of the debate on the amendment which I cannot allow to remain on record without correction. The first is that the hon. Member for the Nairobi Area said that there was a wholesale indiscriminate imposition of Emergency Regulations. Sir, that just is not true. The hon. Member, whose speech I must say I enjoyed as a speech, I thought was rather guilty of the Hibernian characteristic of not spoiling a good speech by sticking to anything which was so unpalatable as a hard fact. Sir, I have been truly worried about this. It upset me when I heard of this frightful imposition of wholesale and indiscriminate imposition of Emergency Regulations on the people of Kenya, and you will remember, Sir, that he mentioned that women and children were suffering—it wrung my heart, Sir. When I went home last night I got out my volume of Emergency Regulations and I went through it. It is very interesting, Sir, to find the following cold and dull facts. That of the miscellaneous Emergency Regulations 21 out of 30 have been revoked. I am sorry that I cannot dress it up in

rhetoric but that is the cold, hard fact: 21 out of 30 have been revoked. So far as the general Emergency Regulations are concerned, Sir, just on 50 per cent have been revoked, and, Sir, you must remember when you look at that figure of 50 per cent that the ones that have not been revoked contain things like the title, the interpretation, regulation, the penalty regulation and other general Regulations which you have to keep even though the effective regulations are disappearing one by one. You must also remember this, that of the effective regulations nearly all of them have been amended so as to create relaxations. Now, Sir, those are cold, hard facts which do show that the Government has been doing what the hon. Member for Coast Rural asked us to do this morning; we have constantly gone through the Emergency Regulations and we have either revoked the Regulation as soon as we could or we have amended it so as to create a relaxation in favour of the ordinary citizen.

Then the hon. Member for the Nairobi Area then said, and he developed this argument, that if people are refused channels of representation and complaint then it is not surprising that you get secret societies, and for that reason, Sir, he argued that the Government should remove the Emergency immediately. The Government, view, Sir, is that we will remove it when security conditions permit. Those are two views on which we are each entitled to hold our own opinions, and then, Sir, they are questions of opinion. But when we go away and look at the facts, the fact is that in 1952 there were no Emergency Regulations to shut your channels of representation and what did we get, Sir? *Mau Mau*...

I now turn to my hon. and learned friend the Member for the Central Electoral Area. He said yesterday that the Emergency Regulations and the Emergency was martial law. Now, Sir, the hon. Member ought not to do it. He is a lawyer. We all respect him. When he says things like this we believe him. But in his case we must not, because it is not martial law. Martial law is a very different thing. The imposition of martial law is when you take the Government out of the hands of the normal instruments of Government, you do away with your courts; the citizen has

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no right of access to the courts, he is tried by a military tribunal. Your Government is taken out of the hands of the normal instruments of Government and put in the hands of the military. In 1952, Sir, and in 1953 and in 1954 and right up to this day, this Council has been sitting here. We have not been governed by a military junta, Sir. It is quite wrong of the hon. Member to say it was military law under the guise of an Emergency.

Then, Sir, he went on to say that Kenya was a Police State. Well, there is a very simple answer to that, and that is that in a Police State he would not have been allowed to say so. I do not know whether the hon. Member has ever lived in a Police State. I have. I lived in Italy, before the war when Mussolini was in full swing, and I can tell the hon. Member this. At table in your own house you were frightened to mention Mussolini's name. You were frightened of discussing politics in English in case your servant was a spy and would go away and report you to the police. Sir, we do not have to do that in Kenya. The hon. Member is free to criticize me, and I, Sir, am free to praise him.

The hon. Member for Nyeri and Embu whose speech, if I may say so without sounding pompous, was a notable contribution to the debate, and I must congratulate him on it, said that Government must do something about unemployment in the Central Province. Sir, he is right, and Government is doing everything it can to provide work in the Central Province. Ofhand I am no expert on commercial and economic matters but I know that we are having the contractor road finance, which was started at Karatina, and which we hope will provide a lot of employment. There are the forest development schemes going ahead in the hon. Member's own constituency which are designed to provide work for out of work members of his constituency. Then, of course, Sir, there is the cantonment which is going to be built at Kahawa which someone told me the other day, although my statistics may be wrong since I have not checked them, that that will provide work for 3,000 men. Sir, the Government is trying to provide employment as

quickly as it can within the means which are available to it.

Then the hon. Member for Coast Rural asked why we are not starting to remove the Emergency Regulations at the Coast. We are removing and having been removing as fast as we can the Emergency Regulations from the whole of Kenya. He could not understand why not more than nine people can meet to discuss domestic matters in his constituency. Sir, I know of no law which prevents them. Perhaps he can draw my attention to it. There used to be such an Emergency Regulation, Regulation No. 5 (a), but that has been repealed. Sir, perhaps the hon. Member has been told about it and perhaps we could call it Ngala's Law of Diminishing Meetings. I cannot find it in the Statute Book. If the hon. Member would like to speak to me about it afterwards I would be delighted to discuss it with him in order to examine the matter.

Sir, if I can recapitulate in the moment which is allowed to me, I support the amendment because the amendment seeks to remove the Emergency as soon as security conditions permit. The Emergency is primarily and fundamentally a matter of security. Economic and democratic development, all the other things which are desirable and which we all want, must be subordinated to security, and that is the purpose of the amendment. The purpose of the Motion, as I see it, and I do not see how it can be read in any other way, is that the Emergency must be removed before security conditions permit; it must be removed on grounds which are not security grounds. For that reason, Sir, I shall vote in favour of the amendment.

GROUP CAPT. BRIGGS (Mount Kenya): Mr. Speaker, Sir, I would first of all like to refer to the opening remarks made by my hon. friend the Specially Elected Member, Mr. Blundell, in the course of which he said that he was speaking on behalf of his Group; I would like to emphasize that what I am saying is not in any way unfriendly and I very much regret that the hon. Member is not so himself. But I was interested in what he said, for several reasons. First of all, so far as I am aware, this is the first occasion in this House that party politics have been introduced in debates dealing with security matters. My personal view is

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that it is far better for matters of this sort to be considered purely as a national problem rather than as a party debating point. Furthermore, the question does arise in my mind as to whether, strictly speaking, the hon. Member, as a Specially Elected Member, responsible to this whole House, and elected by the whole House, is, as I say, strictly entitled to speak for any one section of the House without consulting the whole. That is just a personal view point, but it does occur to me that that is a point.

Now, it is also noteworthy that in his opening remarks he did not make it clear whether he was speaking for the members of his Group who sit on the Opposition Benches, whether he was speaking for them only, or whether he was speaking for the whole Group. Because if he was speaking for the whole Group I could not help noticing that most of his followers on the Government Benches, who are in the majority, seem to agree with me in opposing the amendment to the amendment which he had proposed.

Now, Sir, I would like now to deal with one or two points which were made by my hon. friend the Member for Nairobi Area. He made great play on the point, as my hon. friend the Temporary Minister for Legal Affairs pointed out, that restriction on freedom of association and freedom of assembly and freedom of speech, if there is any restriction on freedom of speech, which I am not aware of, tended to encourage secret societies and subversion. As my hon. friend has already pointed out, there were no restrictions of any sort, so far as I am aware, on any sort of political activity prior to *Mau Mau*, and indeed we all saw the build up of *Mau Mau* via political organizations such as the Kenya African Union and we all suffered—all races—very much from the results of *Mau Mau*. My hon. friend also appeared to overlook the fact that under the circumstances of today a surprising amount of tolerance has been permitted in this country, judging by some speeches which have been made by some hon. African Elected Members at public meetings, some examples of which my hon. friend the Specially Elected Member, Mr. Blundell, referred to yesterday, quite rightly, and he quoted some exciting

examples. Now, no government would be doing its duty if it allowed the recurrence of the conditions which preceded *Mau Mau*. Furthermore, Sir, I suggest that, in a situation which is far less serious than the one which exists in this country, the Government of Ghana has introduced Government measures which would cause an absolute outcry if they were introduced in this country in similar circumstances. No one wishes the Emergency to be prolonged one more day than is strictly necessary. In fact we all suffer from the results of the Emergency Regulations. Farmers have put up with a great many restrictions and they have to carry out a great deal of paper work and they suffer a great deal of inconvenience as a result of the Emergency Regulations. No one wants to see them preserved unless they are strictly necessary. But in the circumstances that I have outlined it is quite clear that they cannot all be swept away overnight and it is quite clear that in the future, as my hon. friend the European Minister without Portfolio has suggested, the whole situation will have to be considered, and with reference to the remarks which he made in that connection. Sir, I would like to remind the House that on 15th May, 1956, I put down a question which my hon. friend the Chief Secretary answered as follows: and I asked the Chief Secretary:—

“Will the Government give assurance that the Emergency will not be declared at an end until such time as satisfactory permanent legislation has been introduced to replace those Emergency Regulations which must clearly be required for a period after the more active phase of the Emergency can be considered to have terminated.”

Now, in his reply, Sir, my hon. friend opposite said this:—

“The Government will, before the end of the Emergency is proclaimed, introduce in this Council such legislation to supplement and amend the existing substantive legislation of the Colony as it may consider necessary to secure the public safety and the maintenance of public order after the withdrawal of Emergency powers.”

To that end the Government has for some months past been conducting a comprehensive examination of

(Group Capt. Briggs) : . . . Emergency legislation and substantive security legislation in this Colony and elsewhere and a survey of the particular legislative requirements of the Colony in regard to all aspects of post-Emergency security. These investigations have advanced to the stage at which specific proposals are being formulated with a view to the preparation of the necessary implementing legislation."

Now, Sir, I mention that point—and quite a long time has elapsed since I raised it—but I would like to ask the Government to reaffirm that the statement which was made at that time in reply to my question.

Subject to those comments, Mr. Speaker, Sir, I beg to support the amendment.

MR. PANDYA: Mr. Speaker, Sir, I want to congratulate the hon. Mover of the original Motion on the manner and the tone in which he tabled this Motion before the House. He emphasized, Sir, to my mind, quite clearly the main reason for bringing this Motion before the House, and towards the end of his speech he said this, and I would like to quote the relevant words: "Any person in this country who claims to be a politician, who claims to be democratic, must now realize that the time has come when, after full national talks, even if the Kenya Government is wanting the Emergency, however long they want to prolong it, they should at this stage lift the ban on political organizations on a country-wide basis so that we can form a real balance of opinion in this country."

Now, Sir, I think it is quite obvious that the removal of the restrictions on the formation of national political organizations is what he and we are all concerned about, and indeed, Sir, there are many objections to the other phases of restrictions that one could bring before this House at the moment. I personally feel that this is not an occasion when I want to bring arguments against the very learned and lucid speech of the Temporary Minister for Legal Affairs. I do not think it is necessary to do that at this stage, but probably on another occasion I will take that opportunity. But, Sir, from the

quotation which I gave from the speech of the hon. Mover I cannot see how any misunderstanding can arise on the part of the Government, and at a later stage I do wish to move an amendment which might remove some of the difficulties that the Government might be facing.

However, I also want to say this, Sir, on the general question of restrictions, that it does and has led to some political unrest because it limits the freedom of association, the freedom of movement, and the freedom of speech of a particular section of the peoples of this country: I would like to refer, Sir, to the speech which was made yesterday by my hon. friend the Member for Nyeri and Embu, when he threw a challenge to the Government to visit his area, particularly the Mweya area, and to go round with him to examine the situation. I hope, Sir, that this offer will be accepted from the other side in the spirit in which it was made.

In this changing political climate of Kenya when there is evidence of a new mood and a new atmosphere here, when this spirit is so rampant by loud and vociferous proclamations of creating one nation of the diverse citizens of this country, where spirit of good will and co-operation is advocated by people of all political shades of opinion, where emergence of non-racial political parties is bringing a ray of hope in the minds of men, I cannot understand, Sir, how restrictions of this sort, which are a negation of the principles of democracy, continue. May I ask, Sir, is it right that white Europeans, the Asians, and, indeed, the Arabs, have the right to address meetings all over the country, to talk as freely as they like, that this right should be denied to one particular community, and that they will not be allowed to form these country-wide political organizations. I feel, Sir, that this situation should be remedied within the quickest possible time.

I also feel, Sir, that the time has come when in the interests of the country as a whole, the formation of non-racial political organizations should be encouraged, for I think it is the only salvation and the only manner in which we can avoid racial bickerings and tug-of-war and create a spirit in which we can begin to

(Mr. Pandya) think in terms of the benefits to the whole country and not of one particular community. The removal of these restrictions, Sir, will accelerate the peace of the implementation of these high ideals and cut right across the racial barriers which are the curse of this country.

Our aim is unquestionably parliamentary democracy. This can only be built on mutual faith and confidence, and I do not think we should be afraid of criticism for, in my opinion, Sir, democracy thrives on this aspect, and so our endeavours must be to extend all the privileges and facilities and to bring about equality of opportunity for all the people of this Colony. And is it not imperative and indeed necessary, Sir, that our African friends, should be allowed to address meetings all over the country to explain their viewpoint, tell the people not only of political happenings, but also of other equally important economic and financial aspects? As long as meetings are organized in a constitutional manner, I cannot see, Sir, why the privileges which are enjoyed by the other communities should not be extended to this one community. It is likely, Sir, and indeed it is possible that some unscrupulous people will misuse these opportunities that will be afforded to them. But they should be treated very firmly and drastically and the Government will have our full support in any such measures that they would take at that time. If we do sincerely wish, and indeed we must if we are to survive together, to develop a Kenya outlook and behave like true and responsible Kenyans, it is absolutely essential that these restrictions should be removed at the earliest opportunity.

Now, Sir, to prove to this House that we sincerely believe in the urgency of the formation of non-racial and nation-wide political organizations and that our emphasis is only on this aspect I propose, Sir, with your permission to move the following amendment to the amendment which was moved by my friend the European Minister without Portfolio, that all the words after "the country" be left out and the following substituted: "to allow the formation of national political organization irrespective of race, colour or creed".

Now, Sir, the amendment is absolutely clear in its terms. It does not refer to the question of the lifting of the Emergency at all, it is solely concerned with the point of view which I have put forward and that the formation of nation-wide non-racial political organizations should be permitted.

I trust, Sir, the Government will not be embarrassed or confused any further and that it will, I hope, accept this amendment in the spirit in which it is proposed to meet entirely the Government point of view. And I do, Sir, in all sincerity move this amendment before the House.

MR. ARAP MOI (North Rift): Mr. Speaker, Sir, I think many speakers have spoken on the question of the Emergency which many of us are feeling the weight of and now the Mover of the amendment, Mr. Speaker, has made it quite clear, now, that the best thing to do is to deal with one aspect of this Motion, that is, to urge the Government to allow our people to organize their nationhood by forming Colony-wide political organizations irrespective of color, race or creed.

Mr. Speaker, Sir, the Government intends to keep the present measures of the Emergency. The Minister without Portfolio, Mr. Speaker, last time suggested the emergence of certain secret societies. It was at that time K.K.M. and this time he is giving us another name, K.K.T. And, I suppose, that at the next debate on the same thing he will give us K.K.Y.

Now, Sir, is this the policy of Government to play with the people in the country or is it the intention of the Government to bring about security measures to safeguard every individual in this country? Does the Government seriously suggest to the people, Mr. Speaker, that the Government is incapable of stamping out such secret societies and point out or follow such secret societies where they emerge? Our concern, Mr. Speaker, now is to urge this Government to tell us and to agree that this country should be allowed to follow democratic lines. The Government says that there has been democratic or an evolution of democratic ways in this country. But I challenge the Government, if those democratic ideals have been

[Mr. arap Moi] applied to a few sections of our community then I do not think that such are really democratic ideals. Most of us have no real freedom to organize our people, to co-ordinate opinion, to see that people express their ideas genuinely through the right channels, that is, the bigger political organizations and the Colony-wide political organizations.

Now, Sir, this country is going to be an integrated nation if it is going to be a harmonious one. And I think this is the only answer. I cannot, Mr. Speaker, accept the idea that this country should allow its communities to lead separate lives because living separately will allow our communities to form their own ideas which are not for the good of the country. And at the same time, I think, those who do not see widely enough cannot face the fact that integration is inescapable whether we like it or not. And those who say the contrary do not see wide enough.

Mr. Speaker, I do not have more to say except to say that the future laws of this country will protect each individual irrespective of his colour, race or creed. And that is the aim of this Motion. We are not trying to tell the Government that we want to create a different nation in this country. We want to create one nation and that is the idea behind this Motion, to knit the whole people of our country; not to discriminate against one section of our people but to give equal rights. Something which gives me great concern are those who have been rehabilitated and sent to their own respective areas, particularly to the villages, and in these villages they have no employment. And I should have thought that the Government would give these people rations so as to live because they are not allowed to go to the towns to seek employment, they are not allowed to go to places where they can express their ideas and grievances.

Mr. Speaker, I now second the amendment before the House.

**THE SPEAKER** (Sir Ferdinand Cavendish-Bentick): I will accept the amendment, but I am going to put it in a rather different form if Mr. Pandya will allow me to. Mr. Pandya has produced an amendment which is merely

a rewording of the amended Motion now before us. The suggestion by Mr. Pandya is to the effect "that this Council urges the Government of the country to allow the formation of national political organizations irrespective of race, colour and creed". I think Mr. Pandya suggested that that would be an appropriate amendment to the wording of the amendment which is at present before Council which reads: "This Council urges the Government of the country to bring the Emergency to an end as soon as the interests of security permit." Well, with all due respect, Mr. Pandya's amendment differs so greatly from the amendment that is before us that it is difficult for me to allow it. It deals with a different subject. If Mr. Pandya would put it this way, that is exactly in the same way as Mr. Harris put his amendment and referring to the original Motion—propose that the words "in view of the importance of creating a democratic Government in Kenya" and that the words "to bring the Emergency to an end so as" be omitted, that would cover exactly the wording of Mr. Pandya and refer us back to the original Motion and I think produce exactly what you want in permissible form.

MR. PANDYA: I accept that.

MR. OLE TIPIS seconded.

*Question proposed.*

DR. KIANO (Central Province South): Mr. Speaker, Sir, I regret the fact that we have to leave the words "ending the Emergency" out of the last amendment because really the formation of African national organizations is linked directly with the Emergency powers currently exercised by the present Government. Therefore the acceptance of the amendment by my friend, Mr. Pandya, will necessitate to a certain extent relaxing the Emergency at least to that extent. Therefore we cannot run away from the discussion of the relationship between the Emergency and the organization of political associations in this country.

Mr. Speaker, after listening to the Government's excuses—and I call them excuses—one gets the impression that the Emergency (and I know this is a very serious allegation) but gets the impression that the Emergency is being used to create breaks in the development, and in the growth of African nationalism; that really the Emergency

[Dr. Kiano] is no longer connected with the question of security in this country but rather a political weapon utilized by a strong Government against the march of African nationalism which, nevertheless, will go on.

I say this because, Mr. Speaker, during the Budget speech the European Minister without Portfolio tried to scare this country was with the question of security, and after his rather fluent speech we were left with the impression that the society known as K.K.M. was really confined to a very small area and he seemed to know everything about it and therefore it was very much in hand and therefore the country was not facing any serious security jeopardization.

Yesterday he again tried to scare us with a new one called the K.K.T. One of these days we are going to hear of the K.K.Z. I But, Mr. Speaker, after trying to analyse the meaning of the K.K.T., which I find means the Society of Peace, I do not think the Government tried to indicate to this House how these people interpret peace to mean war. If this means war, then I must say—

**THE EUROPEAN MINISTER WITHOUT PORTFOLIO** (Mr. Harris): Has the hon. Member ever heard of the Peace Pledge Union?

DR. KIANO: I am glad to say that I am not so well read! Neither do I think that I would be by reading that particular book. I have read 1984 where they say white is black and black is white. Nevertheless, it is the duty of the Government to really prove that this new Society of Peace is really a society of war and to show us that it really jeopardizes the peace of this country.

"At one time we were accused, particularly in the Central Province, of having an incurable desire for secret organizations and I pointed out that what matters most is not whether we have a secret meeting or whether we have what is called in Kikuyu—(Inaudible)—which means "a confidential group", but whether or not the confidential groups are confidential for the purpose of advancement or for the purpose of war.

Now, I believe that every group, every society, has—(Inaudible)—It is only an

association of confidence like the Cabinet in Britain which is one of the most secret societies and what they say in the British Cabinet is always secret. And we must really not try to scare this country into a feeling of panic just because people meet secretly. What we are interested in is whether they are meeting for good purposes or whether for subversive purposes. And the mere fact that a society is secret does not in that sense make it subversive. I have a feeling that Government is mistaking an African secret group with an African subversive group and the two are not necessarily the same. I do not think that you will ever cure the Kikuyu people from—(Inaudible)—which is "confidential group". What you can cure them of is these subversive groups.

Now, Sir, as I said earlier, the Emergency today is difficult for Government to justify. Yesterday we had a most peculiar request. As a matter of fact, as I looked at the amendment proposed by the European Minister without Portfolio, I got the impression that the Government itself was passing a vote of no-confidence in itself, because Government says, "Look, you come here. Please ask us to end the Emergency when security is no longer jeopardized." I think they need this House to urge them to do this as if they were actually intending to go on with the Emergency after the question of security is finalized. It was a Government asking a Council seriously, "Please push us, push us when the Emergency, when the security question is finished", because that is the only meaning that I could put to the Government amendment. And this put me into the position of informing this Government—whether the public is wrong or right—that the impression is going on in this country, Mr. Speaker, that the Emergency is being used against African nationalism, that the Emergency is being used as a very convenient administrative way of keeping the African in order and the people are coming to believe, that because they can see no other reason why the Emergency goes on. If the Government do not come up and say why the Emergency continues the people must find their own reasons and the people are now convinced that the Government has found it so easy to rule us; they have found it so easy to trace our movements, they

[Dr. Kiako] have found it so easy to control our movements, that they have found it a beautiful weapon to use which they are reluctant to give up because it was the most convenient way of keeping order.

Dut. Sir, I am sure that Government will deny that allegation. They will say that it is only for the purpose of security that they have this. But how can they convince the public? It is about time someone told the Kenya Government that the public of this country is losing faith in the ability of the Kenya Government to govern without using force; that people are beginning to lose faith in the Kenya Government to govern with peace and goodwill. And I think we have the opportunity today to give the Kenya Government an opportunity, to prove itself and show that it is a Government that can govern in the ordinary, gentlemanly and humane way.

I must also add that perhaps without knowing, the Kenya Government, by maintaining the Emergency, is actually making the position very difficult in this sense: they are actually creating conditions which could bring about another violent crisis in this country. They do not seem to be aware of that, the fact that they are creating such a height of dissatisfaction among the people by continuing to rule them under the Emergency Regulations that they are making it difficult for us who are committed to non-violent tactics to convince our people that there still is a hope in this Government. It is about time they were warned that by continuing to control the people from coming to look for and see for themselves that there is no employment in Nairobi—let the people come and see for themselves. If people continue feeling that they are being kept behind by this Government they are creating conditions which are dangerous to peace. In other words, this method which is supposed to be maintaining peace is actually a method which today is jeopardizing peace. It is about time I told the Kenya Government that although in my district I hear that the Government has been boasting of the fact that they have relaxed Emergency Regulations in no constituency—which they have, under some pressure I should say—they should know that the people in the Central

Province will never consider the Emergency relaxed until they can come freely to Nairobi and out of Nairobi. That, to them, is the test of being free from the Emergency; the fact that a man can move from the poverty of Fort Hall to the poverty of Kiambu, from the poverty of Nyeri to the poverty of Embu; that to them is not very much of an advancement. They want to be able to go to the Rift Valley to look for work, to come to Nairobi to look for work. If they find that there is, no work, then they cannot blame the Government, but today they say that they are out of work because the Government is keeping them in the villages and therefore they put the entire blame of their poverty on this Government.

MR. SLADE: Mr. Speaker, on a point of order, is the hon. Member speaking to the amendment?

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): No, he is not really speaking to the amendment.

DR. KIANO: Mr. Speaker, Sir, I accept your comment except that there have been so many amendments to amendments to amendments that it is rather difficult to keep within any one of them; but I will watch the warning.

Now that I have been warned that I should be sitting down I would like to say this. It is time that we were allowed our National organizations. We require them in order that we can co-ordinate the political philosophies which we have been preaching to our people to be able to feel that a man is not just a Member for Nairobi or a Member for Central Province or a Member for wherever you like but a man who is a public servant for Kenya, and to be able to do this we must have political organizations. But one thing should be clear to the Kenya Government, with or without the restrictions on African political organizations, African nationalism will go on and, therefore, we may as well facilitate it instead of trying to put—(inaudible)—through it because it will not win and people will still go on and have their national organizations through the African Elected Members Organization. Therefore, Sir, I request the Government to consider again and remove this particular restriction and I support Mr. Pandya's amendment.

MR. OLD TIPIS: Mr. Speaker, Sir, I rise to support the amendment moved by my hon. friend, Mr. Pandya. But on the whole, Mr. Speaker, one cannot overlook the spirit and what was behind the original Motion moved by the hon. Member for Nyanza North.

After listening yesterday and this morning to speeches from the Government Benches, I am sorry to say, Mr. Speaker, that I feel very much frustrated this morning, and if I do not speak in my usual tone, then I wish that I will be excused.

Now, Mr. Speaker, one cannot help wondering as to how long this Government will continue to pursue policies which they must know by now, that without the consent of the governed and without keeping to the legitimate demands and the aspirations of the governed these policies cannot survive.

Mr. Speaker, Sir, I know that racial politics, and I hope the Government does know it too, that racial politics in this country, so far, have led us to chaos in the past and the middle we are in today. Now, there is no doubt in my mind, Mr. Speaker, and I hope in the mind of many fair-minded people in Kenya, that the longer this sort of political tug of war between our various races and communities continues, and are allowed to go on unchecked, the more we widen the gap of creating that essential mutual understanding which is indispensable to building a Kenya nation which, I think, we would all like to see. The Motion before the House, the original Motion laid before this House and the amendment, is to my way of thinking, a very great challenge to all hon. Members of this House because we must know, we have said it time and time again, and there is an old saying of that well-known American, Lincoln, that a divided House against itself cannot stand. And as such, this country cannot have any sense of security and stability as long as those who believe in racial politics and racial supremacy are allowed to continue in privileged positions, Mr. Speaker. Now, the amendment moved by the European Minister without Portfolio, to my knowledge is meaningless, although our Legal Minister has defended it so vigorously, but to a man who knows

very little about the law—up to now I have not been convinced, and I take it that it is only playing with words because, in a way, it nullifies the original Motion. I am just wondering whether it is not time, Mr. Speaker, that we really got down to such things as taking into consideration what really we want. Whether we want to govern in this country by force without the consent of the people and many other things which are involved in this.

Now, Mr. Speaker, I think I am right in saying that the Africans, as a whole, are law-abiding citizens and loyal subjects of Her Majesty the Queen. This has been proved during the last two world wars, and even during the *Mau Mau* uprising our people—those who saw the evils of what *Mau Mau* stood for—raised up their hands and risked all that they valued, even their lives, to defend this country and to eradicate those who were out to destroy everything good for which we all stand for.

Now, I am rather surprised, Mr. Speaker, because if I mention here, and I would like anybody to correct me. Personally, I took an active part in fighting this *Mau Mau*, in the bush and everywhere else—at the risk of my life and the lives of my family, and as such, I think I ought to be at least listened to. Now, during those days we had the so-called K.E.M. loyalists—the Home Guards—people from districts such as Laikipia were allowed to come and fight the *Mau Mau* in places like Naivasha or Nakuru or anywhere where the terrorists were fighting. Now having got over that shooting war, I am surprised to find that the same person who was allowed to volunteer to help the Government in this manner, the Government is still restricting him to move even within the district. And then we are told that there has been a very great relaxation on Emergency restrictions. On one side you cannot even find a man—a K.E.M.—moving from the nearest place, which is Gilgil to Nakuru without a pass; and that man is known in that area as well as in Nakuru. He has served the country well, but these restrictions are still there. On the other hand, you find a K.E.M. who accidentally might have left behind his passbook in his house, and just happened to walk on to the store or to a shop to buy some foodstuff. He is



[Mr. ole Tipis] The motion known to the police, to the administration and to all the forces of law and order. He is stopped and has to produce his passbook, and simply because he has left it in his house he is not even given an opportunity of going to bring it, and in addition to that, they know him thoroughly well but he is still charged. And then we are told that these Emergency restrictions have been lifted. Mr. Speaker, Sir, I think it is high time we faced the facts and realities.

Now what I would like to ask this Government. Supposing they lifted the Emergency—Regulations—today, which they say they cannot do because there are so many persons still detained in various detention camps. Surely, the Government will still continue with all the forces, all the security forces at its disposal. Do I understand that it will mean, if the situation deteriorates the Government will have to go to a very far country abroad to seek permission for the introduction of the Emergency power to deal with the situation that arose or what?

Now, Mr. Speaker, I would like in all sincerity to suggest to our Government that it is time they really, very seriously considered the Emergency situation so as to allow—

MR. SLADE: On a point of order, Sir, I am sorry to interrupt my hon. friend, particularly when I support the amendment, but I do suggest that this hon. Member also is speaking right off the amendment which relates only to the creation of national political organizations.

THE SPEAKER (Sir Ferdinand Cavendish-Bentick): As you have interrupted the hon. Member, I may say that I was going to intervene as soon as he completed his speech, as actually during the last ten minutes or so he has spoken completely off the subject matter which is before the Council. Perhaps I might once again explain that the original Motion is on the Order Paper. The first amended motion is also on the Order Paper, which reads that "in view of the importance of creating a democratic Government in Kenya" and the words "so as to allow the formation of national political organizations, irrespective of race, colour or creed" be omitted and there be added at the end of the

Motion the words "as soon as the interests of security permit". If that amendment were passed the result would be to give the following Motion instead of the original one, that "this Council urges the Government of the country to bring the Emergency to an end as soon as the interests of security permit". Now, as a further amendment which was proposed by Mr. Pandya and seconded by Mr. arap Moi it has been moved that the words "in view of the importance of creating a democratic Government in Kenya" be omitted, and also that the words "bring the Emergency to an end as soon as", and that gives you Mr. Pandya's amendment which is "That this Council urges the Government of the country to allow the formation of national political organizations irrespective of race, colour or creed." In this latest amendment, which is what we are now discussing there is nothing about "movements", and there is nothing about "bringing the Emergency to an end". The present amendment is merely concerned with what is the part of the original Motion, which is the question of the formation of national political organizations. If this amendment is carried it will become the main question, and hon. Members not debarred by normal rules of debate who wish to speak again can do so. If this amendment is lost, I then put Mr. Harris' amendment which is in the Order Paper. If that is carried—then again it becomes the substantive question and again Members not debarred may speak again, bringing in anything they wish about these general matters. But at the moment we are merely discussing the amendment whether or not Government is prepared to allow the formation of national political organizations irrespective of race, colour or creed and nothing else.

MR. OLE TIPIJS: Sir, I am very grateful, Mr. Speaker, for your correction.

Now as far as the formation of a Colony-wide political organization irrespective of race, colour, tribe or creed is concerned, this is really very important because the more we are divided the more we widen our differences, and I hope that it will be accepted in this spirit. You cannot possibly accuse the African of pursuing racial politics when you continue on putting all obstacles, and closing all the

[Mr. ole Tipis] avenues which might lead to a formation of a Colony-wide political organization irrespective of race. This is very important. If you tell us that you refuse this Motion, then we shall know, and the whole world will know, it is not we who are not co-operating, but it is you who do not want to co-operate with us, and then any allegations you might have against us will be just invalid.

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

THE ACTING CHIEF SECRETARY (Mr. Griffith-Jones): Mr. Speaker, time is running short, and we still have 30 minutes for the Mover to reply to the main Motion, and 30 minutes for myself, the speaker on the Government side claiming it, so I feel that perhaps I should try to shorten the debate on this particular amendment.

Now, Mr. Speaker, as I understand it the theme of this debate as it has developed so far is that the Government is urged, and this is the real substance and as I understand it the intention of the original Motion, the Government is urged to allow the formation of national political organizations composed of all races irrespective of colour, race or creed, but composed of all races. Now it is important to remember that at the present moment the restrictions which have been referred to in regard to the formation of political organizations relate to those organizations which are wholly or predominantly African. Now I do not want to dwell too-long on the reasons for that. I think they are well known to this Council. They have been canvassed at some length on previous occasions, and you will remember, Sir, that on one previous occasion I did refer to quotations from speeches made by some of my African friends in this House at various meetings which indicated the extreme dangers of which they themselves may not be wholly aware, and I have here a number of further examples which I feel I should put to the House because they will, I think, underline the attitude of the Government, which I shall explain fully in a minute, to this proposed amendment.

Now very recently, within a week or ten days ago, it was said by a Member of this House—it was said in Nyanza—

that "the Kikuyu started the fight for Kenya's independence, and the Nyanza people must continue the struggle". Now, Mr. Speaker, anybody listening to this—I regard it not in the least bit as a matter for amusement—this is purely and simply an unshamed support for *Mau Mau* and for *Mau Mau's* methods and practices.

Another quotation—again by a Member of this House last month: "The time has come to do something, when those who claim the country as theirs should come with the African Elected Members and refuse to pay poll tax. Those cowards who pay tax"—towards who pay tax—"will not follow and will not come if the others are sent to prison, but the children of those prisoners will keep a watch on the children of the cowards." Now that is a direct incitement to disobedience of the law coupled with the sting of intimidation in the tail.

Now on the question of race relations, of which we have heard so much today. This is not a quotation from a Member of this House, but from shall we say, an African politician outside this House very closely associated with certain Members of this House: "Europeans and Asians in Kenya are the rich people and have taken the African's land. Why should the settlers be allowed to join the Government of the Colony? There must be some reason for it. This is that they wish to keep the African as a labourer for ever." The same African politician urged his audience not so very long ago "not to be misled that it was impossible for Europeans to be removed. Whether they liked it or not the Europeans would have to leave". This is by nobody's standards, racial co-operation.

Now, another quotation, also by a Member of this House: "No one should be deceived that the European is a friend. It is only lip-service. Asian friendship is only for money." The same Member, on the same occasion: "The enemies of African progress are the Governor, the Chief Native Commissioner, the Provincial Commissioners, the district commissioners, the district officers and the chief who is being forced to go against them because he wants his salary." Is that, or is it not, an attempt to subvert lawful authority?

And let me make one final quotation—this again, by a Member of this House:

[The Acting Chief Secretary]

"That the Emergency is being used to further European domination." Sir, when one considers—and there are many more instances which one could quote if one really examined the record with fine precision, Sir—this sort of behaviour on the part of persons who are representative leaders of their people, and who claim to be such, it does not encourage one to believe that there is great sincerity behind the protestations which we hear from them that they condemn racial politics, that they want to build a community, a nation, which cuts across race and colour and creed. It does not encourage the Government to believe that if they were allowed to have a Colony-wide political organization it would be, as has been suggested, in order to pursue proper aims by proper means.

AN HON. MEMBER: (Inaudible.)

THE ACTING CHIEF SECRETARY (Mr. Griffith-Jones): I find, I confess, that this attitude of levity to a matter which I, personally, think, and which has been represented in this debate is a matter of some importance and genuine feeling. I find this hilarity somewhat out of place.

However, Sir, the Government is in sympathy with any genuine feeling that this country should develop into a nation, that there should be an awareness that all the people in this country are citizens of this country, that there should be a realization that we cannot if we are going to make a nation in this country, that we cannot continue to regard ourselves as Africans, Asians, Europeans and Arabs and attempt to rival each other in obtaining concessions or advantages at the cost or to the disadvantage of others. We must move towards that aim, and the Government is wholly in sympathy with that aim, but at the same time it must discharge its responsibility to ensure security.

Accordingly, Sir, in order to demonstrate the sympathy which the Government has with the views which have been put forward, and accepting that they have been put forward, at any rate in the majority of cases with the utmost sincerity, the Government will accept this amendment subject to certain qualifications, and I do not think those qualifications are ones which anyone can really cavil at:

Now, the Motion, as I understand it as it will read if the present amendment is accepted, would be "That this Council urges the Government of the country to allow the formation of national political organizations irrespective of race, colour or creed", and I now propose, Mr. Speaker, to move an amendment to that amendment, withdrawing with the authority of my friend, the European Minister without Portfolio, his earlier amendment, which I think will clarify the scene. I propose to move the existing amendment by substituting for all the words after "national political organizations"—the following words "which cut across race, colour and creed, provided that they do not, neither do any of their leaders or members in the name or under the aegis of any such organizations, pursue aims or policies, or indulge in or advocate actions or activities, which might, directly or indirectly, engender racial hatred, or subvert lawful authority, or promote disobedience to the law, or lead to violence or intimidation". That would mean that the motion in total would read as follows: "That this Council urges the Government of the country to allow the formation of national political organizations which cut across race, colour and creed provided that they do not, neither do any of their leaders or members, in the name or under the aegis of any such organizations, pursue aims or policies, or indulge in or advocate actions or activities, which might, directly or indirectly, engender racial hatred, or subvert lawful authority, or promote disobedience to the law, or lead to violence or intimidation."

Now, with your permission, Mr. Speaker, I would just like to expatiate a bit on the wording of that motion by saying that the Government here is seeking to meet what it believes to be the essence of the sentiments which have been presented to it from the other side of the House in this debate. It must, at the same time, take the proper and sensible precautions which experience has indicated to it, and that is why it will not accept it merely because a political organization contains one or two members of a particular race, and the whole of the rest of another race; it is a national political organization which cuts across race, colour or creed.

[The Acting Chief Secretary]

It will not accept that, because that would not be a genuine national political organization representative of all races, colours, and creeds. But it will accept that when there is a genuine political organization, it will examine very carefully the constitution and composition of any such national political organization which is formed, in order to ensure that the objects are not such as to cause any of the results which are quoted in my amendment. After that, assuming that all those conditions are met, then the organization will be judged on its record and practice. I believe, Mr. Speaker, that this is a fair offer on the part of the Government to the other side of this House, and I hope, therefore, that it will be accepted in that spirit. I am sorry that the amendment has become somewhat verbose, but I should not like subsequently to be accused of having misled the House in any way, and I have sought, therefore, to make it perfectly clear what the Government has in mind—namely, that it will allow a genuine non-racial political organization, which, however critical of the Government—and may I make it clear that we do not mind criticism, we thrive on it—pursues legitimate aims by legitimate and responsible means.

I beg to move.

MR. ALEXANDER: Mr. Speaker, Sir, I beg to second this amendment. In the process towards democracy—the evolution of democracy—in this very politically immature territory we do, Mr. Speaker, from time to time—we are confronted from time to time—with the paradox of agreement between the Government and this side of the House, or certain parts or groups of this side of the House, and from time to time, as the result of this evolution and the ministerial system that at present is with us, we do have situations where the loyalty between this side and the other side of the House is very greatly tested. There is nobody who knows this better than the Member for Mount Kenya, and I am disappointed and disturbed that he should have played upon this particular situation to question the bona fides of the hon. Specially-Elected Member, Mr. Blundell. The Member for Mount Kenya when he sat on that side of the House

in a ministerial position was aware and deeply conscious of the times when, in fact, he was more in agreement with us on this side of the House than with the sentiments over there, but out of sheer loyalty and sheer sense of duty he—

MR. COOKE (Coast): On a point of order, Mr. Speaker, is the Member in order? You have ruled that speakers must speak to the amendment only.

THE SPEAKER (Sir Ferdinand Cavendish-Bentick): Perhaps Mr. Alexander would confine himself to the amendment as far as possible.

MR. ALEXANDER: I will, Sir. We are talking about democracy, and there was a speech made in this House today that needs answering, Mr. Speaker, Sir, when the Mover of the original Motion spoke he used these words, "so that we can form a real balance of opinion in this country—a real balance". Those, Mr. Speaker, are the operative words, and I believe most appropriate to this current amendment, because there has been evidence and the Mover of the amendment gave much of it—of attempts from time to time by certain speakers, and some of them Members of this House, to create situations of mass hatred and mob contempt and I am pleased that the Government is deeply conscious of this type of technique and in this amendment seeks to destroy the opportunity for those people to continue with this vile method of preying upon the emotions of the masses in this country.

The other aspect which is also touched upon in the amendment, and the Mover of this also made it very clear, is the need if we are to have a real balance of opinion to remove any opportunity for intimidation; still very fresh in our minds is the agony through which an hon. Member of this House had to pass some months ago as a result of the inference and the pressures generated by Members of this House. I refer to the decision by Mr. Amalemba to stand as a Specially Elected Member, and I do know the agony through which he had to pass because of the intimidation which was thrust at him, and I do earnestly urge upon the Government that the very moment they detect any moves like that, in this desire of certain people to have non-racial national-wide political parties,

[Mr. Alexander] masses, if he means my constituents, that they are not human beings, then I am sorry that I do not agree. I wish he could leave out from his vocabulary the word "masses" when he talks about the people of Kenya. At the meetings of political associations the people would be individuals, at places like Nairobi, Mombasa and Kisumu or Embu or Nyeri. You see, Sir, 10,000 people would come to the meetings and they are not the masses but they are individuals. I think that he is responsible for a lot of misunderstanding among politicians because of his language of talking about the masses, and I seem to feel, Mr. Speaker, that he is thinking of the population of Kenya, comparing the races, and when he looks at the biggest race he calls it "the masses". I would like to be forgiven by the Member if I have been too harsh on him, but I wish that he could forget these words, Sir, or leave them out. I wish to appeal to all the citizens of Kenya to work together, and if we use such words about a certain section of the population then I think that no member of any other race should look on the Africans as "the masses".

*Question proposed.*

MR. MAHE (Central Province North): Mr. Speaker, if I may be allowed to speak to this amendment, I would like to say that I agree with it, Mr. Speaker, what pleases me is the spirit I felt in his words of trying to come together in a genuine manner, but I would like to stress the point that genuineness is not a peculiar quality of any single race in Kenya or group or society or section. I think that all of us can be genuine some times and I do not think, if we have our arguments on humanity and common sense, that there will be any difficulty in being able to agree. I believe also, Sir, that there is a danger in using too many words. In Kenya we form political associations and we call them by new names, hoping that they will be genuine. I think that sometimes we tend to use diplomatic smoke screens. I hope that all the people here who can call themselves Kenyans, and I believe that they are sincere, would subscribe to the idea of being genuine if they approach this problem.

At the same time, Sir, I would like to appeal to this House here, and to Kenya as a whole, to wish that we should work together and have the political faith that cuts through colour, creed and race, so that we can work together happily.

I do not see contradiction myself in the second part that he introduced when he said we must be law-abiding. It is an essential feature in any community. To take an example, if you took a group of thieves, they would have a leader and they would have discipline; but they would have a kind of law which they would follow. I do not see why, in a country like Kenya, much as we differ in colour, in physique perhaps, and in language, we could not work together and have a law-abiding society. Any reference, like those made by the Member for Nairobi West to emotionalism—he is emotional himself and I am very emotional, it is a part of human beings—are doing the very thing that we want to avoid. Mr. Speaker, Sir, I do not like his expression "the masses". I would like him to tell me what he means by the

masses, if he means my constituents, that they are not human beings, then I am sorry that I do not agree. I wish he could leave out from his vocabulary the word "masses" when he talks about the people of Kenya. At the meetings of political associations the people would be individuals, at places like Nairobi, Mombasa and Kisumu or Embu or Nyeri. You see, Sir, 10,000 people would come to the meetings and they are not the masses but they are individuals. I think that he is responsible for a lot of misunderstanding among politicians because of his language of talking about the masses, and I seem to feel, Mr. Speaker, that he is thinking of the population of Kenya, comparing the races, and when he looks at the biggest race he calls it "the masses". I would like to be forgiven by the Member if I have been too harsh on him, but I wish that he could forget these words, Sir, or leave them out. I wish to appeal to all the citizens of Kenya to work together, and if we use such words about a certain section of the population then I think that no member of any other race should look on the Africans as "the masses".

MR. PANDYA: Mr. Speaker, Sir, I would like to assure the leader of the House, the Government, and the Members of this House that we have no intention whatsoever to do any of the things that are provided by the amendment of the Acting Chief Secretary. I would like, Sir, to extend to him my thanks for having met our point of view and I, in my turn, accept his amendment willingly. I can see, Sir, that there is a spirit of good will and co-operation which cuts right across the barriers created by the despatch box here.

I support the amendment.

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): As the originator of the last amendment is willing to accept this then I think I might save time if I put this latest amendment.

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

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

MR. MUMMI: Mr. Speaker, Sir, I have no hesitation in supporting the amendment to the Motion as proposed by the

[Mr. Mumi]

Acting Chief Secretary. I have one small point just to add on to what has been already said. I would like to put on record that for the first time the Consultative Elected Members' Organization has created an organization in Kenya which will very shortly be known by the name of the Kenya National Party.

Mr. Speaker, I would just like to draw the attention of the House to the problem of creating a nation in any country. I would like to take Great Britain as an example. Great Britain is a great nation today but originally it was a fragment of a number of tribes, some of them being the original tribes of those islands, the British Isles, and some other tribes from Europe, the Continent, and those tribes put themselves together. They sank their differences of languages, their differences of mode of life and they created a nation. I have no doubt that Kenya can follow the pattern that was created by the British. Kenya is a composition of many tribes. We have the black tribes, the white tribes, and we have the coloured tribes, and all that this Motion was seeking to do was to try and see whether we could put those tribes together and form a Kenya nation. The fears that have been expressed by a number of Members on this side of the House will, I am sure, be eradicated in the course of time.

One thing that has created fear among the different races in this country is a lack of proper contact and exchange of views. I am sure when such political and national organizations are formed there will be ground for exchange of views, and I have no doubt that in no time the people of this country will understand the necessity for thinking themselves one people and one people of Kenya only.

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

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

Mr. Deputy Speaker, I will be the last, and I am sure that my colleagues on this side of the House would also be the last, to associate myself with any organization that is described by the Acting Chief Secretary to aim at creating such

things as intimidation or creating dissension or creating race hatred. I do not think anybody who is concerned for the welfare of a country could in any way associate himself with any organization that has such aims. I believe very strongly that we have come to a stage of civilized and educated people where we should think like civilized and educated people, and if we have reached that stage then I have no doubt, Mr. Deputy Speaker, that anybody who will be an associate in such organizations as we intend to form would support whatever Government there will be to see that such an unwarranted and undesirable thing as mentioned by the Chief Secretary are prevented and would not prevent the people of this country from thinking as one people.

One other thing, Mr. Deputy Speaker, that I would like to put on record is the statement made by the Member for Nairobi Area 4 along his speech. He seems to have directed his imagination to the events which are taking place today, to statements made by politicians of today, statements made by Elected Members of this House. In my opinion, Sir, when we think of creating a nation in this country we are not thinking of a nation of the people who are living in this country today, neither are we thinking of a nation of the Members of this House today. He, like myself and any other Member, can be ousted in the next election and he will no longer be in this House, but we are trying to create a way whereby those who come after we are gone will work through what we are now creating to form a nation in this country. Therefore, Sir, I think it is very wrong when we speak of important matters that affect our future generations to sort of create an atmosphere whereby my child will begin to think when he reads the HANSARDS of what is placed on the record today, of what I said, Mr. Deputy Speaker, of Mr. Smith; or what Mr. Smith said of me. I think that this sort of thing will not promote immediate creation of a nation for Kenya. I believe that the time has come when we must sink our differences and think of ourselves as children of the nation of Kenya.

I beg to support.

MR. SLADE: Mr. Deputy Speaker, Sir, I support the Motion as amended; but

[Mr. Slade] in doing so I would like to make clear the position of the Specially Elected Members as we ourselves see it, in view of what was said by the hon. Member for Mount Kenya earlier in this debate. It has been suggested, Sir, that the Specially Elected Members, because they have been elected by Members of the Council as a whole, are not free to say what they think on their own, without consultation with those who have elected us. I would like to make clear, Sir, that we adhere to the general parliamentary principle that any Member of Parliament, once he gets there, is free to speak according to his own conscience. He further suggested that we could not speak on behalf of a group in this Council. Again, Sir, I say that we have the right to do so; and I would further say quite definitely that when the hon. Specially Elected Member, Mr. Blundell, spoke, earlier in this debate, he did so for every single Member of the group behind him who is free in this Council to say what he thinks because he is not attached to the Government.

Now, Sir, I do want to commend very warmly the spirit and the presentation of this Motion by the hon. Mr. Mufiro and his colleagues, Sir, when they speak, as they have, of political economic and social integration, they are speaking the language of almost all of us throughout this Council, and, what is more, there is no question as to the sincerity of what they say. That is proved not only by a document they have issued in the course of the last 24 hours but also by even the more serious test of what they say to people of their own race. Mr. Deputy Speaker, I have been present at a meeting of Africans at Kaloleni Hall where I have heard the hon. Mover speak, and he has said exactly the same to them as he has said to us in this Council; and that I believe is the best possible proof of his zeal sincerely. Sir, it is most encouraging to find so many people now in this Council moving towards the same objective and to find that our differences now are really those of method and speed. There is still a difference there, Sir, and it is no good trying to disguise the fact; but that is something I am quite certain we can get over.

This proposal that the Government should allow national political organizations to cut across race, colour and creed, is undoubtedly one of the methods whereby we can move towards that integration that we all desire so much. But we must at the same time recognize certain limitations at the present time. If we are going to achieve real integration, we have first got to achieve some integration of our interests and standards and our traditions. That cannot be done in a day. It must be a process of organic development and evolution, and if you do not recognize that you are in danger of trying to move at an artificial pace which may easily destroy what you are seeking to create; and that applies, Sir, I think, just as much to this development of political organizations as it applies elsewhere. Sir, in spite of my enthusiasm for this Motion and my belief that it is right in advocating these organizations, I must issue one or two warnings. The first is, Sir, not to place too much faith in them as an immediate cure for our problems, and the second is to beware of the dangers they bring with them.

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

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

Sir, there is no arguing the fact that at present we stand widely apart in our racial communities, and even as between tribes, and as between religions. We have got at our present stage mainly religious and racial parliamentary representation, and in that state of affairs it would be stupid to try to overlook and write-off all the different racial and tribal cultures and interests that are here today. It would be very wrong to try to do so, Sir, because our own tribal and cultural standards and traditions are of immense value to us. There are those things which make us set standards for ourselves and you cannot afford to destroy them without being sure that you are replacing them with something better. I think that what we really have to do is not so much to try to destroy these things but to synthesize them, and make the most of them and gradually to build out of them interests and standards that we have in common, so that we can eventually develop national aspirations that command our

[Mr. Slade]

common loyalty. I say again, Sir, that we cannot do that in a day; and in the meantime we must recognize that the real true representation of the people in this country will lie in their local organizations and to some extent in their racial organizations, and the Colony-wide organization is bound to be a comparatively weak thing because it is not such a natural thing. That is not to say that we must not work towards developing these organizations. I am only warning people not to put too much faith in them today as the sole answer to our problems.

Then, Sir, there is the danger that can arise from country-wide organizations, whether racial or non-racial. Apart from the fact that it may not be so representative as it purports to be there is also the danger or it may be used to regiment and even intimidate the voter and deny him the freedom of ultimate choice of his representative. Again there is a danger with all these organizations that the power will fall into the hands of people lying outside this Council who direct the actions of those within the Council and deprive them of freedom to act according to their conscience. Again there is a danger that by the creation of national or country-wide organizations you will get Members of this Council so firmly against each other with their party allegiances that they are no longer permitted to reach a compromise solution which is sometimes the essence, and the only answer to the problem, and which we have in this Council. Indeed, Sir, we have seen that there is also the danger that from Colony-wide organizations you may get the development of something rather worse than the "confidential groups" which the hon. Member for Kiambu referred to and the danger of uncontrolled and uncontrollable meetings.

For these reasons, Sir, I do believe that however anxious we are to achieve non-racial co-operation, and anxious we are, the first non-racial co-operation is amongst the parliamentary leaders of the different races and tribes; and what we have got to do is to work there for our initial racial co-operation and grouping, among the Members of this Council, recognizing that we are very largely still racial representatives and that behind us we shall be guided by racial organiza-

tions in our own constituencies as the natural unit of politics in this country. It is our job to develop our non-racial outlook among ourselves and to pass it on to those constituencies, racial, or non-racial, we have in this country. Later by developing more and more non-racial representation in this Council we shall be able to develop non-racial party organizations fully outside this Council.

Sir, having said that, and having apparently poured a little cold water on these ideas, I do want to repeat how much I do welcome this Motion and support the ideals behind it, and how greatly one is encouraged by the spirit being shown by all inside this Council in this debate.

I beg to support, Sir,

THE ACTING CHIEF SECRETARY (Mr. Griffith-Jones): Mr. Speaker, I have very little to add to what has already been said in this debate. There are just one or two points which I feel I should advert to before the debate closes.

I should like to refer to the speech made by my hon. friend the Member for Nyeri and Embu and to his reference to the extent to which he has helped the Government by explaining to his people what the Government is trying to do. I should like, publicly, to acknowledge that help and to express the Government's deep appreciation of it.

Sir, the hon. Member for Mount Kenya asked positively for a reaffirmation of a previous declaration of intention on the part of the Government that the necessary legislation to preserve public security would be passed before all the remaining Emergency legislation was revoked and the Emergency brought to an end. Sir, I give that assurance very readily. It is, of course, absolutely essential, as has been explained by my hon. friend the European Minister without Portfolio earlier in this debate, the enactment of necessary substantive legislation is one of the prerequisites to the ending of the Emergency. I should also like to reaffirm, as has been said before, that the Government hopes that it will be possible soon to end the Emergency and to that end it should not be long before it brings before this Council its legislative proposals as a precursor to that action.

[The Acting Chief Secretary]

Sir, the hon. Member for Nairobi Area said, and I cannot let this pass, that the Government was "panicky, insecure and frightened". I must just make it quite clear that the Government is neither panicky, insecure nor frightened, but it does intend to take all essential precautions with a due sense of responsibility, which recent experience in this country has shown to be necessary. It will take those precautions for the protection of the decent law-abiding citizens of this country. But there is no panic and there is no sense of insecurity and there is certainly no fear within the Government in that regard.

Finally, Sir, one small point which I should like to make in amplifying the point which my friend the Member for the Eastern Area made in proposing his amendment. He said that it was likely that some people might misuse the opportunities which these new political organizations might present to them. I agree with him, and as he well knows I have indicated the qualifications which the Government feels it must make for that very reason. But I do want to make this point, and make it most emphatically, that when these organizations are created, if any of their individual members or leaders do misuse the opportunity which the organizations present, then the organizations themselves must be quick and scrupulous in applying their own discipline. Otherwise they will become identified in the minds of the public and in the minds of Government with the actions and the speeches of the miscreants who have misused the opportunities in question. We do want to make that point clear, that it is not merely a question of relying upon the ultimate sanctions of the criminal law for the very bad abuses. There are lesser abuses which do require prompt and certain application of internal discipline within the organization.

Mr. Speaker, with those very few points I beg to support.

MR. MULIRO: Mr. Speaker, Sir, although this Motion has been amended about four or five times I am very pleased at last that the Government of this country has seen some light and has come to very good sense and allowed national political organizations.

It is our duty in this country to create whatever atmosphere we can to bring about a society of equals in this country. We, the Members who want to form the National Party of Kenya, have dedicated ourselves completely to a policy of non-racialism, and anyone who wants to come along with us who has any slings of tribalism, racialism or religious beliefs that he wants to perpetuate through the organization, cannot be accepted and will not be tolerated. We are determined by what is going to be surely in our own constitution, that any person who preaches violence, subversion or hatred of any kind within our organization, if he is a member we shall have to get rid of him. If we want discipline in the country those who want to remain among us must organize themselves in their own minds and in their own hearts, and we who are wanting this opportunity have already to a very great degree organized ourselves and go rid in our own minds of racial hatred and therefore that is all we want to preach to this country.

The fears, Mr. Speaker, which are being ventilated by a number of people who have spoken today, will be probably cleared, only when they listen to us on the public platform, both in the bush and rural areas as well as in the townships and everywhere, where we are determined to pursue a policy completely of nationalism and true nationalism and not racialism or tribalism.

With these few remarks, Mr. Speaker, I beg to support the amended Motion.

The question was put and carried.

#### ADJOURNMENT

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): That brings us to the end of the business on the Order Paper and I therefore adjourn Council until 2.30 p.m., Tuesday next, 28th July.

*The House rose at Twelve o'clock.*

Tuesday, 28th July, 1959

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

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

#### PRAYERS

#### ADMINISTRATION OF OATH

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

Anthony Charles Christopher Swann.

#### PAPERS

The following Papers were laid on the Table:—

Kenya Meat Commission—Ninth Annual Report and Accounts for the period 1st January to 31st December, 1958.

The Kenya Meat Commission (Grading) (Amendment) Regulations, 1959.  
The Hide and Skin Trade (Imposition of Cess) Rules, 1959.

(BY THE MINISTER FOR FINANCE AND DEVELOPMENT (Mr. Vasey), on behalf of the Minister for Agriculture, Animal Husbandry and Water Resources)

#### ORAL ANSWERS TO QUESTIONS

##### QUESTION No. 176

MR. ARAP MOI asked the Acting Chief Secretary:—

- The purpose of the visit of the Minister for Housing to the United Kingdom?
- Is the visit made at the expense of the Government? If so, what will be the approximate cost?
- Is the Minister, in any statements or views that he may or might have expressed either privately or publicly, bound by the principle known as "Collective or Cabinet responsibility"?

THE ACTING CHIEF SECRETARY (Mr. Griffith-Jones): (a) The Minister for Housing has gone to the United Kingdom to attend the Housing Centre Trust Conference in London, to study new developments in housing, and to examine housing schemes in various parts of Great Britain and Northern Ireland.

(b) Yes, Sir, The Minister for Housing is visiting the United Kingdom in his official capacity, and the cost of his journey will, therefore, be met from Government funds. The cost of his return air fare to London is Sh. 5,600. He will also be paid travelling and subsistence expenses incurred on duty in the United Kingdom in accordance with the Code of Regulations.

(c) Yes, Sir. As a Minister, Mr. Amalamba shares responsibility with his colleagues for the policies of the Government, which he is not, therefore, at liberty to criticize or disagree with, in public or in private, outside the immediate circles of the Government.

MR. ARAP MOI: Arising out of that reply, Mr. Speaker, do the private views expressed by the Minister for Housing mean that the New Kenya Group is being supported by the Government?

THE ACTING CHIEF SECRETARY (Mr. Griffith-Jones): No, Sir, I think the answer to that question is fairly obvious. The rule of collective responsibility does not imply that a Minister can have or express no personal views; but any views that he does express outside the circles of the Government must not be critical of, or opposed to, or repugnant to the policies of the Government.

MR. ARAP MOI: Mr. Speaker, Sir, arising out of the Minister's reply, is it that whoever goes to the United Kingdom or anywhere at the expense of public funds can indulge in private political propaganda when he discusses with anyone in the United Kingdom?

THE ACTING CHIEF SECRETARY (Mr. Griffith-Jones): I have no further statement to add to what I have already said, which, in my view, covers the whole field.

MR. MBOYA: Mr. Speaker, Sir, do we understand that the New Kenya Group is not critical of the Government?

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): There is no reference to the New Kenya Group in the question.

##### QUESTION No. 180

MR. TRAVADI asked the Minister for Legal Affairs when will it be possible for Government to introduce new legislation for Hindu marriage and divorce?

THE TEMPORARY MINISTER FOR LEGAL AFFAIRS (Mr. CONROY): Mr. Speaker, Sir, early in the next session, I hope.

### COMMITTEE OF THE WHOLE COUNCIL

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

### IN THE COMMITTEE

[D. W. CONROY, O.B.E., T.D., Q.C., in the Chair]

### The Money-lenders (Amendment) Bill

#### Clause 2

MR. WEBB: Mr. Chairman, you will remember that when this Bill was considered in Committee on the last occasion my hon. friend the Specially Elected Member, Mr. Slade, raised a question about the retrospective effect of the new definition of "money-lender" which clause 2 inserts in the Bill. I have now looked into this matter again and I find that the new clause was submitted to the Law Society some 11 weeks ago. It was then the subject of discussion between a representative of the Law Society and myself through an "intermediate" and I thought that I had then satisfied the Law Society that the clause, as drafted, had the necessary retrospective effect. Indeed, it was drafted with that object and had been considered by my hon. friend the Attorney-General from that point of view. However, in order to put the matter beyond any possible doubt, I beg to move the amendment, of which I have given notice, that a new subsection be added as follows: "(2) This section shall be deemed to have come into operation on the 1st day of January, 1933." This date goes back, Sir, before the date of the amending Ordinance in 1936, which amended the definition, in order to meet the situation which we have created in the new subsection by very greatly increasing the scope of the definition. That definition is now even wider than it was when the Bill was originally enacted in 1932, and I therefore think it is desirable that the full definition should be retrospective to the date of the commencement of the principal Ordinance.

Question proposed.

Question: that the clause be renumbered put and carried.

Question that the new subsection be inserted put and carried.

Clause 2, as amended, agreed to.

#### Clause 3

MR. BOMPAS: Sir, section 3 deletes from the principal Ordinance the existing licence fee of Sh. 300 per annum, or Sh. 200 if it is for the second part only of the year, and it substitutes an undischarged sum which is to be prescribed by the Minister by regulation. Sir, we recognize the convenience and, in some cases, the necessity for Government by regulation, but I suggest that Government must not expect this Council to accept that process in cases like this. The size of the present fee, which is stated in the objects and reasons to be too small, does savour more of taxation than of a mere licence fee. Why should Council be asked, Sir, virtually to hand Government a blank cheque in cases of this sort? When deciding that Sh. 300 was too little, the Minister for Finance must obviously have had in his mind what was a fair and reasonable fee, and I think it would have been proper, Sir, to have stated the amount of that fee in the Bill so that we could either endorse or criticize the amount suggested. I know the Minister will reply that we have an opportunity when the regulations are published, but he knows full well how remote is the possibility of modifying something which has already become more or less *au fait accompli*. I am not very much concerned, Sir, with the amount of the fee in this instance or how much money there is: it is there intended. I have no doubt that the unfortunate clients will pay in the end, but I am concerned, Sir, with the principle, and I would ask Government and our Ministers in future not to deprive us of our right—indeed, our duty—to discuss fully a reasonably complete picture of legislation which is to be projected before the country. I do not propose to move an amendment, Sir. As I said, I am not very concerned with the detail here, but I am, indeed, Sir, by the principle.

THE MINISTER FOR FINANCE AND DEVELOPMENT (Mr. Vasey): Mr. Chairman, the hon. Member takes me by surprise. I can assure him, strange as it may seem, the Minister for Finance has not got the fee or any sum fixed in his mind. He is prepared to listen to all the arguments

[The Minister for Finance and Development]

before the fee is fixed. Sir, the principle here is one that I think I am quite correct in saying has been followed in other cases. It is a matter of administrative convenience whereby when fees are altered to suit existing circumstances, the Ordinance has not got to be amended, but the regulations can be as they are laid on the Table of this Council. Any hon. Member opposite is able to move a Motion which calls them to the attention of the Committee or the Council, so that I cannot agree with the hon. gentleman that his right is being restricted. I would have said he is going to have ample opportunity to discuss this if he wishes in future. It certainly is a much better administrative procedure than the clumsy one of having to amend the Ordinance every time you want to alter the fee. Now, on the size of the fee, Sir, the hon. Member said that he did not worry very much about the size of the fee. The fee was fixed in 1932 at Sh. 300 per annum, 1932 is a long time ago. The value of Sh. 300 in 1932 in purchasing power can be regarded, I feel, as somewhat greater than the purchasing power of Sh. 300 today, so that I think there is justification of the statement that those fees are no longer deemed to be adequate, but I cannot agree that this is a type of taxation. This is a fee to recover the cost for the services which have to be rendered throughout the various departments to people taking out licences of this kind, and it is on that basis that the fees will be fixed.

MR. BOMPAS: I agree with what the hon. Member has just said. In fact, Sir, he has made the very point that I was trying to make and which I thought I had made, that it is the principle of fixing fees of this sort by regulation, and however much the Minister may say that it is easy for us to speak on this side, to debate the amount of those fees, Sir, it is not so easy once the figure has become a fixed item.

THE MINISTER FOR FINANCE AND DEVELOPMENT (Mr. Vasey): I do not think that the hon. Member can have been listening to me, Sir, because I did say the principle was one that had been accepted and indeed it has been accepted in the case of reduction of fees, also. In

so far as ease is concerned, I know the hon. Member for Klamu was not a Member of this Council at the time that I was chairman of the Unofficial Members' Organization, but in fact we, I think, led the non-Government side to the first defeat of the Government in Legislative Council on the very fact that these papers or regulations should be laid on the Table so that hon. Members would have ample opportunity of discussing them. Indeed, one of the arguments we used at that time was that this was a far easier method of our getting some alteration than facing an alteration of an Ordinance; and I regret that I cannot altogether agree with the arguments of the hon. Member, whilst I have great sympathy with the motive behind his suggestion.

MR. WEBB: On a point of order, Mr. Chairman, is this discussion not wholly out of place in Committee? Surely it would have been proper for the hon. Member to have raised this matter on the Second Reading. This is the stage when amendments are moved, and the hon. Member has expressly disclaimed that intention.

THE CHAIRMAN (Mr. Conroy): One of the purposes of Committee which we have always accepted is that any hon. Member can seek information from a Minister which is relevant to a particular clause.

Clause 3 agreed to.

Clauses 4 and 5 agreed to.

Title agreed to.

Clause 1 agreed to.

### The Municipalities (Amendment and Miscellaneous Provisions) Bill

#### Clause 2

MR. HOLLISTER: Mr. Chairman, Sir, in view of the fact that this particular clause is so closely related to clause 20, and indeed is merely an interpretation clause, I would ask that discussion on this particular clause be deferred until the Committee comes to clause 20.

THE CHAIRMAN (Mr. Conroy): I am in the hands of the Committee on this matter. I think possibly the best way to deal with it would be to put this question to the Committee that the consideration of clause 2 be deferred until immediately after the consideration of clause 20 be

[The Chairman] cause if clause 20 is amended in a certain way it will also be necessary to amend clause 20.

*Question proposed.*

The question was put and carried.

Consideration of clause 2 deferred.

Clause 3 agreed to.

*Clause 4*

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): Mr. Chairman, I beg to move that clause 4 of the Bill be amended by adding at the end of paragraph (c) of the new section (f) the words "of whom four shall be of the Muslim faith and four shall not be of that faith".

This matter was mentioned in the Second Reading and I gave at that time the House the reasons for this amendment, and indeed it has been at the unanimous request of both the Muslim and non-Muslim communities of Mombasa.

Sir, I beg to move.

*Question proposed.*

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

MR. MBOYA: On clause 4, Mr. Chairman, I have proposed the following amendment: that all the words after "eight aldermen" be deleted.

*Question proposed.*

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): Mr. Chairman, it is a little difficult to speak to this. If this particular amendment was carried without any further amendment being made it would really mean that the constitution of the Mombasa Municipal Council would be eight aldermen, and there would be, Sir, may I add, nobody to elect them.

THE CHAIRMAN (Mr. Conroy): It is only the words after "eight aldermen" in paragraph (a) which would be deleted. It would mean that paragraphs (b), (c), (d), (e), (f), (g), (h) and (i) would remain.

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): If the intention of this

amendment, Sir, is to leave the aldermen to be elected without any allocation of race—and presumably that is the intention of this amendment—following on what you have just explained, Sir—then, as I explained at the Second Reading, I would have welcomed that. But this is a matter which is a result of long negotiation and full agreement by the representatives of Mombasa, and I have, indeed, agreed with those representatives that this allocation shall be made, and, as I said at the Second Reading, the best I could do was to provide, for two who are not allocated to any particular race. I hope that, with experience, the Mombasa Municipal Board, having had the experience of electing two who are not allocated to any particular race, without any difficulty may well be able later to expand the system and have the whole lot so elected. In the meanwhile, Sir, I am afraid that I cannot accept the amendment.

MR. MBOYA: Mr. Chairman, I do not wish to repeat what I said in the main debate, but it would seem to me to be rather poor of the Government to say that the only reason they cannot accept the principle of non-racial representation on the Mombasa Municipal Council is just because the Minister was unable to give any sense of direction to the people in Mombasa. In fact, Mr. Chairman, we are led to understand that people in Mombasa would welcome non-racial representation in their new Council if the Government would accept that principle.

MR. USHER: Mr. Chairman, I merely wish to interpolate this, that not only has this been a matter of long negotiation as the Minister has said, but Sir, I think he will recall that until very recently, indeed, the agreement was that there should be not less than four Europeans as members of the aldermanic bench and that concession has been made willingly.

CAPT. HAMLEY: Mr. Chairman, it does seem a little hard that the people of Mombasa, having agreed on the composition of their Council, are now being almost forced from this Chamber to disagree. Surely, if we can get local agreement we should be very pleased indeed that the people of Mombasa have got what they agreed they wanted, and are content with it. I deprecate the business

[Capt. Hamley] of this Chamber stirring up trouble in other chambers. The people in this Chamber are now trying to force something on the Mombasa Municipality that the Mombasa Municipality have already agreed not to have. Why, therefore, stir up unnecessary trouble?

MR. HASSAN: I agree with the Minister's speech which he made about the acceptance of the number of aldermen in the Mombasa Municipality. It is quite true that Municipal members decided finally among themselves as to the number and how it was to be divided there. I fully agree with the Member for Nairobi asking for the non-racial spirit to be introduced in the local and Government institutions in this country. Nobody denies that we are aiming at it one day, and that that will succeed. But I object very strongly, now that Mombasa is going to have a City Council status, that we should start our experiments on the Mombasa Municipality. Whatever has been decided by the City Fathers of Mombasa has been decided unanimously and we should feel very happy and pleased and we should give our blessing to the united demand they have made from Mombasa.

MR. MBOYA: Mr. Chairman, I cannot agree with the last speaker. Surely, the time has come when somewhere someone has to experiment in all these pious hopes that everybody expresses in this Council every day, including the speaker who has just sat down. If he thinks that in his home town we may not experiment then I beg him to say where we may experiment?

MR. HASSAN: All over the country!

MR. MBOYA: Mr. Chairman, I would just emphasize that I think that this is not just a question of what is happening in Mombasa, but it is a question of giving this country something that it desires, something that everybody has been telling us is the most desirable thing in this country. The question is, Sir—when are we going to start implementing all these pious hopes?

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): Mr. Chairman, the comments which have been made just now have interested me considerably be-

cause, as I said earlier on in the debate on the Second Reading, I have put suggestions to a number of local authorities and the answer has always been what the hon. Member Dr. Hassan has said himself, "Do not try it on us, try it on someone else first." I think, Sir, that the answer is that until this Council has made up its mind where it is going with regard to representation I certainly do not want any experiments tried in local authorities which, to my mind, are the basic practical working authorities of this country.

MR. KHAMISI: Mr. Chairman, on this amendment, although I have agreed to support it, my support was conditional on the fact that the second amendment, which the hon. Member for Nairobi Area is moving, is accepted. If the second amendment is not accepted then I do not support this first amendment because my own fear, from experience elsewhere, is that what will happen is that we shall be in a minority there and we shall not even be able to get one seat. My fear is well founded from experience elsewhere.

MR. MBOYA: Mr. Chairman, I thoroughly agree with my hon. friend from Mombasa Area, and I think what he said brings out very clearly what is wrong in all these matters and especially what is wrong in the Government's approach of asking the local authorities to agree beforehand whether these changes can take place. As at present constituted, Sir, it is difficult to see how these local authorities, some of them with vested interests, are tackling this problem. I think, Mr. Chairman, that I am willing to agree with the Member for Mombasa Area that this first amendment is very much tied to the second one and that our attitude to the first one is very much tied up with the second one.

MR. KHAMISI: May I suggest that we postpone the first amendment and go on to the second amendment first?

THE ACTING CHIEF SECRETARY (Mr. Griffith-Jones): I think we are rapidly coming to the stage where we should take this Bill backwards!

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): Would it be possible to take both amendments together, Sir? I think that they do tie up.

THE CHAIRMAN (Mr. Conroy): I will put the second question first.

*Question proposed.*

MR. MBOYA: Mr. Chairman, speaking to the main debate, I did clearly emphasize the reason for that attitude. I may say that our view is that the time has come when in this country we should begin to develop local government systems and also the Central Government on the basis of recognizing the individual citizens. Again, Sir, we find the Government offering communal seats. I also said in the main debate that we can start this non-racial approach at local government level, and I have invited all the groups in this House to join with us in injecting this little degree of non-racialism at local government level. Those groups which preach non-racialism so often in this country should come with us now and do a little bit of practising which they preach. Now, Mr. Chairman, I did point this out, and I do want to emphasize this again, that I do not know how the Government or anyone in this Council—today can explain the fact that the Bill makes provision for the representation of 4,000 Europeans in Mombasa by eight members, against four members for 90,000 Africans. Mr. Chairman, something is definitely wrong, and whereas it may have been possible to think on these lines 30 years ago when introducing the system of representation in this country it is inconceivable that anyone should think that this is the sort of piece of legislation that should be introduced in Kenya in 1959, and especially when everybody is beginning to develop groups in this country on non-racial lines. I would ask them to join with us now and prove their non-racial approach.

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): Mr. Chairman, as I understand it, Sir, this amendment would mean that there would be no racial allocation at all and that everybody would vote for anybody, and in fact it would be one man one vote in the Municipality of Mombasa. I have a certain amount of sympathy for the hon. Member for Nairobi Area, for the principle which he enunciates, but it seems to me that there again it is quite unfair to try what is really a very drastic experiment at the

Mombasa Municipal Council level. As I said before, surely these matters have got to be decided by all communities at this level, Sir, at the Legislative Council level, before one imposes on subsidiary authorities constitutions of this sort. That itself has yet to be decided and discussions will no doubt be held in the near future. Meanwhile I certainly do not want to see something brought in hurriedly without full consultation with the people concerned and here again I underline that I am quite convinced that the great majority of the people of Mombasa are prepared and happy to accept this agreed constitution, agreed with their previous Municipal Board.

I therefore, Sir, beg to oppose the amendment.

MR. TRAVADI: Mr. Chairman, last week, as the House will remember, I opposed this. We also all found out to our great surprise that even the Government at the moment is ready to accept a common roll to start in the local government authority in Mombasa. Only the hon. Mr. Hassan has spoken about the community being divided so that the ratio is 4:4, but the Indians and even the Africans are very ready to join hands in common roll, and Sir, why not have it? If we provide for the minorities, even for the tiny minority, then I think that we shall never be able to achieve that goal. I therefore beg to support the hon. Member for Nairobi Area.

MR. USHER: Mr. Chairman, it is all very well to talk about us here in this Chamber, determining such matters as are now in issue, but might I remind the hon. Member who has just sat down, and the hon. Member for Nairobi Area, that these matters are of principal concern to the ratepayers of Mombasa. I am one of them.

MR. KHAMISI: Mr. Chairman, I would like to support the Member for Nairobi Area in this particular amendment because I feel that the time is long overdue for reviewing the whole process of elections and also the allocation of seats in local authorities as well as in other places. In this particular instance, Sir, I think it would be looked upon as a good omen if we agreed to this amendment because in actual fact it will mean that—although there are all races each race could have equal numbers of seats,

[Mr. Khamisi] 8/8/58 (32 in all) and there would be no racial sufferers thereby. For that reason I would like to support this proposal that the election should be carried out on a non-racial basis, but it is understood, of course, that if it is done on non-racial lines the outcome may be that each race will get equal representation.

With these few words, Sir, I support the amendment.

MR. NAZARETH: Mr. Chairman, I should have liked to support this amendment but I see very great difficulties in supporting it. I was recently very disappointed to learn from the Minister that an experiment which I had proposed for Kisumu was turned down by every community there except the Indian community, which means that the system of proportionate representation which I suggested was very suitable for experiment for the Africans, the Europeans and the Muslims.

Now, we have been told that this proposed constitution for Mombasa has been agreed by the people of Mombasa and if that is so and if this Council were then to impose or set up a different constitution which is what is now proposed, in that case you would be forcing upon Mombasa something against an agreement which has been arrived at on that very point. And that, of course, is a very serious step for this Council to take.

If these suggestions had been made in good time long ago as, for instance, the suggestions that I had made with regard to Kisumu, one might have been able perhaps to persuade the people of Mombasa and gain a certain amount of support there to accept a constitution of a kind that is proposed. Also, I think that we are not quite ready for a constitution of this nature. The system of election would necessarily be involved in a constitution and apparently now the members would be elected in the same way that election takes place in other municipalities. Well, I think the franchise is necessarily involved in such a matter as this.

It raises major questions and if they are suddenly put forward without any kind of previous discussion I feel we are taking a vital and drastic step. For these reasons I feel myself unable to support the amendment although I do feel that

every effort should be made by this Council at the earliest stage to consider the constitutions of all the municipalities and try to introduce some form of common roll which would necessarily, of course, involve the franchise and all things connected with an election.

CAPT. HAMBLEY: Mr. Chairman, Sir, people are not getting down to facts, if I may so say. The object of the drill here is to produce a municipal council that will work, and a municipal council that will take the very large sums of money—produced by the ratepayers in Mombasa, and convert it into amenities such as roads, lights and sewerage and things like that. And that is not an easy matter to do, Sir. One wants a considerable amount of experience before one can handle that amount of money and turn it into things that are going to benefit the town.

Now, I have no doubt that the idea of the Member for Nairobi Area is a very good one, at any rate as far as he is concerned; but the point is, Sir, that up to the present there have been two nominated Africans on the council. If he has his way now I have no doubt that there would be a vast flood of elected Africans on to the council and I submit, Sir, that they just have not the experience to do this job and until such time as we can produce—as we are going to do—more elected Africans to gain experience of doing this job, we are just wasting our time here talking about these extremely impracticable methods of padding the Mombasa Municipal Council. We are increasing the number—in fact, not only increasing, we are creating for the first time seats for African elected members besides increasing the numbers. In other words, we are going to train Africans (elected by their people) to do this very responsible job of handling the ratepayers' money and running the town of Mombasa, and we should not try to run before we can walk, Sir.

MR. MBOYA: Mr. Chairman, first the Member for Mombasa Area, Mr. Usher—or for Mombasa, I do not know the difference—speaks of the question of the interests of ratepayers. Yes, it is the interests of ratepayers; but, does ratepayers mean that the interests of the



[Mr. Mboya]

Europeans must be dominant or pariahs. Would not Mr. Usher agree that we should consider all racial—

MR. USHER: Mr. Chairman, on a point of Order, can we not get away from the use of names in this Chamber?

THE CHAIRMAN (Mr. Conroy): It is out of Order to mention Members by names especially when they represent constituencies.

MR. MBOYA: Mr. Chairman, I fully appreciate that, but I did not know whether he was the Member for Mombasa or the Member for Mombasa-Area.

THE CHAIRMAN (Mr. Conroy): There is a list which is provided by the Clerk which sets out all names and I do expect Members to look at it before they refer to Members.

MR. MBOYA: My point is that we are considering ratepayers and that we should consider all ratepayers and I suppose that the Member in question would not object to the African ratepayer being given the same consideration as every other ratepayer. If he has to advance the argument that of the 90,000 Africans the number of ratepayers would be less than the 4,000 Europeans may be we would listen to him and consider the matter accordingly. But he has made no attempt to analyse the number of African ratepayers included in this figure of 90,000 but merely talks of the question of the interests of ratepayers. My submission is that we are here advancing the interests of some ratepayers who have never been considered for many years and who are not being considered under the provisions of this Bill. And they are surely entitled to as much consideration as any European ratepayer or any other ratepayer in this country.

Now, the Minister said that he sympathized with me and I thought that when he made this sympathetic statement that he was probably going to suggest some sort of amendment or compromise between what I have suggested and what has been provided in the Bill. But the Minister goes on to talk of sympathy and ends up by saying, "We must abide by what the Mombasa Municipal Board as it is now constituted is saying." Now, what is that Municipal

Board. Is not the whole purpose of the exercise in which we are involved now the consideration of changes within this Municipal Board that will make it more representative of all the communities in Mombasa. To come and tell us that the Board as now constituted is capable and competent of advancing the interests of all the communities is in my view to suggest that nothing is wrong and therefore the amendment should not have been brought at all. I cannot understand, Mr. Chairman, why the Minister should have accepted, for example, an increase in African representation on the Municipal Board from two to four instead of from two to eight as in the case of the Europeans and as it is in the case of the Asians. I still cannot understand, Mr. Chairman, why the Minister finds it impossible to give some direction to this Municipal Board or Council when in fact the Minister in the case of Eldoret took some very decisive steps; in the case of the African District Council of Kisumu he did not hesitate to suspend the Council, he did not hesitate to use his powers then but he comes here pleading as though he had no powers at all, as though he could do nothing at all about this situation.

Now, Sir, the Nominated Member at the back, Captain Hamley, refers to the need for experience and implies that an African on the Municipal Council would not be capable of exercising any amount of responsibility. He implies that to elect more than four members of the Municipal Council would result in chaos. Now, Mr. Chairman, with due respect, and I do not want to bring out old stories, but let us consider the situation with regard to the Nairobi City Council. Was that African inexperience or was it entirely a European dominated City Council? And if Nairobi can make mistakes and go on with it, why not try some, experiment in Mombasa? If Nairobi can make mistakes what is there to suggest that Africans may not have a similar freedom to make some mistakes?

Mr. Chairman, you are not going to get Africans gaining experience by preventing them from being elected on the councils. The only way they are going to get the experience of which Captain Hamley is talking is by being on the council and I submit to Captain Hamley

[Mr. Mboya]

and to the Government that probably a major advance would have been achieved by some more realistic degree of representation for all the communities on the Municipal Council. I sympathize with this statement that we do not want to bring in drastic changes that might upset everything. But may I suggest that the change which is now proposed under the proposed amendment is no change at all. It does not advance the position of the Africans vis-à-vis the necessity for them to have effective representation on the council.

Now, Mr. Chairman, I did say in the main speech and I say again that this is the opportunity for the New Kenya Group of which the Minister is a chairman and all these people who profess non-racialism and liberalism to come out now and do something about implementing these pious ideas.

MR. KIHAMISI: Mr. Chairman, Sir I find the arguments advanced by the Nominated Member, Captain Hamley, cannot be allowed to pass unanswered. He has implied that the Africans in Mombasa are not ratepayers which is quite wrong. Most of the rates at Mombasa are—

CAPT. HAMLEY: On a point of order, Mr. Chairman, he is putting words into my mouth that were never there. I said nothing about the Africans at Mombasa being, or not being, ratepayers.

MR. KIHAMISI: I am sorry, Mr. Chairman, but it has been suggested that the Africans should not have equal representation because they do not subscribe fully to the rates of the Municipality. This argument falls to pieces. Whoever has suggested that argument I do not remember but I remember having heard it in this House this afternoon. Most of the rates, I must say, in Mombasa are derived directly or indirectly from Africans who occupy the greatest part of the district and of the Municipality and whenever the local authority increases the rates that is passed over to the Africans who own houses there and that is also passed over to the tenants who are mostly Africans. That argument, I maintain, does not hold any water. For that reason, Sir, I strongly support that they deserve and they ought to get equal representation.

The argument to the effect that Africans are still untrained for working in the local authorities also cannot be substantiated because we have several African councillors contributing and doing work voluntarily for the local authorities for very many years since they have been given the opportunity to go into local authorities and I am quite sure, Mr. Chairman, that we can obtain the services or even more quite capable and effective representatives of the Africans in the local authorities.

MR. HARRISON: Mr. Chairman, this constitution has been agreed by consent with the people of Mombasa. In the circumstances, have we any authority to dictate or impose anything outside their wishes?

MR. ARAP MOI: Mr. Chairman, since the Mombasa constitution was discussed by the Mombasa people it seems to me that some Members in this Chamber or in this House have committed themselves and they find it difficult to agree to any amendment at all. Why did they not see that the Africans in Mombasa are well represented since they are having numerous problems and here the hon. Member, Captain Hamley, suggests that the Mombasa people are peaceful and discuss their matters peacefully. If that is the case, Mr. Chairman, I think that this matter should be decided properly and I think it would be fair and proper that another amendment be put.

MR. NOALA: Mr. Chairman, I would like to challenge the question of consent of the people. When this idea was first moved I remember I was a member for Mombasa and I urged the Minister and expressed the great dissatisfaction of the Africans on the four members only. And I do not remember anywhere where the Africans gave any consent to that representation at all. I submit, Sir, that an effective representation of eight should be seriously considered by this House for Mombasa. It has already been pointed out by my friend, the Member for Mombasa Area, that he also approached the Minister and I think the Nominated Member, Mr. Harrison, when he says that it was by the consent of the people probably he does not mean Africans as we know the Africans are not satisfied with the membership.

[Mr. Ngala]

The second point was raised by the Nominated Member that implied that Africans are not capable of doing the work of the Municipal Council. Now, I think that this is a very wrong and unfair comment because so far the Municipality has had two nominated members and I was one of them some time ago, together with the hon. Member for Mombasa Area. Now, as far as I remember we did our best and comparing what the nominated African members have done in the council they are all on the same level with any other member of any other race on the council. I think that it is quite unfair to bring that comment here and an increase would not do any harm and, in fact, would be much appreciated by the council. Therefore, I hope the Minister will see the need for stepping up the membership of the Municipal Council.

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havlock): Mr. Chairman, I do really think we must get our minds clear. Sir, we are discussing an amendment which says that there shall be 32 councillors elected, having deleted "3 Europeans, 8 Asians, 4 Africans, 4 Arab members and a Iwili"—having deleted all that we then say instead "32 councillors to be elected" and hon. Members opposite are basing—first the hon. Member for Nairobi Area—their arguments on racialism which, of course, is not affected in this amendment because there is no racial allocation at all in the amendment and other hon. Members are now talking about 8/8/8 and increased African representation. I think that we are not at all clear what we are getting at, Sir, and I would like to make this point. This proves that it is not possible in this Committee of this Council to handle matters of this delicacy which take weeks and months and indeed years to negotiate with the people concerned and I still say, Sir, and reiterate that the real people who are concerned are the people in Mombasa and this is a local authority we are discussing and not a political body that we are discussing and I highly deprecate any idea that this Council should try to force on to the ratepayers of Mombasa a quick amendment of this sort.

Now, Sir, even if a further amendment comes forward to the effect that there should be 8/8/8 as suggested by the hon. Member for Mombasa Area when he first spoke is, as he said, a matter for very serious consideration. And then the hon. Member for Nairobi Area and other hon. Members opposite have stated a number of things which I cannot accept. For instance, Sir, they are criticizing and saying that the Africans under the suggested amendment and under the suggested Bill do not have proper or satisfactory representation. Well, obviously everybody wants more; but surely it is a very great improvement to move from two nominated members to four elected members, and at the Second Reading when the hon. Member for Mombasa Area brought this matter up I gave him an assurance that there would certainly be one nominated member under (b) and that there might well be more African nominated members. There is also written in that there will be an African Alderman and, in other words, the representation of the African community on the Mombasa Municipal Council under this amendment will be increased from two to at least six and probably seven.

Now, Sir, I do feel that hon. Members opposite must recognize that the development of local government is a matter, as I have said before, continually being reorganized and developed and even this constitution—let us recognize it—will not stand for a very long time. It is dynamic; it is always going on. And therefore, Sir, first of all I would like to know what is in the minds of hon. Members opposite, whether an increase in racial allocations or an increase in African representation under a racial allocation or is it just 32 members of any race to be elected by anybody or everybody. I would like to hear that, Sir, for interest's sake, but whatever it is I am afraid I cannot accept it.

MR. ALEXANDER: Mr. Chairman, I will try to make clear to the Minister at least what is on my mind. It is this that before the wishes of the Member for Nairobi Area can be accepted it is necessary that two very important and fundamental conditions are fulfilled. Firstly, that all—and I repeat, all—the people should have and should be seen to have qualities of discernment, of reasoning, of objective criticism and of judgment; secondly, that there must be

[Mr. Alexander]

obvious evidence of the absence of racialism, and it is because the hon. Member for Nairobi Area persists in his emphasis day by day on extreme racialism that he in fact delays moves to non-racial thinking. It is only when we can be sure that everybody is capable of voting outside and over and beyond their race that we can genuinely embark upon the wishes that he expresses, wishes that one day no doubt will be achieved. Because of this, Mr. Chairman, the wise Mombasa has decided to adopt this particular constitution for the moment. We are continually reminded of the wisdom of Mombasa and it is a very wise old town. In fact, it is the one part of this country that has many hundreds of years of history to it and it is because of that and because of what they have learned over all these hundreds of years that they realize that this for the moment is a wise sort of constitution for themselves.

Mr. Chairman, I beg to oppose the amendment.

MR. MBOYA: Mr. Chairman, the last speaker certainly accused me considerably. He speaks of "until we". Now the question is who is the "we"? The dominant Europeans at the top deciding our fate without our right to say something about it; 4,000 Europeans in Mombasa having eight members as against four for the 90,000 Africans and the 90,000 Africans being told "until we" decide whether you are capable or experienced you may not rise to the same level as ourselves. And he calls that non-racialism. The hon. Member for Nairobi is talking a lot of racialism.

Now, Mr. Chairman, I do not know half the time what the Member for Nairobi North talks about.

SIR CHARLES MARKHAM: Quite right, Nor do we.

MR. MBOYA: Well, it is very difficult, Mr. Speaker, when these two Members speak at the back to distinguish which of them is speaking because they speak the same language.

MR. ALEXANDER: Not with the same voice!

MR. MBOYA: Now, Mr. Chairman, I think the Minister is taking advantage of an unfortunate position, taking advantage of the Standing Orders which make

it impossible for us, at this stage, on this side, to move a further amendment if we wish to do so. The Minister has emphasized and, I think, referred to the references by some Members on this side that they would accept 8/8/8 as the basis of representation.

Now, the Minister is quite free, Mr. Chairman, if he feels as we do that this situation in Mombasa ought to be reconsidered further to move an amendment in the House and to ask that the numbers or the figures already provided in the amendment should be reviewed. There is nothing at all preventing the Minister from doing so. He says he will find it difficult to accept these suggestions because Mombasa have instructed him to accept only this, the figure appearing in the Bill. As I have already pointed out, on a number of occasions the Minister has seen fit to take certain action much more extreme than suggesting to the Mombasa Municipal Board to accept eight Africans instead of four. This does not mean that any of the African Elected Members on this side are going from our expressed desire to see a completely non-racial municipal council created in Mombasa. We are only—I think these of us who have expressed this point on this side—are only telling the Minister that he is rather getting behind the times as far as the political development of this country is concerned that they are prepared to bear with him only for a little while. Now, Sir, there is nothing at all preventing the Minister from doing that and I would suggest that instead of the Government coming here and telling us that this is very short notice that the Government have had some time to consider this matter—at least the time between the original debate and the Committee stage today—and in that period, however short it may be, the Minister was in a position to consult with Mombasa as to what possible amendments the Government may make. I think it is a bit unfair if not dangerous that the Minister should completely ignore the expressed views of the majority of the population in Mombasa.

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havlock): I do think, Sir, that the references to stringent action that I have taken on other occasions with regard to

the Minister for Local Government, Health and Town Planning (Mr. Havlock): I do think, Sir, that the references to stringent action that I have taken on other occasions with regard to

[The Minister for Local Government, Health and Town Planning] other local authorities has nothing to do with this argument at all. I have taken action in those areas because I could see that the local authorities themselves were not acting in a proper manner and the public were starting to suffer from their lack of action or their wrong action. And I do not see that it has anything to do with the negotiation of a new constitution for a local authority.

Now, Sir, the hon. Member for Nairobi Area has quoted a number of figures with regard to the population of Mombasa. There has been some discussion in this Committee regarding the matter of ratepayers and who do pay rates and so on. I must admit, of course, that just because a man pays a rate directly, he is not the only man—the only type of person—contributing to the economy or wealth of the local authority. That is quite established and is reflected indeed in the Rules which have been published lately on registration. And, Sir, it is all very well to talk about airy figures: 4,000 Europeans, 90,000 Africans. I would be very interested to see what the result of registration will be when for the first time the Africans of Mombasa will be on a registration roll and will be able to elect their representatives.

I want also, Sir, to repeat at the risk of boring the House what I have said previously, that the increased African representation is going to be very considerable indeed in Mombasa: as I said, from two, anyway to six and possibly to seven. Now, Sir, the recommendation that has now been put to me by the hon. Member for Nairobi Area is that African representation on the Mombasa Municipal Council should be eight, presumably elected members. In fact, that is, that the four (4) under (d) of the clause we are discussing should be changed to eight. Well, as I pointed out, that will not lead to such a very large increase because that would be eight Africans elected and one alderman which makes nine. I have already said that it is probable seven will be the result.

Now, Sir, I do not consider it is right at this stage, in particular with this constitution which was discussed not only with the board members but with all sorts of representative committees and

representatives of Mombasa over a long period. And, indeed, I would say that this agreed constitution does represent the majority view of the more permanent citizens of Mombasa.

I will say this though, Sir, that the representations that have been brought forward to me today by the hon. African Elected Members that there should be eight African elected members instead of four I will certainly discuss and refer back to Mombasa to see if I can get agreement on that stage. Further, I will say this though, Sir, that I want this constitution to go through because otherwise everything is going to fall to the ground and nothing will work. But as I said again, these constitutions of local authorities are always developing and I will put that suggestion forward when the time comes. As the hon. Member knows, I will not be here for a month or two anyway. But anyway, otherwise, Sir, I am afraid that I cannot accept the amendment.

GROUP CAPT. BRIGGS: Mr. Chairman, Sir, I beg to move that the question be now put.

THE CHAIRMAN (Mr. Conroy): We have a little difficulty in Committee because the technical rule is that the Mover be called upon to reply. The Mover of this amendment is Mr. Mboya.

MR. MBOYA: Mr. Chairman, I only want to say that I am encouraged by the Minister's last remarks and I hope that this will come to follow in not too long a time.

Question that the words proposed to be left out be left put and negated.

MR. MBOYA withdrew the first amendment.

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havlock): Mr. Chairman, I beg to move that by renumbering the said new section 10 as subsection (1) of such section and by adding thereto a new subsection as follows:—

(2) Where, under section 12 of this Ordinance, the Governor declares the number of elected members to be returned for each ward of the Municipality of Mombasa, he may in the case of the members to be elected under paragraph (c) of subsection (1)

[The Minister for Local Government, Health and Town Planning] of this section, in addition declare that the members to be elected for particular wards shall be or shall not be of the Muslim faith.

This, Sir, is to implement an agreement that has been reached between the two Asian communities with regard to their representation on a ward basis. I beg to move.

Question proposed.

The question was put and carried.

Clause 4 as amended agreed to. Clauses 5 and 6 agreed to.

#### Clause 7

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havlock): Mr. Chairman, I beg to move that clause 7 be amended by leaving out subsection (1) of the new section 15A thereby introduced and inserting in its place a new subsection as follows:—

(1) (a) The Minister may, at the request of some of the inhabitants of any area within a municipality, appoint a public officer to enquire into and report to him upon the advisability of establishing a parish council under the provisions of this section.

(b) Notice of such appointment shall be published in the Gazette and in a newspaper circulating in the area, and any person interested in the matters to be enquired into, including the Municipal Council or Municipal Board, shall be entitled to be heard by the officer, and the officer shall be given all the necessary facilities by the Municipal Council or Municipal Boards for making the enquiry.

(c) Where the public officer so appointed recommends the establishment of a parish council, the Minister may, by notice in the Gazette, after consultation with the Municipal Council or Municipal Board, establish a parish council in the area, and shall in the notice define the area for which the parish council is established and specify the constitution of the parish council, and in particular the number of councillors who shall be members, and provide for the election of a chair-

man and deputy chairman of such council:

Provided that the Minister may, if he thinks fit adopt boundaries for the area other than those recommended in the report.

Sir, this arises out of discussions and complaints that have been made with regard to the establishment of parish councils and the whole object of this amendment is to allow for a close study of the conditions pertaining in any particular area or district or municipality so that a practical scheme may be drawn up and in fact it can be definitely assured that a parish council is both desirable and workable in the area concerned. It does give, as hon. Members will see, the public and the municipal board of council an opportunity to put forward all objections and suggestions and I do hope therefore that this will meet some of the doubts that were expressed at the Second Reading of this Bill.

I beg to move.

Question proposed.

MR. HOLLISTER: Mr. Chairman, Sir, this particular group of sections which are dealt with by clause 7 of the Bill is, I am led to understand, strongly opposed by the Association of Municipalities on the grounds that the creation of parish councils in compact municipal areas would in effect be a retrograde step and against the public interest and also could lead and probably certainly would lead to the disintegration of municipal government.

To take an example, in the United Kingdom, parishes—parish councils—existed long before such bodies as county, urban, rural district or municipal councils. The parishes in those days in effect formed the nucleus of these various statutory bodies when they came into being. Under this Bill the process is, in effect, being reversed, in that we have municipalities—we wish now to create parish councils—and the municipalities which are compact bodies at the moment which are broken up into smaller units. The advantages of the present system is a unified administration in municipal areas, and I think are pretty self-evident. Only one machine—one administrative machine—is necessary, but under a

(Mr. Hollister)—system of parish councils you would have everything being duplicated, and, I think, a very important point arises, that you would have a lot of wasteful expenditure. I understand from what was said in the debate on the Second Reading of the Bill, Mr. Chairman, and from what I have heard today, that most of this Bill, or the greater part of it, deals with Mombasa and Mombasa only, and I would have thought, with respect, that possibly this could have been drafted in such a way that it applied to Mombasa and Mombasa alone. But if this suggestion is unacceptable, as I understand it has been, then I would like to propose amendments to the hon. Minister's amendments. I would propose that immediately after the word "of" in the first line of section 1 (a) "The Minister may at the request of," there are inserted the words "at least 90 per cent," and that the word "inhabitants" in line two be deleted and replaced by the word "ratepayers", so that it would read: "The Minister may at the request of at least 90 per cent of the ratepayers of any area, etc." And I would further propose, Mr. Chairman, an amendment to the hon. Minister's amendment, that the words "persons interested" in line two of subsection (b) be replaced again by the word "ratepayers".

I suggest these amendments to the amendments, Sir, because before the Minister takes any action I think he should be absolutely satisfied and convinced in his own mind that there is a substantial volume—a great number—of really interested persons, namely the ratepayers, who are in favour of the change, and that the expressions or phrases used, "persons interested", and "inhabitants" are really too indefinite to determine something as great as this before the Minister decides to set up a parish council.

There is another aspect to be looked at here, and that is the real meaning of the word "may". In certain circumstances it can be interpreted as "shall", and this is not so important in subsection 1 (a) because the effect is that the Minister may at the request of etc., etc., but I think that it should be followed in the second line by the words "at his discretion". I am referring now, Sir, to the hon. Minister's amendment (c) where

"the public are so appointed, etc., etc.", and I am proposing that after the word "Minister" in the second line there be interposed the words "at his sole discretion".

Further, it may be realized, or it must be realized, that when considering the Minister's amended section (c), if he comes to the conclusion that a parish council in any particular area is desirable, he must not only consult with the municipal council or the board concerned, but he should really and really must obtain their agreement with regard to the establishment of a parish council. I do not consider that it is sufficient that he merely consults with them, and it must be remembered that the parish council when established will be spending money, and administering services, probably even using staff which belong to, or are normally administered by, the municipal council or board, and I therefore move a further amendment to the amendment, that after the word "consultation" in line three of subsection (c) there is inserted, or there are inserted, the words "and agreement", so that it will read: "After consultation and agreement with the municipal council." Sir, that is as far as the hon. Minister has gone with his amendments, and I beg to move the amendments to the amendments which I have suggested.

THE CHAIRMAN (Mr. Conroy): Under the proviso to Standing Order 90 (2), you must deliver a written copy of your amendment to the amendments to me.

MR. HOLLISTER: I have not a copy of the amendments to the amendments, Sir. I will write them up, Sir.

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): Sir, the first amendment suggested by the hon. Member for Nairobi North—"The Minister may at the request of at least 90 per cent of some of the inhabitants"—he is going to change to "ratepayers" later, but "some of the inhabitants of any area of the municipality". Well, Sir, first of all it is going to be very difficult to define 90 per cent. Who is going to really know if 90 per cent of the ratepayers of the area have really given their views, and secondly, 90 per cent is much too high a figure. Thirdly, why ratepayers? Because, who are ratepayers? Ratepayers

[The Minister for Local Government, Health and Town Planning] are only property owners, and they are certainly not the only people who are concerned in the establishment and the proper administration of local government. The hon. Member's amendment is "ratepayers". If the hon. Member is going to consider registered voters, that is a very different thing indeed, because after all, as I say, a ratepayer is a man who owns a very large block of offices and pays the rates on it, but he collects those rates from the people to whom he rents the offices, who would, of course, have no concern. Unless the hon. Member is thinking again on this I could not possibly accept that amendment.

Then, if I can go on, Sir, to little (c). This is really a legal argument with regard to the "sole discretion" and "may". I would suggest possibly the better wording would be "The Minister in his discretion may by notice in the Gazette" or "in his sole discretion"—I do not really mind very much. It is really a legal argument, and I am prepared to accept the advice of the lawyers and the learned Members of this House on this matter. When it goes on "after consultation and agreement with the municipal council or municipal board"—and "agreement" is the suggested insertion—it is a very difficult one, this, because if, after all—if a number of people in an area wish to set up perhaps some form of autonomy over the area to maintain the standards of the area, to spend a bit more money on the area, then if it has got to be with the agreement of the municipal board or municipal council, it is very unlikely that agreement will ever be reached or given because that particular area will be represented by one or two councillors, but certainly a minority of the board or council. I believe, therefore, that some rather disinterested authority should make the final decision; and I can think of no one better than the Minister to do so after hearing both sides; all the objections and all the different recommendations. I therefore would not like to accept that last amendment.

MR. ALEXANDER: Mr. Chairman, I would like to propose a further amendment, and I am sure that after I have spoken my friend the Acting Member

for Nairobi North will, no doubt, accept what I wish to have inserted. It is that the word "some" be substituted by the words "75 per cent"—that replaces the "90 per cent" of the Acting Member for Nairobi North, and that the word "inhabitants" be substituted by the words "registered voters", so that that clause 1 little (c) will read: "The Minister at the request of 75 per cent of the registered voters."

Now, Mr. Chairman, I know that in speaking to the Minister in the way that I am going to, I am speaking to someone who fully appreciates the reasoning behind the arguments. He knows better than anybody how it is always the vociferous few that "wag the big majority dog".

AN HON. MEMBER: Hear, hear.

MR. ALEXANDER: I am delighted, Mr. Chairman, to hear that from the Government side because so often they remind us of this very point. If the Minister wants to make the dog noises I will bring my big bitch in here to deal with him. Throughout British legislation this figure of 75 per cent is repeated time and time again when a voice—the responsible and reasoned voice of the people—needs to be heard. In fact, it is quite common, of course, throughout company legislation, and I do put it to the Minister, in all seriousness, that if he leaves this word "some" in here he will have situations where just a mere handful of people making a tremendous noise will appear to be creating an "impression". It is perfectly reasonable to insist that 75 per cent of the registered voters should band together and express their wishes. Any lesser number, I believe, will only lead to these difficulties which I have expressed, and do ask the Minister to accept this. And similarly, in the case of the words "registered voters" he knows better than anybody how aggravating it is to have people who do not bother to get on the voters' rolls telling us what to do. If they cannot be bothered to get on the voters' roll, then quite frankly they should not be entitled to have a voice. And again, I would ask the Minister to accept this amendment. When he has accepted both of these, Mr. Chairman, I have a further amendment to the second line of this particular clause to move. I beg to move.

THE CHAIRMAN (Mr. Conroy): I cannot propose the question until I have a copy of the amendments.

MR. ALEXANDER: No. Later on then.

THE CHAIRMAN (Mr. Conroy): I would draw the attention of hon. Members to Standing Order 90 (2), the proviso which provides that where an amendment has been moved to any part of the Bill, in accordance with the provisions of this paragraph, any Member may move an amendment to that amendment on delivering to the Chairman the terms of his amendment in writing. It is quite impossible to deal with somewhat complicated matters unless they are handed in writing to the Chairman.

MR. USHER: Mr. Chairman, on a point of order is the amendment and the first amendment moved by my hon. and learned friend now to be debated, or do we wait?

THE CHAIRMAN (Mr. Conroy): They have never been proposed yet because I have not got a copy of them.

MR. HOLLISTER, it may help if we deal with the first amendment first, to which Mr. Alexander has moved a further amendment. That is to say your proposed amendment to clause 7—the amendment to the new section 15A (1) (a). Do you wish to pursue your amendment, or do you accept Mr. Alexander's?

MR. HOLLISTER: No, I will accept the 75 per cent.

THE CHAIRMAN (Mr. Conroy): And the inhabitants and registered voters amendment?

MR. HOLLISTER: I will also accept registered voters.

THE CHAIRMAN (Mr. Conroy): Technically speaking, your amendment in the possession of the Committee is in the wish of the Committee that Mr. Hollister should be allowed to withdraw?

I will propose Mr. Alexander's amendment, and that will simplify dealing with the new section 15A (1) (a).

#### Question proposed.

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): Sir, I understand what the hon. Member for Nairobi West is getting at, and I have some sympathy for him in this. I am prepared to accept the words "registered voters" instead of

"inhabitants". I think that really brings it back to the people who are particularly concerned, but I do not like, firstly, laying down any particular proportion, because it would be very difficult to find out whether that proportion has been met or not, and secondly, it is going to be extremely difficult to find out where the registered voters actually live. The hon. Member knows in municipalities—the hon. Member may be puzzled—but he, I think, is thinking of the City Council of Nairobi, which is divided up into a number of wards, but the great number of municipal councils and boards are not divided into a number of wards, and the registered voter merely puts down, I presume, his plot number and so on. But it is not going to be very easy to find out, I think, exactly where the man lives, and, of course, also if the voters list has not been brought up to date fairly lately a number will be found to have left and be elsewhere as we know happens so often. I would wonder if the hon. Member would accept a slightly wider interpretation of what he wants, and the sort of wording I would suggest would be as follows: "The Minister may, if he is satisfied that a substantial number of the registered voters residing in any area, so desire"—then go on, "with-in a municipality appoint, etc., etc." I think that would give slightly more elasticity and make it more practical to apply what I know is what he requires—that is if the Minister is satisfied that there is a proper and a real desire in the area, not just a lot of people making a big noise about nothing.

THE CHAIRMAN (Mr. Conroy): Are you proposing that as an amendment to the amendment to the amendment?

MR. ALEXANDER: Mr. Chairman, I suggest the Minister has defeated his own argument. He is worried that there may be municipalities in which there is no ward system or clearly defined areas of representation. That being so, Mr. Chairman, why use the word "area" in here at all, because as it stands that difficulty is presented to him. What does he mean by the word "area" here? In a moment the amendment I have just given you—the second amendment—will seek to define this a little bit more clearly, but if he is to rely merely on assessing what is a substantial number, I consider again, Mr. Chairman, he will be in the

[Mr. Alexander] same difficulty which I have tried to describe—that is the vociferous few making considerable noise and persuading the Minister that because of their great amount of noise they are substantial. Well, I can give the Minister two examples in recent years in Nairobi. There was a tremendous outcry from a small number of people, but it was very loud about building a City Hall, Well, what happened, of course, Mr. Chairman, they built it, and today the complaint is that we did not build it big enough or soon enough, but if the Minister had been listening he would have undoubtedly come to the conclusion that a substantial number of people did not want the City Hall. In the same way a lot of clatter went on about flats in Muthaiga. There are flats in Muthaiga today, Mr. Chairman, but the Minister, if he had listened to all the trouble that went on at the time, would have been quite convinced that a substantial number of people in Muthaiga did not want flats.

Now I do suggest to the Minister that this amendment that I have proposed is perfectly reasonable, and I will go on to tell him now what my amendment is to be, so that he is clear in his mind what I am getting at, and it is that after the word "area" in the second line there should be included these words—

THE CHAIRMAN (Mr. Conroy): Is this (b) or (a)?

MR. ALEXANDER: I am not, at this moment, Mr. Chairman—I am merely telling the Minister so that it will help him to clarify my argument—after the word "area" I am going to propose in a moment that the words "containing at least one thousand registered voters". Here, again, I believe I seek to define—or I seek to define—more precisely what we mean by this word "area". I am just reminding him of this at this stage, and I do put it to him, and I believe that if other Members who have had experience of municipal work will speak, that they will agree that my amendment is perfectly reasonable and perfectly practicable, and I urge upon him to accept it.

THE CHAIRMAN (Mr. Conroy): I think Mr. Havelock will confine yourself to the amendments of which notice has

been given, so that we can dispose of those before moving on to the second amendment of which Mr. Alexander has spoken but which has not yet been proposed."

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): Yes, Sir, I think the hon. Member for Nairobi West, Sir, is making very heavy weather of this indeed. Although you have just ruled that I should confine myself to the amendment in front of us, Sir, it is quite obvious that the explanation the hon. Member has just given in regard to the further amendment he may wish to move that what he is really out to do is to sabotage this particular plan in the best way possible for him, and I believe I have gone a very long way indeed to meet the hon. Member. Now may I also say that this is only the first stage. The Commissioner is then appointed and the Commissioner then enquires into the details, and surely he with all the people who are interested giving evidence in front of him will be able to weigh up without being influenced by a noisy minority exactly what the actual opinions and requirements and desires of the people in the area are. When we get down to the 75 per cent of this or that or the other what it really amounts to is a referendum, and I believe that that is quite unnecessary at this stage and very difficult to organize. I therefore, Sir, do consider that the amendments I have put forward goes a long way to meet the hon. Member and I beg to oppose.

MR. USHER: Mr. Chairman, Sir, I believe the trouble is that this is not desired particularly by any of the country except Mombasa, and, Sir, I think that if we apply ourselves to the matter, some time, either at today or tomorrow's sitting we may be able to get a separation which will leave Mombasa in. In the meantime I should be very much embarrassed by anything in the nature of the suggestion of the hon. Member for Nairobi West, whether it is 75 per cent or whatever percentage it might be, because it is perfectly obvious to me that you can always find 25 per cent of muggumps if you look for them. Also, and I think the Minister has made this clear, an assessment of the situation—the feelings in the area concerned, would be the concern of the public

[Mr. Usher] officer whom he appoints, provided that he was satisfied that a substantial number of people as he has said in this amendment desires to have the parish council. The last thing I want to do, Sir, is to embarrass my hon. friends from up-country, as I hope they do not desire, and I am sure they do not desire, to embarrass me. In regard to ratepayers, I thoroughly agree with what has been said on the ministerial side. Who is a ratepayer? That we do not know. We want to know for various reasons, but it is impossible to determine, and I am afraid that word will have to be out.

MR. HASBANI: The amendment which has been moved, Sir, and another amendment about the 75 per cent. I personally feel that the reply given by the Minister will be suitable for the problem that has been raised. If a substantial number of registered voters and people in that area demand it, I think that would be one of the proofs that that particular area needs a parish council. The second question, which was perturbing the Municipal Council of Mombasa, and there was a great deal of opposition to it, was that the municipal council should also be satisfied that there are a substantial number of people in the area demanding the parish council. They do not want anything to be done over their heads. After all, they are the city fathers controlling the particular area, and carrying local government very satisfactorily. If a substantial number of members do want a parish council, I would like to see that they do satisfy the municipal fathers who are responsible and also be satisfactory to those who are opposing the parish councils.

MR. ALEXANDER: Mr. Chairman, the Member for Mombasa made precisely the point that I sought to make the other day—but the Minister rejected it—namely, that this Bill was designed for Mombasa, but whilst they were doing it they found it convenient to tag on a variety of odd legislation, and it has made—in fact—the Bill cumbersome and somewhat difficult to understand. In fact this very debate, I think, is proving that. The very fact that the Minister himself has had to introduce a mass of amendments shows that the Bill is ill prepared. I would gladly accept the suggestion of the Member for Mombasa if, in fact,

one could, with some assurance, feel that once this is passed that we could go back to it. The experience is, Mr. Chairman, that once legislation is on the statute book it is very, very difficult to undo it, and that is the whole purpose of this Committee Stage of a Bill. It is to enable us—to give us the opportunity—to bring in amendments that fulfil our wishes and the wishes of the people—the majority—the substantial amount of people—that we speak for. And I do urge again upon the Minister to give way on this one. I do not mind if he wants to bring the 75 per cent. down to 50 per cent., but I can assure him that his inference that I am seeking to destroy this particular section is quite wrong. All I am trying to do, Mr. Chairman, is to help him. Although he has said, I realize, that a Commissioner will set about discovering what are the wishes of the people, but why, Mr. Chairman, bother a Commissioner, when we know—when it is obvious—that the noisy voice that we hear is not the wish of the people? Why do we have to put in a Commissioner merely to tell us that all the noise we have heard is not representative? Surely we would be wiser to make provision in this Bill to make certain that the Minister before he embarks upon these provisions that the majority of the people genuinely and sincerely want this particular innovation, and I am quite prepared to go down to 50 per cent., if necessary, and I will not accept it from him that it is difficult to establish in any area who are 50 per cent or 75 per cent of registered voters. If, in fact, it was true, it would mean a complete mockery of our local government election system.

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): Mr. Chairman, the hon. Member for Nairobi West, as usual, has brought out some good points and made some very irrelevant statements at the same time. First of all he has accused the Government of this Bill being ill-prepared because the Government and myself after discussion with hon. Members opposite and others are prepared to go a long way to meet them. Every time the Government is sympathetic and wishes to meet the wishes of the hon. Members opposite, then we are accused of the Bill having been ill-prepared. That

[The Minister for Local Government, Health and Town Planning] is, of course, a very nice way of going about things.

Secondly, if only Mombasa is interested in this Bill and interested in parish councils, then what is the fear the hon. Member has? Only Mombasa will ask for them, if that is the case, so why waste the time of the House?

Thirdly, if the Minister is going to run into the danger of being led astray by the noisy majority, is not that argument one he has put himself—that if the Minister had listened to the noisy minority about the Town Hall there would not have been a Town Hall, etc.? The Minister after all will not always be a rather silly-ass like me, Sir. I hope there will be an improvement later.

The other point, if I may say so, and he has brought this out himself. There was a large noise, a very considerable noise, about building Embakasi village by the County Council a year or two ago, but the Minister resisted and it has been a very great success. I honestly suggest that the hon. Member is making "very heavy weather" of this. As I said before, this is merely to establish whether there should be a Commission of Enquiry. Now may I say here, Sir, that there is really no way—and I am speaking from real experience of this—there is no way of finding out the wishes of the people on these sort of matters except by electing a representative, or by an enquiry. A referendum is quite hopeless. People will say "yes" and "no" to a referendum without really knowing what the whole issues are. Therefore it is much, much better that there should be a Commission of Enquiry who can enquire into all the details and put all the points of view and listen to all the points of view. As I said before, this is only the start of it, whether there should be a Commission or not. Therefore I suggest that the phrase I have used, Sir, the Minister does satisfy himself as best he is able that a substantial majority is good enough for this first step.

Sir, again I beg to move.

MR. MBOYA: Mr. Chairman, I find myself in sympathy with both the Government and the Association of Municipalities because for one thing—as I said in the original debate, I see some

merit in having parish councils when urban areas grow and become large enough for that type of council to be developed. On the other hand, I can also see the arguments of the Association of Municipalities and the fear of possibly some of their powers and authority being undermined by the creation of the parish councils, and I wish to make the point, I made in the original debate, namely, that we should not fail to recognize that as it is at the present moment in most of the urban areas the arrangement of residences is such that mostly we have a predominance of one racial group in one area, and that the establishment of parish councils may result in a situation where you are merely creating racial councils within the urban areas. Our fear is that this may lead to a situation where the African demand for effective representation on the parish body may not be listened to on the ground that some parish council is being established for them. We would like to have an assurance from the Government that at no stage would this be used as an excuse to refuse to listen to the Africans' demand for an effective representation on the parish councils. We should like to have an assurance on the municipal councils—like to have an assurance that, in fact, the system used—and here I have some sympathy with the suggestion of having appointed a Commissioner to investigate before the parish council is established—that on no account will these councils be established unless due consideration has been given to the people who will be affected most in the areas in which they are to be established. Otherwise, I find myself in a great deal of difficulty to decide whether to completely support the Government before we have those assurances, or whether I should support the municipalities, because again I am not completely sure that their motives are entirely free of some ulterior intentions of keeping away the Africans and other people from participating effectively in the affairs of the local government.

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): Mr. Chairman, I am sorry that the hon. Member for the Nairobi Area was not present when I replied to the Second Reading and if he would

(The Minister for Local Government, Health and Town Planning) study HASSARD he would find an assurance given at that time; but I would like to make it quite clear that so far as representation is concerned for the Africans on municipal boards, the establishment of the parish councils will not affect that issue and I would certainly be open to representations.

MR. HASSAN: Mr. Chairman, I would like to point out to the Minister that parish councils may be needed in Mombasa. We have two areas surrounding Mombasa. One is the Likoni area and the other is the Kisauni area. There are very large acreages of land in those areas which have certain legal restrictions of segregation, and they are only open to certain members of the community. Other communities are denied the privilege of owning any land in those areas. In fact in each area there is probably something from 500 to 1,000 acres. If any registered voter in those areas asked for the parish council then I hope the Minister will see that those people must relinquish the restricted covenant in the leases so that something like 500 to 1,000 acres, only open to members of one community does not enjoy a parish council there.

THE CHAIRMAN (Mr. Conroy): Order, order! I do not think that this is relevant to this Bill. It does not arise on this clause and it is not within the power of the Minister. (Please sit down, Mr. Hassan.) It does not arise because the Minister does not have the power to make orders to take away anyone's rights under leases.

CAPT. HAMLEY: I do not want to labour this much but I want to strengthen the Minister's argument and point out what I think is a fallacy in the argument of the hon. Member for Nairobi West. I had considerable suspicions about this clause myself when I first read the Bill, but I am more or less satisfied with the solution that the Minister has put forward, that is that he will appoint a Commissioner to enquire into requests for parish councils. I think that the fallacy of the statement made by the hon. Member for Nairobi West is that he regards this Commissioner purely as a returning officer to gauge the number and the volume of the requests. That is not so. The Minister is going to appoint

a Commissioner not only to judge the volume of the demand but also to judge the reason for the demand; and surely that should satisfy the hon. Member that here is somebody appointed to go into the whole thing: the volume of the demand, the reasons for the demand, the sensibility and practicability of the demand, and all the circumstances surrounding it, and I should have thought that that was safeguarded enough.

MR. USHER: Mr. Chairman, Sir, I am wondering if it is not possible to solve the difficulty as between the views of some of those who live in the Mombasa Area and up-country if the Minister could consider giving an assurance that under clause (1) he would advise the Governor to apply clause 7 to Mombasa only for the present and, so far as the rest of the country is concerned not, for three, four, or five years.

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): I am afraid that that is not possible under clause 1. The Governor can bring in a portion of this Bill at different dates but not applying it to different areas. In any case, I do not think much of the suggestion, and I cannot see anything to object to in the present situation. If, as hon. Members have said, people up-country do not want parish councils then they will not ask for them. So what is worrying the hon. Members?

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.

THE CHAIRMAN (Mr. Conroy): Mr. Alexander has moved an amendment to delete "a substantial number".

MR. ALEXANDER: I have left the amendment with you. Actually it was before this latest amendment which was moved and it concerns the word "area".

THE CHAIRMAN (Mr. Conroy): No, it is the first amendment, which was to delete the word "some" in the first line of section 15A (1) (a) and substitute therefor the words "seventy-five per cent". That has now been overtaken by a further amendment which has deleted the word "some" and substituted therefor "a substantial number". I would propose to

(The Chairman) put your amendment with your consent in the following way: that section 15A (1) (a), as amended, be further amended by deleting the words "a substantial number" in the first line and substituting therefor the words "seventy-five per cent".

Question that the words proposed to be left out be left out put and negatived.

THE CHAIRMAN (Mr. Conroy): Then, therefore, the second part of the question falls away.

There is a second amendment which has been moved by Mr. Alexander, which is that the proposed section 15A (1) (a) be amended by adding in the second line after the word "area" the words "containing at least 1,000 registered voters".

I have proposed that question already, but I have not put it yet.

MR. ALEXANDER: Sir, I gave notice of this when I was speaking before. If I may now speak to it, Sir, here again, Mr. Chairman, the attempt in this amendment is to establish that a reasonable number of people require this particular innovation. The word "area" if it is left as it is could mean any little pocket of a municipality. I have a vision of the Muthaiga Country Club or the Kaloleni Social Club deciding that perhaps it would be pleasant if their little area were to be made into a parish and they have to the autonomy over their own affairs. That may be carrying it to the ridiculous but I use that merely to illustrate that sort of small pockets who are obsessed most of the time with their own importance, and obsessed with the idea that they are different from everybody else, will press to be made into a parish, and I believe, Mr. Chairman, it would be sensible and eliminate a great deal of the possible frivolous applications if we defined "area" as a particular part of a municipality that contains at least 1,000 registered voters. Now, Sir, 1,000 is not a great deal and perhaps does not cover a great area, but it does at least show that the people who are applying are serious to the extent that there are 1,000 of them in the area.

I beg to move.

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): I do not think that this achieves what the hon. Member, who is obviously a perfectionist, wishes to achieve. An area with 1,000 voters in one place may be a quarter of a square mile or a few hundred square yards, or in some other places it may be literally some square miles. I do not think this meets what the hon. Member is trying to achieve, I believe, Sir, that the hon. Member would be very well advised at this stage, and in the future, to leave these matters to the good sense of the Minister.

Question that the words proposed to be left out be left out put and negatived.

MR. HOLLISTER: The next amendment I would put forward is in 2 (b), to replace the words "persons interested" with the word "ratepayers".

Question proposed.

THE CHAIRMAN (Mr. Conroy): It should be the deletion of the word "person" should it not, Mr. Hollister, and the substitution therefor of the word "ratepayer"?

MR. HOLLISTER: Yes, I apologize.

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): Mr. Chairman, if I could speak to that, there again I do not believe that there are only ratepayers who are interested in this. The people residing in the area are justifiably interested and also, of course, people residing outside the area, those people who wish to object to the establishment of a parish council within one small area of the municipality, whether they live in that area or not. Surely, Sir, they should be able to object if they so wish. I can see, really, no particular merit in this suggestion, Sir, and I am sure the wider the net is cast the better, and therefore "interested persons" will give very much more opportunity for all objections and all recommendations and ideas to be put to the Commissioner. I am sure in order to achieve what hon. Members opposite seem to wish to achieve the word "persons" should be left as it is.

MR. HOLLISTER: Sir, I have a lot of agreement with what the hon. Minister has said in this particular case and would, with permission, be prepared to

[Mr. Hollister] withdraw. But, before doing so, I would like to ask him why in his original drafting there was a subtle difference drawn between subparagraph (a) of the section, where he refers to "inhabitants" and subparagraph (b) which we are now dealing with and where it refers to "persons" interested.

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): For the reason which I have just given, that it was deliberately made wider so that all persons interested, from wherever they may be, could make representations. It was deliberately made wide. It is not only confined to the inhabitants of the area.

*Amendment, by leave, withdrawn.*

THE CHAIRMAN (Mr. Conroy): I believe, Mr. Hollister, that you have an amendment to clause 15A (1) (c).

MR. HOLLISTER: That is correct, Sir; that after the word "may" in the second line are inserted the words "at his sole discretion" and that the word "consultation" in line 3 are inserted the words "and agreement".

*Question proposed.*

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): I think I can accept the first part but not the second.

THE CHAIRMAN (Mr. Conroy): I will propose them as one, but put them as two. That is the simplest way. Then we can vote on them as two but discuss them as one.

MR. WEBB: Mr. Havelock has said that his voice is getting hoarse, Mr. Chairman, and he has put me in to bat at the first end of this particular over; and that is to say that he is prepared to accept "the Minister may, in his discretion, by notice in the Gazette".

MR. HOLLISTER: Actually, Sir, my amendment was, "at his sole discretion".

THE CHAIRMAN (Mr. Conroy): The words in the written notice of amendment before me are "at his discretion". Is the Minister prepared to accept that?

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

THE CHAIRMAN (Mr. Conroy): That means that the second part of the proposed question is that there be inserted the words "and agreement".

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): Mr. Chairman, this is a very much more important matter. "At his discretion" is really clarifying what the word "may" means. That is why I left it to the hon. and learned Member. This means, of course, that no parish council can be set up without the agreement of the municipal council. That is what it amounts to. As I said earlier on, if we have gone through all the hoops suggested in these amendments here, and it is shown, after enquires and so on, that a parish council is desirable and practicable then I do not see why the municipal council should have the last word in the last stage because, as I said before, the area concerned, their representatives on the municipal council will obviously be in a very small minority and I do not think it is right that the municipal council should just bulldoze over the desires of the people concerned, over the recommendations of the Commissioner, having investigated, that they should be allowed to say "no" after all that. So, Sir, I am afraid that I cannot accept that amendment and, as I have said, I am sure that the last word must remain with the Minister. In fact, Sir, a number of African Elected Members made this point in the Second Reading, and I think it was the hon. Member for the Nairobi Area who brought the matter up, and I gave him an assurance that the Minister would have the last word. His point, if I remember correctly, was that it was no use with the present composition, racial composition, of local authorities to give this power to the municipal councils, and that indeed is the general opinion of a number of hon. Members who represent communities in their turn are represented in a minority way at the moment in the local authorities, and those hon. Members look to the Government and to the Minister to keep the balance and to ensure that the minority communities, that is the communities represented by a minority of members in local authorities, are not overridden and unfairly dealt with.

Therefore, Sir, I believe that we must

[The Minister for Local Government, Health and Town Planning] maintain and retain the ultimate decision of the Minister after, as I have said all these hoops have been gone through.

I therefore regret that I cannot accept the amendment.

MR. HOLLISTER: Mr. Chairman, I agree, again with a lot of what the hon. Minister has said, but surely we must look to the position where, if the Minister within the terms of the Ordinance decides that there is going to be a parish council, without the agreement of the municipal council, then the position after that decision has been made and the parish council has been set up would be extremely difficult, because if the municipal council had argued that they did not want any parish councils and the parish councils had been imposed upon them, when the very essence of the whole scheme is that the parish council should work under and indeed form part of and have delegated powers from the municipal council, how the smooth working would be established when a parish council was literally imposed on a municipal council without its agreement, Sir, frankly I fail to see.

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): It is quite obvious in practice. If there is a very strong body of opinion in the municipal council against the establishment of parish councils then it would be very difficult for the Minister to impose on the other hand, as so often happens in these local authorities, opinion is very often very divided indeed, and indeed that opinion quite often sways. I would remind hon. Members of the case—especially the hon. Member for Mombasa—where the Municipal Board of Mombasa reversed a decision, on a matter which has been raised in this House often enough. Therefore I can still believe that the Minister must maintain the final discretion. Surely it is quite illogical to move an amendment on the one hand that the Minister may at his sole discretion, or whatever the words are now, do so and so, and then take away his discretion by saying that the municipal council must agree. I should have thought that the hon. and learned Member would have known that.

Question, that the words "at his discretion" proposed to be inserted be inserted, put and carried.

Question that the words "and agreement" proposed to be inserted be inserted put and negatived.

THE CHAIRMAN (Mr. Conroy): Mr. Havelock, I think you are moving an amendment to section 15C. I think Mr. Hollister has given notice of an amendment to the new section 15a which comes before 15c.

MR. HOLLISTER: Sir, I beg to move that clause 7 of the Bill be amended by leaving out subsections (1) and (2) of the new section 15a and inserting in their place a new subsection as follows: "A parish council shall have such powers and duties as a municipal council or municipal board within whose area the parish council is established may confer upon it being powers and duties which the municipal council or municipal board itself for the time being possesses."

Now, Sir, in support of that amendment, I maintain it is essential that where a parish council is established, it should work in the closest harmony with what is, in effect, its parent body, and it would be contrary to this section if the Minister was vested with powers to impose specific functions on the parish council irrespective of whether the parent body was in agreement with such a transfer or not. The municipal council or board would have automatically the most intimate knowledge of its own administration and functions in those particular areas that it has heretofore carried on before the establishment of the parish council, and they would also know the advantages which might accrue from this devolution of power, or delegation, and on these grounds I think it would be injudicious for the Minister to have any overriding powers of direction as set out in the Bill.

As some evidence of the Minister's intention, or I think his evident intention, to supervise meticulously the affairs of the parish councils, I would like to call attention to the subsection (3) of 15a, where staffing and emoluments can only be fixed with the Minister's concurrence, but as evidence of the Minister's sympathy with this view he has tabled an amendment under which the estimates of the parish council are to be the subject of approval by the municipal council.



[Mr. Hollister] in other words, this points to his agreement with this close liaison between the municipal council and the parish council; that is his amendment (c) creating the new subsection (4) (a) starting "Every parish council shall, . . ."

It is on these grounds, therefore, Mr. Chairman—and I do not wish to take up the time of the Committee too long on these—that I propose my amendment.

*Question proposed.*

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): Mr. Chairman, this again is an attempt to sabotage parish councils completely. It merely means, of course, that the parish council would be a body dependent on the municipal council. It would be just a reflection of the municipal council of the area concerned. It would have no autonomy at all, and I think that the whole principle of the suggestion for autonomy would be undermined.

Again, I cannot see that there is any real danger in 15a as it stands. First of all, of course, the municipal council may delegate to a parish council to carry out functions which the municipal council thinks the parish council could do better than themselves. Secondly the Minister himself can confer powers on the parish council so that they have some standing and some solid basis for their own individuality and independence. But on the other hand, with regard to the estimates which the hon. Member mentioned, I see quite clearly that there cannot be too much fragmentation of financial responsibility and therefore the estimates are, as the hon. Member has mentioned, to be under an amendment—subject to the approval of the municipal council. But I would remind the hon. Member that there is to be an appeal to the Minister should the municipal council not approve the estimates as submitted by the parish council.

I would not mind particularly accepting an amendment to that same effect in this section—that in the first place the powers of the parish council would be those conferred upon it by the municipal council, but there ought to be an appeal to the Minister ultimately; but I do not honestly think we can work out an amendment to that effect at the moment. I see no difficulty here. No Minister can

really be too definite and too hard-hearted or use the bludgeon too heavily if he is going to try and make the pattern of parish councils and municipal councils work. But I do honestly believe that the whole spirit of the parish council will be denied to it if it knows that only the powers which the municipal council confers on it can be conferred on it. That is, I believe, undermining the whole idea and I am afraid I would not be able to accept that amendment.

Question that those subsections proposed to be deleted be deleted, put and negatived.

THE CHAIRMAN (Mr. Conroy): Now, Mr. Hollister, you have given notice of a further amendment to section 15b (3).

MR. HOLLISTER: As this amendment is so closely connected with the last amendment that has just been dealt with, in order to save time of the Committee, with permission I will withdraw it.

*Amendment, by leave, withdrawn.*

THE CHAIRMAN (Mr. Conroy): I think Mr. Havelock's is the next amendment—15c.

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): I beg to move that clause 7 of the Bill be amended by leaving out subsections (1) and (2) of the new section 15c thereby introduced and inserting in their place two new subsections as follows:—

"(1) A parish council shall have power to require a municipal council or municipal board to levy over and above any rate levied by the municipal council or municipal board on land within the municipality generally such rate on land within the area of the jurisdiction of the parish council as the parish council shall determine to defray the parish council's expenses of exercising any powers and duties delegated to or conferred or imposed on it under this Ordinance, in accordance with its approved estimates of expenditure.

Provided that such rate shall not, without the consent of the Governor in Council of Ministers, be such as to produce more than one-quarter of the proceeds of the rate levied in the same financial year by the municipal council or municipal board.

[The Minister for Local Government, Health and Town Planning]

(2) The municipal council or municipal board shall be entitled to retain out of the proceeds of a rate levied under subsection (1) of this section the cost of levying and collecting the rate and such proportion of the general administrative expenses of the municipal council or municipal board as are attributable to the services administered by the parish council and shall pay the balance thereof to the parish council.

Sir, I explained generally what the intention was in the Second Reading on this particular matter, and I think that one of the most important aspects of this, of course, is the limit of the rate which can be levied by a parish council, a limit of 25 per cent of the total rate. I think, Sir, that this amendment should meet a number of objections and doubts that some hon. Members have expressed, that the parish council will become so powerful that the whole area will be so fragmented that the municipal council itself will not be able to work.

I beg to move.

*Question proposed.*

THE CHAIRMAN (Mr. Conroy): Members will note that the Motion of amendment has been moved in a slightly different form from that contained in the notice of proposed amendment sent round with the Order Paper.

MR. USHER: Mr. Chairman, Sir, I must apologize to the Minister for proposing an amendment to this. I think he is aware of the circumstances and the terms of the amendment were in the hands of his Ministry this morning. The points were conveyed to the Ministry—this was most courteous to me in the matter—by a letter which only arrived in Nairobi this morning.

I am instructed, Sir, that the proposals which they are making now will link the services with a percentage of the rate and not with a percentage of the money to be collected. My instructions are that that is what was originally intended when the financial provisions in regard to parishes were discussed, and that the amendment that I now have will make that clearer than the amendment on the Order Paper as modified in the way you have just read out, Sir.

The amendment is this, and it does, I may say, make the matter rather clearer—anyhow, to myself. It would be in these terms—by the way, Sir, this does not relate to the proviso at all:—

"(1) A parish council shall have the power to require a municipal council or municipal board to levy over and above any rate levied by the municipal council or municipal board on the area of the parish in respect of services administered by the municipal council or board, such rate as the parish council shall determine and then we go on to the proviso:

(2) The municipal council or municipal board shall be entitled to retain out of the proceeds of a rate levied under subsection (1) of this section the cost of levying and collecting the rate and such proportion of the rate levied as is levied in respect of the services administered by the municipal council and shall pay the balance thereof to the parish council."

Sir, I have nothing further to say on this, and I beg to move.

THE CHAIRMAN (Mr. Conroy): These proposed new subsection (1) and (2) are to be inserted in place of the subsections (1) and (2) proposed by the Minister in his amendment?

MR. USHER: If you please, Sir, The proviso would remain the same.

*Question proposed.*

MR. TYSON: It does seem to me the most satisfactory way of dealing with this matter. What chance have we, at this short notice, of giving any consideration whatsoever to what has been proposed. I do suggest this type of amendment should have been embodied in the Ordinance when the Bill was drafted, and if necessary the Bill should have been put off to the next session. To come along at this stage with an amendment on the lines read out is most unsatisfactory.

MR. ALEXANDER: We asked on this side, that this should go to select committee, and this is just the very sort of reason why it should have done, and it is very encouraging to us to hear someone of the Government side agreeing with us.

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): It is most unfortunate that hon. Members opposite did not wake up about eight weeks ago when the Bill was first being published. I cannot accept this accusation at all.

I would also like to say that I thoroughly agree with and support the hon. Nominated Member, Mr. Tyson. I could not possibly accept an amendment of this sort without considerable study, and I do not really feel that the amendment that has been put forward by me just now will in any way upset the hon. Member's town clerk or treasurer. We will certainly study this particular thing, it is here anything of great import in it, but I am afraid there is no time to do it at the moment and I could not accept it offhand.

MR. USHER: Mr. Chairman, Sir, this is a most unsatisfactory situation. We are now told that the Committee has not got time to go conscientiously into the matters which are before it, I do not know whether it is possible for you, Sir, to arrange that consideration of this particular section should be deferred in any manner, but if that is possible I would ask that that it should be done so as to give the Minister—to whom I have already tendered my apologies in the matter—time to consider the true meaning of it.

THE CHAIRMAN (Mr. Conroy): It is not within my capacity or jurisdiction to defer consideration of the clause or of any clauses or of the whole Bill. The Bill was published on 9th June. The amendment moved by the Minister was annexed to last Thursday's Order Paper. An amendment has just been moved by the hon. Member for Mombasa and he is within his rights in moving it. Standing Orders specifically provide that he may move, without notice, an amendment to an amendment proposed by another Member where notice has been given of the first amendment. Any question of deferment is a matter for this Committee, not for me.

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): Mr. Chairman, may I say on first study of this amendment—I accept the hon. Member for Mombasa's apologies—but it is difficult to study these de-

tailed matters in a few minutes. On first study of this amendment I am advised that it is probably just a matter of clarification of the amendment which I moved and which is now before the House, and that there is no grave matter of principle involved, and I would suggest that the House accept the amendment I have proposed and if, on further study, we find that there is something of very real grave import in this amendment of the hon. Member for Mombasa, then I can assure him I will bring before the House another amendment in the next session.

THE CHAIRMAN (Mr. Conroy): Another method would be in the Report stage—the report from this Committee—if it were desired to recommit the Bill to the Committee for further consideration of this clause, which would give some slight chance of consideration to the proposed amendment.

MR. USHER: I would not care to go as far as that, but the Minister has met me very fairly in all the circumstances and I would ask him if he would make quite clear that he regards the amendment which I have proposed now as truly clarifying the subject-matter of the amendment which he has proposed—if he does so, Sir, then I am happy.

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): I cannot accept that I cannot give that assurance. I will say that I am certain that it is the intention of the hon. Member for Mombasa that his amendment should be a more clear expression of the will and the intent of the Bill than the amendment which I have moved. I am sure that is the intention of the hon. Member. Whether it is so I cannot say until I have had time to study it.

MR. ALEXANDER: Mr. Chairman, I think it is right that I should put on record from this side of the House an answer to what the Minister said. As a matter of fact the amendments which he is now proposing were put in our hands late on Thursday. What the Member for Mombasa has just done is propose an amendment to the amendment of the Minister. We had no opportunity before last Thursday afternoon to consider this, and it is quite unreasonable of him to accuse us of not having

[Mr. Alexander] moved by the Minister, which is that to deal with this matter sooner. As he knows, this is a Bill that concerns all the municipalities all over Kenya and nobody knows better than him, how difficult it is to co-ordinate the views of all the municipalities. He has had considerable trouble. This Bill is the result of many hours of painstaking labour on his part, and I would have thought that he would have appreciated the position we are also in.

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): Sir, I do not think we should continue with a dogfight about the time that people have had to consider these matters. It is all a matter of degree, and as the hon. Member knows, I have entered into considerable discussions, even after the Bill had been published, and that is one of the reasons for this amendment. All I can say is that there is a certain difference between the time between now and, say, Thursday—I think it was Wednesday evening when the amendments were first published—the Thursday's Order Paper—and the few minutes one has had in this House to consider the amendment by the hon. Member for Mombasa. But I am glad that the hon. Member for Mombasa has accepted my suggestion, which I understand he has.

THE CHAIRMAN (Mr. Conroy): I will put the question. I will put it the form that subsections (1) and (2) be left out of section 15c and then I will put the question that Mr. Usher's proposed amendment be inserted in place of subsections left out. His amendment is the latest amendment and must therefore be taken first. If his amendment is carried, that is the end of the matter. If his amendment is lost, I will then put the Minister's original amendment, and if that is carried it will take the place of section 15c (1) and (2) in the Bill as published.

Question that subsections (1) and (2) be left out of section 15c was put and carried.

Question that the two new subsections as proposed by Mr. Usher to be inserted be inserted was put and negatived.

THE CHAIRMAN (Mr. Conroy): I will now put the original amendment as

moved by the Minister, which is that in place of the subsections (1) and (2) left out, the subsections (1) and (2) as proposed by the Minister this afternoon be inserted.

The question that the subsections to be inserted be inserted was put and carried.

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): I beg to move that clause 7 of the Bill be amended by leaving out subsection (4) of the new section 15c thereby introduced and inserting in place thereof a new subsection as follows:—

(4) (a) Every parish council shall, in every year, prepare detailed estimates of its revenue and expenditure for the year commencing on the first day of January then next ensuing, and may, in any year, prepare supplementary estimates of its revenue and expenditure during such year and shall forward them, approved by the resolution of the parish council, to the municipal council or municipal board having jurisdiction in the area for which the parish council is established: and—

(i) where the estimates are forwarded to a municipal council, that council shall approve them, or shall approve them subject to such alterations as the parish council may agree, or shall reject them;

Provided that the parish council, after any rejection, may submit fresh estimates to the municipal council or may appeal to the Minister, who may approve the estimates or may approve them subject to modification or may dismiss the appeal;

(ii) where the estimates are forwarded to a municipal board, that board shall forward them to the Minister in the same manner as is prescribed for its own estimates by section 104 of this Ordinance, together with its recommendations thereon, and the Minister may approve the estimates, or may approve them subject to modification, or may reject them.

[The Minister for Local Government, Health and Town Planning]

(b) A parish council shall not, except with the prior approval of the municipal council in the case of a parish council established for an area under the jurisdiction of a municipal council, or of the Minister in the case of a parish council established for an area under the jurisdiction of a municipal board, incur any expenditure which has not been included in the approved estimates or approved supplementary estimates of the parish council, and shall not, except with the like approval, make reallocations of expenditure in the approved estimates or approved supplementary estimates which would increase or decrease any one item of the approved expenditure by more than £50.

Provided that a parish council may appeal against any refusal of approval by a municipal board under this paragraph to the Minister whose decision shall be final."

Sir, this amendment is again a result of discussion and it will be seen that in fact the estimates of the parish council are subject to approval by a municipal council with only appeal to the Minister. Originally in the Bill it was that they were subject to be approved by the Minister. Those of a parish under a municipal board are subject to the Minister because the municipal board's own estimates are subject to the approval of the Minister anyway. That is one of the main differences between a municipal board and a municipal council, which I think is logical, and (b), Sir, sets out the general provisions of expenditure, which I think is in line with general local government practice.

I beg to move.

*Question proposed.*

MR. HOLLISTER: Mr. Chairman, I only wish to point out one small thing. In the proviso to the last clause (b), I think "municipal board" should read "municipal council".

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): Yes, I thank the hon. Member for pointing out the typographical error.

MR. TYSON: Mr. Chairman, I want to repeat my protest. Bringing along an amendment of this character, without our having any notice whatever about it is most unreasonable.

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): I do not know if the hon. Member realizes this is an amendment which has been on the Order Paper since Thursday.

THE CHAIRMAN (Mr. Conroy): Order, order. I will put the question, which is that section 7 be further amended by leaving out subsection (4) from the new section 15C.

The question that the subsection proposed to be deleted be deleted was put and carried.

THE CHAIRMAN (Mr. Conroy): I will now put the question that in place of subsection (4) left out, be inserted the subsection of which notice has been given, subject to a correction of the typographical error in the penultimate line of the proviso.

The question that the subsection proposed to be inserted be inserted was put and carried.

MR. HOLLISTER: Sir, I beg to propose that clause 7 of the Bill be amended by the addition at the end thereof of a new section to be numbered 15D reading as follows:—

"15D. No property, movable or immovable, vested in or belonging to a municipal council or municipal board or to which such council or board was entitled at the date of the establishment of the parish council and no assets or claims to which such municipal council or board was entitled at such date shall be vested in or belong to such parish council."

The reason, Sir, for introducing this amendment that I have just proposed is that I feel with respect to what the Minister said earlier this afternoon, certain parts of the Bill have been prepared rather hastily and without full consideration of their effect. These clauses, I think, have been considered since about 9th June, but it must be remembered that municipalities have in the past borrowed considerable sums of money on the security of their fixed assets, and also, of course, of their rates and

[Mr. Hollister]

revenues, but as the Bill is drafted it appears to be likely that certain assets of a municipal board or council could be transferred to a parish council together with the functions that are being delegated to it. The amendment that I have proposed is to ensure that no asset shall be transferred to a parish council which belongs to a municipal council or board and forms part of the security for money borrowed by that municipal board or council.

I beg to move.

*Question proposed.*

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): Sir, as I understand this, the amendment means that no property, movable or immovable—in fact, I have just been told that it means the municipal council could not even hand over a box of pencils to the parish council—but that no property at all can be transferred even if the municipal council wishes to transfer it. That is how I understand the amendment to read. It seems to me rather ridiculous. There may well be cases where a municipal council or board would like to transfer certain assets to the parish council and, as far as I can see, this would prevent them from doing so.

MR. HOLLISTER: Sir, would the hon. Minister be prepared to accept the amendment if it was brought into line with what he has just suggested, that if it is the desire of the municipal board or council to transfer anything then they may do so.

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): I think that what the hon. Member is getting at is that he's afraid—and I hope he will correct me if I am wrong—that the Minister, in some way or other, might force a municipal council or board to transfer certain assets to a parish council. I can see no provision that that can be done. Otherwise, I cannot really see the reason for this amendment at all. There is no need for the municipal council, surely, to transfer property movable or immovable to a parish council and if they feel that their loans are secured on this property, movable or immovable, then there is no

need for them to transfer them and thus reduce the security of their loans.

MR. HOLLISTER: Sir, I was under the impression from the general tenor of the Bill that when a parish council was established it would be given certain functions, probably matters of social welfare or something of that nature or indeed education as the Bill stands at the moment and that some of the fixed assets of the municipal board or council related to those functions—education, schools; social welfare, canteens and things of that nature—which would be wished to be transferred to the parish council. And if that were so and those very assets had been used already and formed part of a security for a loan taken by a municipal council they could not do it because it would be depreciating the value of the assets which were the security for the loan.

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): Surely, Sir, if this parish asset is a security for a loan the loan would be transferred to the parish council as well. I cannot understand this argument.

MR. ALEXANDER: Mr. Chairman, when the City of London lent money to the City Council of Nairobi it was on the security of all its assets and on its rates and the reason for this amendment is to remove any fear or doubts in the minds of those who lend to local authorities that their security will in any way be dissipated. Already we have taken away in this Bill already approved a great part of that security, that is, the capacity of the ratepayers to rate themselves. We already have agreed that a parish council shall be entitled to levy rates of their own. That means to say that the main municipal body will only be able to levy a lesser amount of rates. That straightaway deprives the main body of some security and will be taken account of, let us have no illusions about this, it will be taken account of by those in the City of London to whom we look for our borrowing. Now, this particular amendment deals with assets and I believe that if it is approved and I urge upon the Minister to approve it although I appreciate the other day when I raised this matter I was talking rubbish; nevertheless, Mr. Chairman, I assure him that it is not rubbish and I do urge him



MR. DECHAARD: The point is also carried by subsection (1).

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): It is not necessary, but if the hon. Member wishes to press it I think I may be prepared to accept, but I think it is rather a waste of time.

MR. HOLLISTER: If the general legal opinion of the other side of the House is that the greater includes the less, then I am quite prepared to accept it.

*Amendment, by leave, withdrawn.*

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

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

Clause 10, as amended, agreed to.

Clause 11 agreed to.

#### Clause 12

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): Mr. Chairman, I beg to move that clause 12 of the Bill be amended by adding at the end of subsection (3) "he may, in the case of a particular municipality, refer the matter to a panel constituted by him for that municipality, which panel may either uphold the council's decision or direct the council to nominate or re-nominate such person, and the decision of the Minister, or of the panel, as the case may be, shall be final". Sir, this is a matter with regard to entering names on approved lists of tenderers, and there is, as hon. Members will see, an appeal at the moment to the Minister which people who are not included on the lists can take advantage of. It has been suggested to me, Sir, and I think it is a good idea which I have accepted, that anyway, so far as some municipalities are concerned, it might be better if the appeal rested with a panel, and that is the reason for this amendment.

I beg to move.

*Question proposed.*

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

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): Mr. Chairman, I beg to move that clause 12 be amended by deleting the words "but shall not be made public until, after the contract

has been placed" which appear in the first proviso to subsection (4) of the said new section 55. The full proviso reads, Sir, "Provided that all tenders received shall be recorded in the minutes of the council but shall not be made public until after the contract has been placed."

It really is rather illogical. The minutes of the council are made public anyway, and I think it is desirable that the tenders should be made public, and it has been suggested that it is desirable that those words should be deleted.

I beg to move.

*Question proposed.*

Mrs. HUGHES: Mr. Chairman, does that mean that tenders will be opened in public or that they will not be made public? Will they be opened in public? Will the public be allowed to be at the opening of the tenders?

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): So far as I can remember, Sir, that is at the discretion of the local authority.

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

Mrs. HUGHES: Mr. Chairman, I beg to move that clause 12 be amended by deleting the second Proviso in subsection (4) and the newly proposed section 55 of the principal Ordinance, and in doing so, Sir, the reason is that in subsection (3) such very wide scope is given in compiling the lists of the nominated tenderers and that they are not selected lists in the generally accepted term in the trade. I do think that subsection (4) does become redundant and indeed unwise in this particular case.

*Question proposed.*

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): It must be, after the tenders have all been sorted out into selected lists and approved lists, a pretty important reason why the lowest tender should not be accepted. There are occasions, I have no doubt, when it might be necessary not to accept the lowest tender, but all the same all that the Council has got to do is to seek the Minister's approval, and I do not really think that that is going to be of any great difficulty to them because those occasions will not be very many.

Mrs. HUGHES: The nominated lists might be very large lists indeed, and there might be very good reasons for not accepting the lowest tender.

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): The principle of the selective tender lists is to ensure that people who go on that list are all qualified and capable of handling the sort of contracts that may be put out. Therefore, Sir, it is very unlikely indeed once he is on the selective lists, there will be a very strong reason for the lowest tender not being accepted. There may be occasions when the reverse would happen, to give an example, when two large contracts are being put out to tender, and one man tendered for both contracts and his was the lowest. It may very well be said then that he could not cope with two large contracts, although he has every right of putting his tenders in for both in order to get one or the other. In that sort of case it might well be that the local authority concerned would have to accept other than the lowest tender. I do not think it is any great inconvenience to them to seek the approval of the Minister in those cases which will seldom arise.

MR. HOLLISTER: This is a case where obtaining the Minister's approval might overrun the tender period. It could happen. I am not saying that it would happen in very many cases, but it could. Also, Sir, there is a very important question which I would put to the Minister, and that is that price is not always the most important part of the tender. Time is very important and you could have a tender which is lowest in price but which is so far away out in time of completion that it could not possibly be accepted wisely by the council. There is also the case which has already been mentioned where you could have a contractor who is on the selective list and who is awarded a contract for £100,000. He has one contract and then he tenders for another one, which he could not possibly be given. The Minister has already dealt with that one. The contractor's financial standing could also change between the time of tendering and letting the contract, and to have to obtain the approval of the Minister for not giving it to that particular con-

tractor could be very cumbersome, and you could not just cancel him from the list of nominated contractors because under the previous provisions of the Bill he has a right of appeal and various other things which would again cause a lot of delay. But I think the question of completion date is very important when considering tenders and this clause should not be tied just to the lowest tender price.

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): I think that the hon. Member has made some quite good points on this. However, we have got to be very careful. As the hon. Member knows the introduction of selective tender lists is not a very popular move, Sir, amongst the commercial community, and it is therefore, I think, right and proper that they should have some protection over and above that local authority and that they should expect, if they are on such qualified lists that the lowest tender should be accepted. I do recognize, however, the point which the hon. Member has made with regard to time. It is a very important factor.

May I, Sir, say this, that if it is found that application to the Minister is really a burden on the local authorities I give an assurance to this House that I will move an amendment. But I do not think it will be.

Question that the words proposed to be deleted be deleted put and negatived.

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): Mr. Chairman, I beg to move that clause 12 of the Bill be amended by adding at the end of subsection (6) of the new section 55 the words "or to purchases of particular goods" by a particular council where the Minister has directed that the provisions of this section shall not apply to purchases of those goods by that council".

Sir, if I may just read section 6, to give the sense of this amendment, it is as follows: "Nothing in this section shall apply to any contract to purchase by the council of any produce or other perishable goods bought in a public market or to any purchase entered into by the council as the result of bidding at a public auction..." and then the

[The Minister for Local Government, Health and Town Planning] amendment is added on to that, Sir. The reason for this, Sir, that it has been found that there are a number of requirements of the local authority which it is ridiculous to go out to tender for, in that there may well be requirements which are manufactured by only one firm in any case; there is really no competition for it; and for instance, I may give another example, if, for instance, a local authority has introduced a certain type of water-meter in its water system it is certainly not going to change that type of water-meter, and, therefore, it is quite ridiculous for them to have to go out to tender for the second batch of water-meters for an extension to their water reticulation system. That is the sort of occasion when the Minister might well be able, and should, in order to save time and trouble, exempt the council concerned with regard to the provisions of the remainder of this clause.

I beg to move.

*Question proposed.*

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

Clause 12, as amended, agreed to.

THE ACTING CHIEF SECRETARY (Mr. Griffith-Jones): Mr. Chairman, Sir, I have consulted with Members of the opposite side and it is my intention to move that the Committee do now report progress on this Bill and ask leave to sit again, and when the Council resumes I shall move the suspension of Standing Orders to the extent necessary to enable us to complete consideration of this Bill in Committee today. That will leave tomorrow afternoon for the debate on the item on the Order Paper to succeed this item of business and will avoid, therefore, the upsetting of Members' arrangements which they will have made, no doubt, for tomorrow morning and Thursday. It is not the intention that the Council Members should meet either tomorrow morning or on Thursday.

Before I do that, Sir, in the limbo of the early afternoon we did complete consideration of another Bill, and I think, before I move that we report progress on this Bill, that I had better move the formal Motion on that other Bill.

I accordingly beg to move, Sir, that the Money-lenders—(Amendment) Bill as amended, be reported to the Council. Bill to be reported, with amendments. The question was put and carried. Council resumed.

THE ACTING CHIEF SECRETARY (Mr. Griffith-Jones): Mr. Chairman, I beg to move, that the Committee do report progress on the consideration of the Municipalities (Amendment and Miscellaneous Provisions) Bill and do ask leave to sit again.

*Question proposed.*

The question was put and carried.

Council resumed.

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

#### REPORT

*The Money-lenders (Amendment) Bill.*

THE CHAIRMAN (Mr. Conroy): Mr. Speaker, Sir, I beg to report that the Committee of the whole Council has considered the Money-lenders (Amendment) Bill and made amendments thereto.

Report ordered to be considered tomorrow.

*The Municipalities (Amendment and Miscellaneous Provisions) Bill.*

THE CHAIRMAN (Mr. Conroy): Mr. Speaker, I beg to report that the Committee of the whole Council has considered some of the provisions of the Municipalities (Amendment and Miscellaneous Provisions) Bill and reports progress and seeks leave to sit again.

#### SUSPENSION OF STANDING ORDERS

THE ACTING CHIEF SECRETARY (Mr. Griffith-Jones): Mr. Speaker, the Council is enthusiastic that that permission be granted immediately and that it should proceed to the completion of its consideration of the provisions of the Municipalities (Amendment and Miscellaneous Provisions) Bill. Sir, I should just explain that I have just received a request from my hon. African friends that the debate on the Order Paper to succeed the consideration of this particular Bill in Committee, which we will be embarking on tomorrow, should be allowed two days. Sir, I feel that in view of the announcement of business

[The Acting Chief Secretary] earlier, most Members have made arrangements already which would make it very inconvenient for the House as a whole to reassemble on Thursday and I do therefore suggest, Sir, that we should embark on this debate tomorrow afternoon and that as we approach the normal time for the interruption of business, if it is the sense of this House that further time should be spent on it, with your permission, Sir, we might suspend Standing Orders and sit a bit later tomorrow in order to give the House an adequate opportunity to debate that matter.

I beg to move.

*Question proposed.*

The question that the Standing Orders be suspended put and carried.

#### BUSINESS OF COUNCIL

MR. MPOVA: Mr. Speaker, Sir, I just wanted to comment on the Acting Chief Secretary's statement about the debate on Holo Camp. We feel very strongly that this debate deserves more than one afternoon tomorrow. We also feel that it is not enough to extend the sitting tomorrow evening for an hour or less for this debate. I would like to draw the attention of the House, Sir, to the fact that for several weeks or even two months now the African Members have had to be patient and await the results of the Disciplinary Committee at the request of Mr. Speaker. In the meantime there have been debates in Britain and other places over the Holo Camp incident. I think, Sir, that this House is entitled to as much attention on this particular question.

I appreciate the Chief Secretary's statement about Members having made arrangements for Thursday as a result of the announcement previously of the business of the House but, Sir, I would very humbly suggest that the Holo Camp incident, particularly with regard to the responsibility of the Members to this House and to the country is much more important than any arrangement that any individual Members of this House may have made. Much as we would like to have accepted the arrangement about the inconvenience this may cause I think the calling of the country and the responsibility of the Members is such that we

should accept this position and extend the debate for another afternoon.

Lastly, Sir, I want to impress upon the House that this is not a Private Members' Motion. It is a group Motion and in the circumstances rates normally with Government business in the Council. My suggestion is that if we had Government business continuing for the next two days we might be sitting for the next two days without considering particularly the convenience of the Members. I humbly submit to the Government that they might reconsider the position they have taken and allow the Council to have a debate on the Holo situation for Wednesday and Thursday afternoon.

MR. NAZARETH: Mr. Speaker, I would like to support the Member for Nairobi Area. It was expected when this matter was discussed and it was arranged and proposed that the Council to rise tomorrow that we should have the whole of today or at least a large proportion of today and the whole of tomorrow for the debate. The result of the prolonged discussion on the Municipalities Bill has been that the whole of today has been lost and in effect we shall have only tomorrow and such extension of time as the Council may be pleased to permit. I would suggest that a matter of such importance which has been delayed so long in discussion should be given two days and that was certainly the intention, that something like two days should be granted.

I would suggest to the Government that they do reconsider the matter. Any inconvenience that Members might be put to ought not to outweigh the very important considerations relating to a debate of such interest and importance or to limit it so severely as seems to be contemplated. I would therefore suggest that we should be allowed to extend the debate into the following day after tomorrow.

GROUP CAPT. BAIGIS: Mr. Speaker, Sir, in common with the hon. Member for Nairobi Area I think a number of other Members hold very strong views in regard to this Holo debate although not necessarily quite the same views. Personally, Sir, I think that the Holo matter could be dealt with by the suspension of Standing Orders provided that there is a limitation on the length of speeches so

(Group Capt. Briggs)

that everyone gets an opportunity of speaking. But I do know that a considerable number of Members—who as I say also have strong views on this matter—have made commitments for Thursday in the light of the announcements that proceedings of the Council would terminate tomorrow night.

THE ACTING CHIEF SECRETARY (Mr. Griffith-Jones): Mr. Speaker, Sir, I have, of course, no wish to attempt to limit unduly the time allotted to the Holo debate. Indeed, it is not my function to do so. I am entirely in the hands of the House. But I wonder if it would not be to the convenience of us all and still meet the views which have been expressed by my hon. friend the Member for Nairobi Area and the Member for the Western Area if we agreed that rather than return on Thursday we should sit tomorrow if such be the wish of the House tomorrow, not necessarily for only an extra hour or less but if necessary for say the two hours which this debate might have occupied today had the Municipalities Bill not proceeded so long in Committee.

I am entirely in the hands of the House but it seems to me that would probably satisfy both points of view, both the desire of my hon. friends opposite to have a full debate and at the same time the convenience of Members who by reason of the previous announcement of business have entered into commitments for the succeeding day, and I personally think that that would probably be the best compromise solution. It is, as has been pointed out on the Order Paper, intended, Mr. Speaker, that the limitation on speeches which were decided upon by the Council last month should apply in this debate; that is to say, the Mover should have half an hour to open and half an hour to reply and that one Member of the Government should have half an hour and the remainder should be limited to 15 minutes.

MR. HASSAN: Sir, I wish this point could be taken to the Sessional Committee again for discussion. When we decided on the work of the Council for these two days we thought the work in hand would be just completed, but due to the Municipalities Bill taking up the whole day today we feel that the time

we thought was enough for all the work on hand should now be extended because it looks as if we may not be able to complete the work of the Council within two days.

I hope this matter may be reconsidered and if possible it should be brought before the Sessional Committee, if necessary at the rising of the Council today.

THE ACTING CHIEF SECRETARY (Mr. Griffith-Jones): Mr. Speaker, I do feel that this is a matter for the Council as a whole. The Sessional Committee is only representative of the whole Council and I think we should decide here. As I say, I am entirely in the hands of the Council and have no wish to attempt to limit the time for this debate but since we might have expected to have had two hours today, if we were to add two hours tomorrow I should have thought that that would have met the position. But, as I said, I am entirely in the hands of the House in this matter.

MR. MUMBI: Mr. Speaker, Sir, we feel very strongly that the Holo incident is one of importance to our country and to the public interest in general and although I would not like to depart from the decisions made by the Sessional Committee on the limitation of speeches I would, Mr. Speaker, plead that more time be allowed to the speakers because we feel that this matter is very important to us all.

MR. SPEAKER, Sir, I would also like to draw the attention of the House to the fact that the debate on Holo had been allotted two days. Now that a day is lost we feel very strongly that we should be allowed Thursday afternoon as well.

THE ACTING CHIEF SECRETARY (Mr. Griffith-Jones): There is one alternative, Sir; I do not know, again it is for the House to consider whether or not it might not be more convenient if we were to sit tomorrow morning and tomorrow afternoon rather than on Thursday. That might meet most wishes in the House.

As regards the limitation of speeches, Sir, I feel that it having been decided by the House itself—not by the Sessional Committee—but by resolution of the House, I feel we should allow that to stand.

MR. ALEXANDER: Mr. Chairman, I believe the case for the debate continuing tomorrow evening has, I believe, been made by the Member for Nairobi Area. His submission was that many Members of this House are interested in this subject, and wish to speak upon it, therefore, if any arrangement is made at a time when Members are going to be absent they will automatically be deprived of taking part. If this debate starts tomorrow morning, there are already many Members of this House who are committed for tomorrow morning and will not be here. If this debate goes on on Thursday there are already many Members, we have been told, who have made arrangements and will not be here on Thursday. I think, Mr. Speaker, I do suggest, that the wishes of everybody are met by the very reasonable suggestion that we go on tomorrow night for so long as it is necessary to enable all the people who want to speak to do so.

MR. ARAP MOI: Mr. Speaker, I do not want to enter into an argument with the Member for Nairobi West, but does he suggest seriously that an African is unreasonable, unable to put forward objective criticisms and so on and so forth. If he thinks that way then his argument is invalid.

THE SPEAKER (Sir Ferdinand Cavendish-Bentick): It might prove easier to ascertain the wishes of Members if the Leader of the House were to have a discussion of representatives of groups for a few minutes outside.

THE ACTING CHIEF SECRETARY (Mr. Griffith-Jones): I think that might be a help, Sir.

THE SPEAKER (Sir Ferdinand Cavendish-Bentick): I take it that it is not necessary for me to suspend business for the purpose.

THE ACTING CHIEF SECRETARY (Mr. Griffith-Jones): If we went back to Committee I might be able to extract the representatives from the other side and "kill two birds with one stone", although that may be an unhappy metaphor.

THE SPEAKER (Sir Ferdinand Cavendish-Bentick): I think that might be the way to deal with it. The House now goes back into Committee.

MR. SPEAKER left the Chair.  
Council resumed.

### IN THE COMMITTEE

[D. W. CONROY, O.B.E., T.D., Q.C., in the Chair.]

### The Municipalities (Amendment and Miscellaneous Provisions) Bill Clause 13

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): Sir, I beg to move that clause 13 be left out of the Bill and a new clause inserted in place thereof as follows: "Section 59 of the principal Ordinance is amended—(a) by deleting the paragraph "All charges under this section shall be regulated by by-laws;" and the proviso thereto, which appear at the end thereof; (b) by adding at the end thereof two new paragraphs as follows: "(59) (a) To pay to the Government such sums of money as are from time to time incurred or expended by the Government on or in connexion with the employment of a magistrate; and (b) to erect and maintain a courthouse and employ such court staff as is required for a magistrate, where the Council has paid or agreed to pay to the Government such sums of money as are incurred or expended by the Government on or in connexion with the employment of the magistrate."; (c) by renumbering it as subsection (1) thereof; (d) by adding at the end thereof a new subsection as follows: "(2) All charges under subsection (1) of this section shall be regulated by by-laws: Provided that the Council may, with the consent of the Minister, impose by resolution of the Council, charges, in respect of any power conferred upon the Council by the said subsection; and such consent may be given in respect of specified charges, or may be given so as to allow a specified council, to impose charges in respect of the exercise of a specified power. (3) Where charges are imposed by resolution of the Council under subsection (2) of this section (a) a copy of the resolution shall be published in the Gazette; and (b) the resolution shall take effect from the date of its adoption by the Council."

Sir, there are two main matters to do with this amendment. The first one is really to allow, and to authorize, a local authority and municipal council to erect and maintain a courthouse apart from the other provisions with regard to the

[The Minister for Local Government, Health and Town Planning] magistrate, which are already in the Bill as it is before the House. This, of course, at the moment, applies only to Nairobi, where a magistrate is employed by the Nairobi City Council, but it might apply in due course to other local authorities as well. The second main point, Sir, is the matter of imposing charges by resolution of the council. At the moment by charges we mean charges for dustbins and things like that and really rather less important ones are visualized in this. I think I mentioned in the Second Reading the charges for hiring benches was one and such charges can be categorized as the Minister may allow council to impose such charges by resolution rather than by-laws. Again it is with the same object to save a lot of administrative trouble to local authorities, but it will only be those charges as approved by the Minister that may be so imposed, and even if they are, as will be seen by hon. Members, the amendment suggests a copy of the resolution to be published in the Gazette to give the public due notice, but the resolution will take effect from the date it is adopted by the council, or rather not give the public notice so much as to publicize the fact so that the public can know what is going on.

Sir, I think that covers the main points of this amendment and I beg to move.

*Question proposed.*

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

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

Clause 13, as amended, agreed to.

Clauses 14, 15, 16 and 17 agreed to.

Clauses 18 and 19 agreed to.

*Clause 20*

MR. NAZARETH: Mr. Chairman, I have waited a long time to propose this amendment, I hope that the Minister has been worn down by this time. It is said that everything comes to him who waits, and I hope that in view of the long wait, I have had the Minister will be moved to accept this amendment. I beg to propose that clause 20 be amended by adding after the words "levy a poll rate" the following words "or a graduated rate based on or related to the rates of tax

under the Personal Tax Ordinance of 1957"—no. of 1957—"or any law amending or replacing the same".

Mr. Chairman, this does not cut down the powers of the Minister in any way under the clause of the Bill as it stands. It rather enlarges the power of the Minister and enables him, if the council so requests, to levy a rate on a graduated basis. This poll rate that is provided for in this clause is for the purpose of promoting either social welfare or education, and it is for a social service. In matters of social services it is desirable that those should pay most who are most able to do so; and if this amendment were accepted it would enable the Minister to impose in suitable cases on the request of the council a graduated rate.

I realize that graduated rates can lead to difficulties, and that is why I have not related this particular proposal to the Income Tax Ordinance or anything of that nature, but under the Personal Tax Ordinance where the graduated rate rises by slabs there is no great difficulty in administration or in collecting the amount, and it would not rise in the steep way in which income tax rises. There will be no great practical difficulties if the rate is related to the Personal Tax Ordinance as there might be if it were related to the Income Tax Ordinance. I can see no practical difficulties if this were worked in conjunction or co-operation with the Inland Revenue Office.

I think similar proposals are being adopted in the case of the hospital tax and the Minister, therefore, I hope, will see his way to accepting this amendment. It certainly will be a very desirable step to take that those who are able to pay more should do so if the difficulties of administration are not too great to overcome.

I would commend this proposal to the Minister.

THE CHAIRMAN (Mr. Conroy): I will propose the amendment. I think you were right in your correction, it was enacted in 1957, it was amended in 1959.

*Question proposed.*

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): I would say that I think this is a most interesting proposition put

[The Minister for Local Government, Health and Town Planning]

up by the hon. Member for the Western Electoral Area. I am afraid at this juncture it is not possible for me to accept the suggestion because of two main reasons. First of all, administratively it will be very difficult, and it will be also difficult to actually lay down the points at which the rate would be collected. But secondly, Sir, on a rather more important matter, at the moment it is recognized, in principle, that a varying tax of this sort is not a proper form of revenue for a local authority. This is a matter that is being discussed and considered within the Government, not with any particular context of municipalities but with other local authorities, and I would ask the hon. Member if he would be good enough to wait for further consideration to be given to the whole principle before the application he has suggested can be considered. I do emphasize that I am not just trying to "brush him off"; this is a most important matter or principle with regard to revenue for local authorities, and I am certainly not in a position yet to commit myself on this.

MR. NAZARETH: Mr. Chairman, in view of the difficulties to which the Minister has referred and the sympathy he has expressed, perhaps the best course would be not to proceed with the amendment but to leave the Minister to give it the consideration which he has promised to give to it, and in those circumstances I would ask your leave to withdraw the amendment on the assurance which has been given.

*Amendment, by leave, withdrawn.*

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): Mr. Chairman, I beg to move that clause 20 of the Bill be amended—

(a) by substituting for the word "requests" which appears in the first line of the new subsection (1) thereby introduced the word "resolves";

(b) by inserting immediately after the word "period", which appears in paragraph (a) of the new subsection (1), the words "not exceeding six years"; and

(c) by substituting for the words "or scheme of education, as the case may be", which appear in the said new subsection, the words "or, in the case of a scheme of education, paid to a body approved by the Minister as being concerned with the administration of education in the municipality and expended by it upon such scheme of education".

Sir, three points arise out of this amendment: firstly, that I am attempting to strengthen the need for a resolution by the Municipal Council, not just a request—the council must resolve that they wish to levy a poll rate. That I think, gives a considerable opportunity for those who may have objections to it to discuss it, to be able to brief their representatives in the council to bring up their points of objection in debate. I realize that a number of hon. Members have worries about this particular section and I hope that the amendment will go some way to help them.

The second amendment, Sir, is really at the request of interested parties who have moved representations to me to the effect that a period of three years may not be sufficient to collect sufficient sums to provide the capital required by a scheme of social welfare or education, so I have agreed to extend that time to six years. This matter was mentioned in the Second Reading.

The third amendment is to make it quite clear that this provision of authorization of a local authority or municipality to collect a poll rate for these reasons does not in any way mean that the municipality is an education authority and is responsible for the expenditure of that money. It is merely a means of collecting, as I said in the Second Reading, through the local authority. One can assess the desires of the people concerned through their representatives and also through the local authority. The actual money can be collected, the money then to be handed over to the authority responsible for education. I know a number of municipalities do not want any indication given that they might become education authorities, which of course would mean considerable responsibility and expenditure, and this latter amendment I hope again will go some way to clearing that



[The Minister for Local Government, Health and Town Planning.]—practical administration of it. There will be overlapping areas. I can give an example here—Nairobi Primary School. Would the pupils there be restricted to Nairobi residents or children of residents or ratepayers or inhabitants of Nairobi City? If not, should Nairobi City Council be responsible for expending moneys on the education of children from somewhere else in the Colony? It would be a very heavy burden for the local taxpayer. Although I am sure we all agree that universal total education is most desirable, I believe that it is the duty and responsibility of central Government and not municipalities, whether they be councils or boards.

*Question proposed.*

The question that the words proposed to be deleted was put and carried.

The question that the words proposed to be inserted was put and carried.

MR. HOLLISTER: Sir, in view of the agreement at the very beginning of Council's meeting this afternoon that clause 2 and clause 20 could be brought together, I would like to move my amendment in respect of clause 2 at the same time.

Therefore I beg to move that clause 2 of the Bill be deleted and that clause 20 of the Bill be amended by deleting therefrom paragraph (b) of subsection (1) and the words "or scheme of education as the case may be" appearing at the end of that subsection.

Sir, in view of the lateness of the hour and the length of the Committee proceedings on this, I rise with a certain amount of temerity, but this goes right to the root of a very strong objection to a part of this Bill by municipalities. It is not the wish of municipalities, as I understand it, to have anything to do with education. They do not consider it desirable and I think we must all agree that certainly up to date in this country it has not been their function, nor has it been considered their function.

I rather regard this as the thin end of the wedge to enable Government to lighten their responsibilities and increase or create responsibilities for education in local authorities. Now because education as a service is a national service as distinct from a local one, and it is presently financed from national funds, it could quite easily be that there would be a conflict between central and local government bodies if the latter take over any responsibilities at all or get mixed up in any way with education. It is for this and other reasons, which I shall state, that I think we should delete from the Bill in clause 2 and 20 all references to education. There will be many difficulties in the

practical administration of it. There will be overlapping areas. I can give an example here—Nairobi Primary School. Would the pupils there be restricted to Nairobi residents or children of residents or ratepayers or inhabitants of Nairobi City? If not, should Nairobi City Council be responsible for expending moneys on the education of children from somewhere else in the Colony? It would be a very heavy burden for the local taxpayer. Although I am sure we all agree that universal total education is most desirable, I believe that it is the duty and responsibility of central Government and not municipalities, whether they be councils or boards.

There is also, of course, the question that education, if brought about in this way, could have very different standards in various parts of the country. You would have one municipality which was extremely wealthy giving very much better services than another municipality which could not hope to reach the same standards. Whereas certain social services have been accepted by and worked by municipalities, I do not think that education, as education, should come within the orbit.

Lastly, I would like to mention, dealing with clause 20, this question of collecting. The way the Bill is drafted, the municipal council or board would be a collecting agency and it is expected to levy a poll rate in some way and then collect it from, in most cases, members of the African community and pay that amount over to Government or approved authorities in order to provide these educational facilities. I agree, as the hon. Member said, it is for capital expenditure. Now I cannot see that municipalities should be shouldered with this responsibility. Surely, the Government—the central Government as an organization—has a complete organization for such collections. We have heard mentioned earlier this afternoon something like the personal tax or the hospital tax. I think, which was mentioned by the hon. Member who spoke before me, and if that machine cannot be used—which surely would be a very very much cheaper and more effective method than putting the responsibility on the municipality—then I think it should be forgotten altogether. Also, if the municipalities had to create a new

[Mr. Hollister.]—machine for this purpose as opposed to using the existing central Government one, surely the cost would be greater. It would have to come out of the proceeds and there would be less money available for the capital expenditure on education that is required.

Also, it would probably in certain quarters, be an unpopular levy, tax or rate, and if the municipality is merely a collecting agency, why should they perhaps get the odium, some from the collecting of a tax when they have no part in the spending of it and would get no part of the glory which might result from spending of it.

Sir, I beg to move.

THE CHAIRMAN (Mr. Conroy): I will propose the amendment on clause 20 and subsequently deal with clause 2, which is really dependent on the amendment to clause 20.

*Question proposed.*

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): Mr. Chairman, the main point to be made on this is that as far as education is concerned, the money to be collected will only be spent on capital requirements; that is, as shown in (1) (b).

There is also all the references that the hon. Member for Nairobi North has been making to the responsibility of the different local authorities and other difficulties of administration in different schools and so on. I do not see that this arises at all. As I say, it is only a matter of capital expenditure and it is entirely on the initiative of the council itself. Nobody can force the council, as I see it, to resolve—which is the amendment now—to levy a poll rate. They take the initiative themselves and they take the decision themselves. If, therefore, no municipal council wishes to use this particular section of the Ordinance, presumably they will not do it. The hon. Member said that none of them wish to do so; well, presumably they will not do it and the matter will not arise.

On the other hand, I believe there are numbers of people, numbers of ratepayers—I stress "ratepayers"—in certain municipal areas who would be very glad that their municipal council or board would be able to take on this responsi-

bility and they will not doubt make representations.

I think one of the fears is that pressures will be built up by certain sections of the population within the municipal areas to adopt this sort of provision and that the municipal council will not be able to resist that pressure.

I think it is time that the municipal councils realized that there are people who deserve consideration and if pressures are really strong enough, which, to my mind is justifiable, there is nothing wrong in the municipal council adopting the measures which so many of their ratepayers will require. But that is again, as I say, entirely up to them. I really cannot see any danger in this particular section and nor do I see any especially—and I have minimized the danger, from the point of view of the hon. Member—in the amendments which I have just moved. I cannot, therefore, Sir, accept the amendment suggested by the hon. Member for Nairobi North which of course merely wipes out and deletes entirely any reference to education or education schemes and being able to use this poll tax, or this particular type of tax, on education.

MR. USHER: Mr. Chairman, Sir, I support what has been said by my hon. colleague, and of course if this fails I shall have to try to circumscribe the effect of this clause in relation to clause 2. But, Sir, in the meantime I would mention this. I would call the attention of the Minister to clause 25, particularly the view of section 117 (b) (1) which says that the Minister may require a municipal council or municipal board to submit to him proposals for the exercise of it of any power conferred on it by law. I am not a lawyer, Sir, but it does seem to me that he could under that section, with those powers, convert what is a power in clause 20 into an obligation or a duty.

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): Sir, on that particular point raised by the hon. Member for Mombasa, I do not consider that clause 25 could be used to impose this function on the local authority. What it says here is that the Minister may if the council does not resolve by order authorize, etc. Under clause 25 the Minister cannot force a council to resolve.

MR. HOLLISTER: The point which the hon. Member for Mombasa has raised rather backs up what I was going to say. If the Minister, however, will give us an assurance that he will not require a council to make a request under the wide powers he has here I would be very much happier. I would have said that he could.

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): It is my understanding and reading of the section that I have not the power to do so. The Minister has not the power to do so, I will go further and give an assurance that I would not use it in this respect.

MR. HOLLISTER: Thank you.

Question that the words proposed to be deleted be deleted put and negatived.

Clause 20, as amended, agreed to.

MR. USHER: Mr. Chairman, Sir, on a point of order, I did say that I would seek to circumscribe the effects of this clause by a further amendment.

THE CHAIRMAN (Mr. Conroy): Well, we have not put clause 2 yet.

MR. USHER: Well, Sir, I have an amendment of which I think that the Minister is well aware, to section clause 20.

THE CHAIRMAN (Mr. Conroy): I was not aware of this, and no copy has been delivered to me.

MR. USHER: Well, Sir, I have a clear conscience in this matter because I handed over a manuscript on Friday last, before I left Nairobi, to the Minister. I must say that he referred it to the Legal Department and I have now been presented, with the amendment which I believe the Minister must have a copy of.

THE CHAIRMAN (Mr. Conroy): But the amendment must be delivered to me. It is very difficult for me to deal with amendments without having them in front of me. If I have them here then I know when to move them.

Is it the wish of the Committee that we should go back on our decision on clause 20, that clause 20 should stand part of the Bill?

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): My Ministry, Sir, did help to draft amendments which the hon. Member said he wished to move. But I would like to tell him, Sir, that I would not accept them because I believe that the word "resolve" goes a long way to meet his wishes.

MR. USHER: Mr. Chairman, I—

THE CHAIRMAN (Mr. Conroy): It is the wish of the Committee that we should revoke our decision that clause 20 stand part of the Bill?

THE ACTING CHIEF SECRETARY (Mr. Griffith-Jones): Mr. Chairman, I appreciate my hon. friend's difficulty, but as a matter of fact no notice has been given.

THE CHAIRMAN (Mr. Conroy): But it is an amendment to an amendment. Provided he gives it in writing before he moves it he can do so. But the difficulty is that we have voted that clause 20, as amended do stand part of the Bill.

THE ACTING CHIEF SECRETARY (Mr. Griffith-Jones): May I suggest that the hon. Member opposite be allowed to make his point without any formal revocation of the decision already taken and that the Minister replies to it. The Minister has already indicated that he is fully aware of the nature of the amendment but that he would not be able to accept it.

MR. USHER: Mr. Chairman, I have two points, and as it appears that my hon. friend has either failed or will fail in his submission to delete all the educational part of this then I would seek to circumscribe it by removing clause 2 (b)—that part which relates to compulsory education. The reason of this, Sir, is that being a voluntary act on the part of the municipality is one thing, but it should not take over duties which would normally be those of the Government and to provide both the capital and the recurrent expenditure of schemes of education which are compulsory.

My second point, Sir, is that whatever you like to say about this clause that we are now discussing, it is a measure of taxation—and should be hedged about with a great deal more formality than it has. I admit that my hon. friend the

[Mr. Usher]

Minister has gone some way but he was not gone far enough in meeting that point, and what I have in mind was that the resolution should not only be in a certain form, and that form I have proposed to put in as an amendment to the amendment, but that it should be passed by a two-thirds majority of the local authority itself. I think that to enforce a resolution carried by a bare majority is open to very severe criticism. I do not know whether, Sir, you are going to allow me to proceed with my amendment or not. I am confused by the situation. But I should be glad if I might be allowed to move my amendment. I can pass over one copy now and I believe that the Minister has already got a copy.

THE CHAIRMAN (Mr. Conroy): It is the wish of the Committee that we consider this amendment, otherwise we are dealing with the thing in such an indefinite and in such an inchoate manner.

THE MINISTER FOR FINANCE AND DEVELOPMENT (Mr. Vasey): Mr. Chairman, I would like to say, in support of my hon. friend the Member for Mombasa Area, that I watched him and saw three times that he wished to speak. But because of the angle at which he was sitting you did not see him.

MR. USHER: That is so.

THE CHAIRMAN (Mr. Conroy): In this particular case I shall allow this particular amendment to be moved; but I shall not treat it as a precedent.

MR. USHER: I beg to move that clause (2) (b) be deleted.

THE CHAIRMAN (Mr. Conroy): I do not think that we can have an amendment that clause 2 be deleted because that is a specific amendment which we have dealt with already this afternoon and which we have decided against.

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): I think the hon. Member is referring to clause 2 of the Bill, Sir.

THE CHAIRMAN (Mr. Conroy): But we have not reached that yet, which is what I have been trying to say for the last ten minutes.

Now, Mr. Usher, are you trying to move amendments to clause 20 or to clause 2?

MR. USHER: Well, then, Sir, I beg to move as follows, that a new subsection (2) to section 93A of the proposed Ordinance should be inserted to read as follows:—

"(2) Every request to the Minister shall be by resolution of the Council, passed by not less than two-thirds of the members present, which resolution shall give a description of the scheme and shall specify the capital sums to be raised by means of the said poll rate, the amount of such poll rate, the persons upon whom the poll rate is to be levied, and the manner in which the recurrent costs of the scheme are to be met."

Provided that in specifying any class of persons for the purpose of subsection (1) of this section regard shall be had to any particular section of the community or to any particular locality."

Sir, I think I have given the reasons already and I do not wish to enlarge upon them, except that I believe that it should have, as a measure of taxation, this added formality.

Sir, I beg to move.

THE CHAIRMAN (Mr. Conroy): I am not quite clear about this. Is it your proposal that the existing subsection (2) be deleted and this new subsection (2) be inserted in its place?

MR. USHER: It is that the new subsection (2) be added.

THE CHAIRMAN (Mr. Conroy): Well, then we will want to call it clause (1a), do we not? The existing clause (1a) will continue in its place and this new subsection should be inserted between subsection (1) and the existing subsection (2), thereby becoming subsection (1A).

MR. USHER: I thought it came at the end, Sir, I may be wrong.

THE CHAIRMAN (Mr. Conroy): The existing paragraph has three subsections which are numbered (1), (2) and (3) and you are now proposing, as I understand it, to give four subsections. Your new one will come between (1) and (2) and will therefore be numbered (1A).

Question proposed.

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): Mr. Chairman, I do not like the principle of any resolution being

[The Minister for Local Government and Town Planning]—The Member for Mombasa, has not, I think, given notice of this particular amendment should not the hon. Member for Nairobi North's amendment be proposed first and the hon. Member for Mombasa's amendment be proposed as an amendment to that amendment?

THE CHAIRMAN (Mr. Conroy): Yes, I am afraid that under the proviso to Standing Order 90, paragraph (2), we find it says this: "Where an amendment has been moved to any part of a Bill in accordance with the provisions of this paragraph any Member may move an amendment to that amendment on delivering to the Chairman the terms of his amendment in writing." Now, the hon. Member for Nairobi North has given notice that clause 2 of the Bill be deleted. Until he moves his amendment, Mr. Usher cannot move his.

MR. HOLLISTER: I was under the impression, Sir, that I had moved it and spoken to it. I joined it to clause 20.

THE CHAIRMAN (Mr. Conroy): I had ruled that we deal with clause 20 first, otherwise we would get in a muddle. We could not deal with two clauses together, so you spoke by way of illustration to your amendments which you wished to move to clause 20.

MR. HOLLISTER: Sir, I beg to move that clause 2 of the Bill be deleted.

Question proposed.

MR. USHER: Sir, I propose an amendment, "that paragraph (b) be deleted."

THE CHAIRMAN (Mr. Conroy): Mr. Usher's amendment should be that Mr. Hollister's amendment be amended by inserting the words "paragraph (b) of" before the words "section 2".

Question proposed.

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): It is a little bit difficult for me to accept this, Sir, before knowing what the reasons are. The hon. Member has not really spoken to this amendment yet but, I suppose I can interpret whatever is in his mind.

MR. USHER: On a point of explanation, Sir, I thought I had covered this and was reproved by you for my reference to clause 2 at that stage.

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): At any rate, Sir, I understand the reason for the moving of the hon. Member for Mombasa's amendment to the amendment is that he considers that the responsibility for providing the capital required for schemes for education which come under the compulsory part of the Education Ordinance should be the responsibility of the Government and not the responsibility of what really amounts to voluntarily contributions.

Well, Sir, I think there is a certain amount of merit in the hon. Member's argument and I am prepared to accept the amendment.

The question that the words proposed to be inserted be inserted put and carried.

The amendment as amended agreed to.

THE ACTING CHIEF SECRETARY (Mr. Griffith-Jones): Mr. Chairman, I take it that the consequential formal amendments of deleting the words "(a)" and the word "or" after paragraph (a) will be made by you under your powers under Standard Orders?

THE CHAIRMAN (Mr. Conroy): They will be made by the Clerk, Yes.

Clause 2 of amended agreed to.

Clauses 21, 22, 23 and 24 agreed to.

Clause 25

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): Mr. Chairman, I beg to move that clause 25 of the Bill be amended by inserting in the new section 117A introduced thereby immediately after the word "may", where it first appears therein, the words "after reasonable notice of his intention so to do."

In other words, Sir, this softens the blow a little although actually this particular paragraph I do not think is greatly objected to. The wording would then be: "The Minister may after reasonable notice of his intention so to direct a municipal council or municipal committee to perform within such time as he may think fit and to on and so on." What it really amounts to is that the Minister

will give warning so that the municipal council or board can put its house in order, to give it time to put its house in order before the Minister actually directs and I hope hon. Members will accept this amendment.

I beg to move.

Question proposed.

The question that the words proposed to be inserted be inserted put and carried.

Clause 25 as amended agreed to.

Clause 26 agreed to.

Clause 27

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): Mr. Chairman, I beg to move that clause 27 of the Bill be amended by leaving out subsection (10) of the new section 123 introduced thereby and by inserting in place thereof a new subsection as follows:—

"(1) Where the Council or Board has paid or agreed to pay to the Government the sums of money referred to in paragraph (5) of subsection (1) of section 59 of this Ordinance in respect of a magistrate, the Minister may direct that the whole or a specified proportion of all fines imposed on or after any date not earlier than 4th November, 1957, by that magistrate in respect of particular offences shall be payable to the Council or Board, and in such case such fines, or the specified proportion thereof, as the case may be, shall be paid into the revenues of the Council or Board."

The reason for this amendment, Sir, is that there is a little bit of difficulty in sorting out what proportion of the fines imposed by the stipendiary magistrate in the City of Nairobi should be paid to the City Council because according to the business of the court some cases are taken by an ordinary magistrate's court, others taken by a stipendiary magistrate's court and it is rather difficult to sort the matter out on a formula and therefore this particular amendment gives the Minister a certain amount of discretion in approving or rather deciding on the proportion of the fines to be paid according to the cases taken.

I beg to move.

Question proposed.

The question that the words proposed to be inserted be inserted put and carried.

Clause 25 as amended agreed to.

Clause 26 agreed to.

Clause 27

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[The Minister for Local Government, Health and Town Planning]

I beg to move.

Question proposed.

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

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

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): Sir, I beg to move that clause 27 be amended by inserting in subsection (2) of the said new section 123 immediately after the word "court" the words "other than such a magistrate as aforesaid". This, Sir, is really a consequential amendment on the previous one, and I beg to move. I could take the other one as well, Sir?

THE CHAIRMAN (Mr. Conroy): Yes.

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): I also beg to move, Sir, that the clause be amended by renumbering the said clause of subsection 1 thereof, and adding at the end thereof a new subsection as follows: "(2) This section shall be deemed to have come into operation on 4th November, 1957." The significance of the date is that the magistrate was appointed then. I beg to move.

Question proposed.

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

Clause 27, as amended, agreed to.

Clauses 28, 29 and 30 agreed to.

Clause 31

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): Mr. Chairman, there are two amendments to this clause. I beg to move "that clause 31 of the Bill be amended by substituting for the words "commencement of this Ordinance" wherever they appear therein, the words "commencement of this section". The necessity for this amendment, Sir, is that the Ordinance will be brought in not as one Ordinance, but section by section according to clause 1, and therefore it is necessary to move this amendment.

I beg to move, Sir.

Question proposed.

Mr. WEBB: Mr. Chairman, it may assist if I point out that there are four places where these words occur in this section, in 1-(a) and 1-(b), (2) and the last four words of subsection (5).

Mr. MANGAT: Mr. Chairman, it seems to me that the commencement of this section is not quite the proper wording. It should be—(Inaudible.)

Mr. WEBB: I think, Sir, that "commencement" is the word we usually use in respect of sections.

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

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

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): Mr. Chairman, I hope that this is the last amendment, and we have left the titbit to the last, Sir. I beg to move that clause 31 of the Bill be amended (a) by substituting the word "chairman", wherever it appears in subsections (2) and (3) the word "mayor". This really means, in fact, Sir, that directly this Ordinance is promulgated—if that is the right word—the Mombasa Municipal Board becomes the Mombasa Municipal Council and will elect a mayor which I hope will take place in the very near future. I hope the hon. Member for Mombasa will think it is worthwhile going through this long and tedious performance to have the last little reward at the end.

Question proposed.

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

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

Clause 31, as amended, agreed to.

Clause 32

Mr. MAXWELL: Mr. Chairman, I do seriously urge the Minister to delete small (4) following the words "the local authority may with the approval of the Minister levy a rate on any of the following. Under small (4) it gives a municipality the power with the consent of the Minister, the right to levy a rate upon the value of any dwelling house. Sir, we have in the past, that is the urban dwellers, always accepted a rate on the undeveloped site value of land, but when it comes to a question of rating the

[Mr. Maxwell]

value of a dwelling house which is a man's home; I think very serious consideration should be given to the matter. For example, you might have a person of means—a rich person—who is quite content to erect and live in a very small house with very few refinements. On the other hand you might get a person with very limited means, but he takes a pride in his home, the house in which he lives, and because he has possibly invested the greater part of his savings in a house, which as I say he has made his home for himself and his family. To suggest that a rate should be levied on the value of a house is, in my opinion, quite inequitable, and I do earnestly suggest that the Minister should remove that particular clause.

Mr. KING: In complete contradiction of the hon. Member in the County Council of Nairobi we have a form of rating which is based on a dwelling house and curtilage which we have had in being for about four or five years and it has worked admirably.

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): Mr. Chairman, the reason for this particular part of the clause is indeed for Mombasa. We have in the Mombasa area brought in what might be called, as I said in the Second Reading, rural areas to the municipality, and those particular areas are probably not yet ready for a proper level of unimproved value rate, and so we thought it was a good idea to bring in the opportunity, with the approval of the Minister, underlined, of other types of rate for these semi and indeed quite considerable rural areas within a municipality. Now, Sir, I would also like to say that of course the principle has already been accepted, in that under the amendment we passed some two years ago in this House, to the Rating and Valuation Ordinance, it has been agreed that the municipalities will be allowed to levy improvement rates. None has yet done so, but it is certainly legal for them to do it, but there is a limitation that the amount shall only be—again I think it is 25 per cent of the total rate, I will have to check that, but I think it is 25 per cent of the total rate of revenue. The principle has already been accepted in this House, and I can assure the hon.

Member that this particular provision is only for Mombasa and will not be applied elsewhere.

Clause 32 agreed to.

Title agreed to.

Clause 1 agreed to.

THE ACTING CHIEF SECRETARY (Mr. Griffith-Jones): Mr. Chairman, I beg to move that the Committee do report the Municipalities (Amendment and Miscellaneous Provisions) Bill as amended to the Council.

The question was put and carried.

## REPORT

The Municipalities (Amendment and Miscellaneous Provisions) Bill.

THE TEMPORARY MINISTER FOR LEGAL AFFAIRS (Mr. Conroy): Mr. Speaker, I have to report that the Committee of the whole Council has gone through the Municipalities (Amendment and Miscellaneous Provisions) Bill clause by clause and made amendments thereto.

Report ordered to be considered tomorrow.

## MINISTERIAL STATEMENT— BUSINESS OF COUNCIL.

THE ACTING CHIEF SECRETARY (Mr. Griffith-Jones): If I may, Sir, I would now like to announce the results of my discussions with the representatives of the other side, Mr. Speaker, having consulted the representatives of the other side of the House, it has been agreed that it would most greatly conduce to the convenience of all Members if the House agreed to sit late tomorrow evening until half-past eight so that the whole of the debate on *Hola* could then take place over a period of some six hours which, it is agreed, is, at least, ample.

## ADJOURNMENT

THE SPEAKER (Sir Ferdinand Cavenish-Bentinck): I now adjourn Council until 2.30 p.m. on Wednesday, 29th July, 1959.

The House rose at forty-five minutes past seven o'clock.

Wednesday, 29th July, 1959

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

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

PRAYERS

PAPERS LAID

The following Papers were laid on the Table:—

Sessional Paper No. 8 of 1958/59: Progress Report on the £4,000,000 Contractor-Finance Roads Project. (By THE ASIAN MINISTER WITHOUT PORTFOLIO (Mr. Madan))

Report of the Controller and Auditor-General on the Accounts of the Housing Fund for the year ended 31st December, 1957.

(By THE ASIAN MINISTER WITHOUT PORTFOLIO (Mr. Madan) on behalf of the Minister for Housing (Mr. Amalemba))

NOTICES OF MOTIONS

EAST AFRICA BAG AND CORDAGE CO. LTD.

THE MINISTER FOR AGRICULTURE AND ANIMAL HUSBANDRY AND WATER RESOURCES (Lt.-Col. McKenzie): Mr. Speaker, Sir, I beg to give notice of the following Motion:—

THAT this Council approves that the arrangements with respect to the East Africa Bag and Cordage Company Limited, set forth in Sessional Paper No. 91 of 1956/57 be continued for a further period to 31st March, 1960.

THE TRANSFER AND DELEGATION OF POWERS ORDINANCE, 1955

THE TRANSFER OF POWERS (AGRICULTURE) ORDER, 1959

THE MINISTER FOR AGRICULTURE, ANIMAL HUSBANDRY AND WATER RESOURCES (Lt.-Col. McKenzie): Mr. Speaker, I beg to give notice of the following Motion:—

THAT this Council approves the draft Transfer of Powers (Agriculture) Order, 1959.

ORAL ANSWERS TO QUESTIONS

QUESTION No. 169

GROUP CAPTAIN BRIGGS asked the Minister for African Affairs (a) How many of the detainees recently transferred from Hola to Manyani to facilitate rehabilitation were classified as fanatical irrecconcilables? (b) Will he further state whether Kikuyu, Embu and Meru loyalist opinion will be taken into full account in accordance with past assurances before any decision is reached as to their being returned to their reserve?

THE MINISTER FOR INTERNAL SECURITY AND DEFENCE (Mr. Swann): (a) Mr. Speaker, Sir, 191 of the detainees transferred from Hola to Manyani were for the purpose of classification regarded as irrecconcilable, but it is a principle of the Government's rehabilitation policy that no detainee is regarded as for ever irrecconcilable.

(b) It is equally a part of the Government's policy that no detainee who is still held to be irrecconcilable shall be permitted to return and live amongst his people in the Central Province.

GROUP CAPTAIN BRIGGS: Arising out of the reply, would the Minister give an assurance that the Government will abide by past arrangements whereby loyalist opinion is consulted prior to the return of any detainees to their districts?

THE MINISTER FOR INTERNAL SECURITY AND DEFENCE (Mr. Swann): Mr. Speaker, Sir, I can assure the hon. Member that it has always been the custom in the past to consult loyalist opinion, and it will continue to be the principle in the future.

MR. MBOYA: Arising out of the reply does the Government approve the use of the term "fanatical irrecconcilables", and if so, what is the definition of fanatical irrecconcilables? Secondly, would the Government indicate when it says loyalists are consulted, who are the loyalists, and what is the method of consultation?

THE MINISTER FOR INTERNAL SECURITY AND DEFENCE (Mr. Swann): The Government, Sir, is not responsible for the definition or the use of the phrase "fanatical irrecconcilables".

MR. MBOYA: Mr. Speaker, Sir, the Minister has not replied to the second part of my question, which is, when he states loyalists are consulted, would he state who are the loyalists, and what is the method of consultation?

THE TEMPORARY MINISTER FOR LEGAL AFFAIRS (Mr. Conroy): Mr. Speaker, on a point of order that supplementary arose out of a reply to a supplementary.

DR. KIANO: Mr. Speaker, would the Minister tell us, irrecconcilable to what? People being irrecconcilable we would like to know what they are trying to reconcile them to?

THE MINISTER FOR INTERNAL SECURITY AND DEFENCE (Mr. Swann): Irrecconcilable to decency, Sir.

MR. MATE: Arising out of part (b) of the question, would Government also take note of the conduct of the well-behaved ex-detainees?

THE SPEAKER (Sir Ferdinand Cavendish-Bentick): This is not a supplementary to the original question.

MR. NYAGAH: Mr. Speaker, arising out of the Minister's reply, is the Government aware that it is creating a difficult position here in—

THE SPEAKER (Sir Ferdinand Cavendish-Bentick): That is not a supplementary question either, it is a speech.

DR. KIANO: We talk of irrecconcilable to decency, would the Minister tell us whether he means irrecconcilable to decency as defined by Government policy or what he actually means?

THE MINISTER FOR INTERNAL SECURITY AND DEFENCE (Mr. Swann): Sir, it applies to the principles of local law and order and the normal standards of decency in human society.

MR. COOKE: Irrecconcilable! Is the hon. gentleman aware that a detainee who confessed to 35 murders at Hola was described by the District Commissioner as a "jolly good fellow". Can he tell me a man is a "jolly good fellow" if he confesses to 35 murders and is still irrecconcilable?

THE SPEAKER (Sir Ferdinand Cavendish-Bentick): I am passing on to the next question. Question 171. Mr. Alexander.

QUESTION No. 171

MR. ALEXANDER asked the Chief Secretary what is the composition of the Commission to carry out a survey on the possible introduction of a television service in Kenya, which was announced last April?

THE ACTING CHIEF SECRETARY (Mr. Griffith-Jones): It is intended that the Television Commission will consist of a chairman and one, or perhaps two, other members, with suitable experience, from outside East Africa, and three local members. I regret that it is not yet possible to announce the composition of the Commission since arrangements to secure the services of the overseas members have not yet been completed.

MR. ALEXANDER: Mr. Speaker, Sir, is the Minister aware that that is identical to the statement made recently in the House of Commons? He has told us nothing new. Will he tell us why the delay since the announcement as long ago as April in selecting members for this committee and, secondly, when it is anticipated they will start their work?

THE ACTING CHIEF SECRETARY (Mr. Griffith-Jones): Mr. Speaker, I can say that although the substance of this question is the same as stated in the House of Commons recently, the form is entirely my own.

As regards the period of time which it is taking to secure the services of suitable persons with expert experience in this particular field, I do ask the hon. Member to realize that such expertise does not grow on trees and that it does necessarily take a bit of time to obtain agreement from people to come and serve us in this capacity. The negotiations for securing the services of the members from overseas are in a relatively advanced stage. The delays are not entirely of our making, nor, indeed, of Her Majesty's Government's making in the United Kingdom, and I hope that it will be possible very shortly to announce the composition of the Commission.

MR. ALEXANDER: Mr. Speaker, Sir, does the Minister accept that this matter is one of urgency and, if so, will he give us an assurance that the Government will press upon Her Majesty's Government the need to come to an early conclusion on this matter.

THE ACTING CHIEF SECRETARY (Mr. Griffith-Jones): That has already been done and is fully appreciated by Her Majesty's Government.

MR. TYSON: Mr. Speaker, in dealing with the appointment of representatives on this Commission locally, will the Minister give us an assurance that some regard will be had to the importance of this matter from the point of view of education?

THE ACTING CHIEF SECRETARY (Mr. Griffith-Jones): Yes, Mr. Speaker, and from all other points of view.

MR. ALEXANDER: Mr. Speaker, Sir, arising out of these replies is the Minister aware that within Government service there is a person most excellently qualified for appointment to this Commission?

THE ACTING CHIEF SECRETARY (Mr. Griffith-Jones): Yes, Sir.

#### QUESTION No. 168

MR. NAZARETH asked the Acting Chief Secretary will the Minister state for each of the 11 years from 1948 to 1958 (inclusive) the number of Asian and European teachers and education officers (giving the figures for each of the two races separately) who—

(a) entered the Colony on "G" Class Permits;

(b) entered the Colony on Temporary Employment Passes;

(c) were allowed to remain in the Colony as permanent residents, or granted "G" Class Permits, or otherwise were allowed to remain lawfully in the Colony, on the expiration of any Temporary Employment Pass issued to them;

(d) left the Colony or were required to leave the Colony on the expiration of any Temporary Employment Pass issued to them.

THE ACTING CHIEF SECRETARY (Mr. Griffith-Jones): I regret that previous to April, 1952, the immigration records were not maintained in such a manner as to permit the extraction of the information for which the hon. Member has asked.

From April, 1952, to December, 1958, however, the figures are available, but as they are too voluminous to be given in an oral reply, I am supplying them to the hon. Member in the form of a written reply to his question.

The written reply issued by the Acting Chief Secretary is as follows:—

#### (a) Class "G" Entry Permits

|                 |
|-----------------|
| 1952—No Asians. |
| 15 Europeans.   |
| 1953—No Asians. |
| 4 Europeans.    |
| 1954—No Asians. |
| 5 Europeans.    |
| 1955—No Asians. |
| 2 Europeans.    |
| 1956—No Asians. |
| 11 Europeans.   |
| 1957—No Asians. |
| 8 Europeans.    |
| 1958—No Asians. |
| 5 Europeans.    |

#### (b) Temporary Employment Passes

|                 |
|-----------------|
| 1952—19 Asians. |
| 15 Europeans.   |
| 1953—18 Asians. |
| 1 European.     |
| 1954—20 Asians. |
| 2 Europeans.    |
| 1955—No Asians. |
| 10 Europeans.   |
| 1956—25 Asians. |
| 10 Europeans.   |
| 1957—13 Asians. |
| 16 Europeans.   |
| 1958—21 Asians. |
| 40 Europeans.   |

#### (c) T.E.P. holders allowed to remain in the Colony.

|                 |
|-----------------|
| 1952—No Asians. |
| 2 Europeans.    |
| 1953—10 Asians. |
| 16 Europeans.   |
| 1954—9 Asians.  |
| 16 Europeans.   |
| 1955—17 Asians. |
| 8 Europeans.    |
| 1956—11 Asians. |
| 18 Europeans.   |
| 1957—9 Asians.  |
| 8 Europeans.    |
| 1958—24 Asians. |
| 20 Europeans.   |

[The Acting Chief Secretary]  
(d) Left the Colony on expiration of T.E.P.s

|                 |
|-----------------|
| 1952—No Asians. |
| No Europeans.   |
| 1953—1 Asian.   |
| No Europeans.   |
| 1954—No Asians. |
| No Europeans.   |
| 1955—2 Asians.  |
| No Europeans.   |
| 1956—1 Asian.   |
| 1 European.     |
| 1957—No Asians. |
| No Europeans.   |
| 1958—1 Asian.   |
| No Europeans.   |

#### REPORTS.

##### THIRD READINGS

##### The Rent Restriction Bill

THE ASIAN MINISTER WITHOUT PORTFOLIO (Mr. Madan): Mr. Speaker, I beg to report that a Committee of the whole Council has considered the Rent Restriction Bill and has approved the same with amendments which have been circulated to Members.

The question was put and carried.

Mr. Speaker, I beg to move that the Rent Restriction 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 Money-lenders (Amendment) Bill

THE MINISTER FOR FINANCE AND DEVELOPMENT (Mr. Vasey): Mr. Speaker, Sir, I beg to move that the Council doth agree with the Committee in its Report on the Money-lenders (Amendment) Bill.

THE ACTING CHIEF SECRETARY (Mr. Griffith-Jones) seconded.

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): I have not seen the Report. I do not know if any other Member has. If the Report is not available to Members who are asked to agree with proposals contained therein which affect everybody in the country I will not put the question.

I have not the Report and I have not seen it.

THE MINISTER FOR FINANCE AND DEVELOPMENT (Mr. Vasey): Mr. Speaker, I must apologize, I thought this was automatically circulated with the Order Paper.

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): This is constantly happening and I am afraid I must ask hon. Members who are responsible for Bills to collaborate with the Clerk at the Table and see that other hon. Members are not asked to pass a Report which they have not seen and consequentially pass a Bill into law the terms of which they are unaware of. I do not know how urgent this Bill is but I am not going to put the question unless somebody explains exactly what the amendments concerned were.

THE TEMPORARY MINISTER FOR LEGAL AFFAIRS (Mr. Conroy): Mr. Speaker, perhaps possibly I might be of assistance to the Council. The amendment, Sir, is of importance but a very short and simple one. In the Objects and Reasons of the original Bill it said that one of the principal purposes of the Bill was to validate all contracts entered into by banks and insurance companies in respect of money-lending over the last few years. It had been discovered that as a result of an amendment made (I think in 1935) the money-lending contracts entered into by those mercantile concerns were void. It was therefore intended that this short Bill should be retrospective to that date. The hon. and learned Specially Elected Member, Mr. Slade, raised the question of whether this object had been achieved in the legislation and he suggested that an amendment should be moved in Committee, Sir, that was done.

It was a two-line amendment to say that the Bill would be retrospective. Sir, this Bill is important because it creates a retrospective protection for a large number of reputable banking and mercantile houses in respect of transactions which they entered into perfectly innocently and which by an oversight in the law we have now discovered were illegal.

Sir, I would in those circumstances ask that you would stretch a point on this

[The Temporary Minister for Legal Affairs.]

occasion and allow us to have the Third Reading today, Sir.

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): Now that hon. Members know what the Report of the Committee was I will put the question.

*Question proposed.*

The question was put and carried.

THE MINISTER FOR FINANCE AND DEVELOPMENT (Mr. Vasey): Mr. Speaker, I beg that the Money-lenders (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 MUNICIPALITIES (AMENDMENT AND MISCELLANEOUS PROVISIONS) BILL

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): Mr. Speaker, this Bill was considered yesterday by a Committee of the whole House. The Committee made amendments to the Bill and copies of the report have been circulated to hon. Members. Accordingly, Sir, I beg to move that the Report of the Committee on the Municipalities (Amendment and Miscellaneous Provisions) Bill be adopted.

THE TEMPORARY MINISTER FOR LEGAL AFFAIRS (Mr. Conroy) seconded.

*Question proposed.*

The question was put and carried.

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (Mr. Havelock): Mr. Speaker, I beg to move that the Municipalities (Amendment and Miscellaneous Provisions) 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.

MINISTERIAL STATEMENT

THE LEGISLATIVE COUNCIL (CONSTITUENCY ELECTED MEMBERS) BILL

THE ACTING CHIEF SECRETARY (Mr. Griffith-Jones): Mr. Speaker, with your permission I would like to make two short statements.

The first is regarding the Legislative Council (Constituency Elected Members) Bill. This Bill was prepared as a consolidating measure in order to facilitate a re-registration of voters founded on the existing basic franchise. It was drafted and published before the decision to hold a conference on constitutional matters was announced. The Council of State has now submitted a report on this Bill including recommendations for its amendment in relation to the franchise. In view of the decision to hold a conference, Sir, the Government has decided that it should not proceed with the present Bill but that the Council of State's report and recommendations on the Bill should be submitted to the conference for its consideration. Accordingly, Sir, no change in the basic electoral system will be made until the conference has concluded its deliberations. I should, however, add that the Government proposes in any case to remove before the next General Election the existing requirement that members of the Kikuyu, Embu and Meru tribes must have loyalty certificates, in addition to the other qualifications required by law, to qualify them for registration as voters.

AFRICAN POLITICAL MEETINGS

The second statement, Sir, is to the following effect. The Government has decided that it is now possible to allow African political associations, hitherto permitted only on a district basis, to be organized elsewhere than in the Central Province, on a constituency basis in those constituencies which include more than one district. This decision will not for security reasons apply immediately in the Central Province but the Government hopes that it will prove possible to allow the formation of African political associations on a constituency basis in the Central Province also before the next General Election, but this must depend on there being no deterioration in the security situation in that province.

MOTION

HOLA CAMP

DR. KIANO: Mr. Speaker, Sir, in view of the fact that a number of things connected with the Holo incident have taken place since I gave notice-of this Motion, I beg your leave to make a number of modifications in the text of the Motion, so that the Motion now reads:

THAT in view of the gravity of the incidents that have taken place at Holo, this House expresses its loss of confidence in the Kenya Government's administration of prisons and detention camps and urges Government to immediately dismiss from Government service officers and warders involved in the 3rd March Holo incident. The House also urges Government to seek the resignation of the Minister for Defence and Internal Security and the Minister for African Affairs, and to institute court proceedings against the said officers and warders in order to restore faith in Government's competence and vigilance in protecting the well-being of prisoners and detainees in their charge.

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): Dr. Kiano sought leave to alter the terms of his Motion, and in doing so he drew my attention to the fact that he has introduced something new in the amended Motion in the matter of the institution of court proceedings. In view of the fact that owing to reasons which I can only consider valid, Dr. Kiano was not allowed to bring in his Motion at the time he wanted to, and quite a lot has occurred since, I have agreed that he may use the Motion in its new form.

DR. KIANO: Mr. Speaker, Sir, I beg to move:—

THAT in view of the gravity of the incidents that have taken place at Holo, this House expresses its loss of confidence in the Kenya Government's administration of prisons and detention camps and urges Government to immediately dismiss from Government service officers and warders involved in the 3rd March Holo incident. The House also urges Government to seek the resignation of the Minister for Defence and Internal Security and the Minister for African Affairs, and to

institute court proceedings against the said officers and warders in order to restore faith in Government's competence and vigilance in protecting the well-being of prisons and detainees in their charge.

Mr. Speaker, Sir, on 3rd March ten Africans in the Holo Special Camp died as a result of physical beatings by men employed by the Kenya Government, in the Prisons Department, and also connected with the Ministry of African Affairs. On 6th March one other person died, again not of natural causes, not of pneumonia, not drinking-water, as we were told, but because eventually that person had suffered physical violence from the warders in the Holo Special Detention Camp.

Now, Sir, after several months and waiting to see what the Kenya Government would do about this incident, the simple and cruel facts are that the officers in charge of this situation, the officers who actually conceived the idea of bringing these people to work and manhandling them on 3rd March, goes free, allowed to retire, apparently honourably, because he is even allowed to keep the gratuities that have accumulated during his service. When a person directly responsible for the deaths of 11 men, and I must say the physical beating of others; we are not yet sure of the number, but others were also beaten on the same day, that person has been allowed to retire from the Kenya Government and to keep his gratuities, while I thought, Sir, that even speaking in terms of British justice that that person should be standing in the dock because of the disaster and the deaths for which he is directly responsible.

Now, Sir, we also find that the man who had given him the idea, Superintendent Cavan whose plan Mr. Sullivan was attempting to put into practice and, apparently, put in the wrong way. That man today stands with the Queen's honours behind his name despite the fact that his plan caused at least the mishandling and the manhandling of prisoners should they refuse to cooperate. An attempt is made by the Conroy Committee to say that manhandling did not involve physical force. Nevertheless, we must refuse to accept the idea that manhandling in the sense was meant to be purely making these

(Dr. Kioko). fellows be pulled away by their hands as we were told in the Conroy Report; because, Sir, we know today that although the Holo incident is perhaps the most serious which has taken place in the detention camps of this country, nevertheless, we do know that the manhandling and physical beating has not been simply confined to the Holo situation and that in other detention camps there has been manhandling involving physical violence, although the matters have never come to full light. Today, Sir, we have thousands and thousands of Kikuyu, Embu and Meru who now tell us that they have gone through in the various detention camps and, apparently, manhandling has meant in those detention camps physical beatings as well as other definitions given in the Conroy Committee. If this is not true I would like to see the representative of the Ministry of African Affairs, or the Ministry of Internal Security, to stand up and say in truth in the presence of the hon. Members here that no people were physically beaten at—(Inaudible)—Camp, and no people were beaten at Manyani Camp, and that no people were beaten at the—(Inaudible)—Camp. We know that they were. Therefore, we know that any policy such as the policy recommended by Mr. Cowan, including the term "manhandling", must have included in the minds of the officers responsible physical violence. Furthermore, Sir, we have evidence that when this policy was shown to the Minister for Internal Security he said that there was no need to check the matter with the Security Committee or the Security Council because it did not involve any matter of policy. It was not involving any changes in policy, and yet this was after the Minister had been warned by the Commissioner of Prisons that the carrying out of this policy might include some people getting hurt and others being killed. In other words, Sir, when the Ministry was warned that the carrying out of this plan might involve somebody getting hurt and somebody being killed the Minister for Internal Security and Defence said, "This does not involve any change in Government policy", which is a confession that it has been a part of the Government policy in the rehabilitation process to use physical violence, otherwise the

Minister would not have said that this did not involve any change of policy. Then we have the Minister for African Affairs sending a note immediately saying, "Let us start now", and "Let us be quick about this matter." In other words, Sir, he, too, is involved, and that is why his resignation is also called for, because he knew that a plan of this nature could get somebody killed; he knew that manhandling has meant physical beating in various detention camps, and he says, "Let us start now, the longer we wait the more difficult it is likely to be." Sir, when this plan actually did bring about the deaths of 11 people and the manhandling, physical beating, of others, we have a situation in which nobody, nobody has actually been punished, not one. The fact that a Commissioner for Prisons is allowed to resign, the fact that the other one is allowed to retire with gratuities, this cannot be considered punishment.

What kind of a Government is it that it merely looks for ways to cover up such a tragedy with the words that it is difficult to bring about court proceedings against these people because they could not quite determine who they stick hit which detainees. I suggest that if the Attorney-General of this Government cannot really find out any way of bringing about these people to court then he should resign, because this would be the type of incompetence that men who we know were responsible for the plan, we know who conceived it, we know who got the detainees out, we know who were the people who were employed as warders at Holo, their names are known, and he comes around and says: "I am sorry but I do not know who to prosecute because I cannot find out which of them actually did the killing." The person who collaborated in bringing about the plan which brought about the deaths is also guilty and he should have been brought to court. I am not a lawyer, Mr. Speaker, and I hope my supporters who are learned in this profession of the law will even make a more convincing case against the Attorney-General himself for failing to bring about the court proceedings against these people.

Sir, we find that, if you will excuse my saying so, Mr. Speaker, immediately after this tragedy the public in this country and the world were treated to a whole series of untruths, covering up

MR. MBOYA: Lies.

DR. KIANO: I cannot use the word suggested by the hon. Member for Nairobi Area because it is unparliamentary, but I would say that we were treated to a whole series of calculated untruths. We have for example, Mr. Coutts going over and saying to his boss: "Sir, these detainees are willing themselves to death. The fellows are actually willing themselves to death." Do men love to die so much that they can will themselves to die? Then we have a doctor who says that these men have died perhaps of pneumonia and some other complications in the lungs. Soon after we are told, "No the men died, actually, after drinking water." In other words, Sir, we have a series of statements which were far from the truth; and if Government is to be congratulated at all it could only be congratulated for thinking at least of putting up an inquest in which the truth finally emerged reluctantly but nevertheless we got it. And how the Government, after the findings of the inquest, continues honourably to sit here instead of actually offering their own resignations, it is actually a shame that we should have to ask for their resignations. They, being honourable men, Mr. Speaker, ought to have been the first to come up and say, "I resign." It is a shame that we have to ask.

Mr. Speaker, the responsibility for the deaths of these men is not only confined to Mr. Cowan who conceived the plan, Mr. Sullivan who carried it out the wrong way, or Mr. Coutts who assumes that the men were willing themselves to death. It goes up to the very highest level of administration in this country, from the Governor down to the prison warders themselves, because we see that a situation had been allowed to deteriorate, where people were saying that there was no discipline, and yet they say that they did not know what to do and later they said, "Let us really show them something. We will really carry out the Cowan Plan." I think I cannot see any way in which even the Governor himself could avoid some blame in this matter. I feel that, since this was done, and this administration, he too, bears the responsibility, and the method in which he has sought to correct a situation by simply offering a little bit of compensation to the people, the families of those who

died, cannot be considered at all adequate.

Now, Sir, I may be considered racial, when everybody else is telling us to forget our races, but I would like to say, Mr. Speaker, that if these 11 men who died were white men in this country the whole world would be up in arms and the House of Commons would have really become even more disturbed than it is, and our own Government, I am sure, would have taken measures different from the measures they have taken today. We know, Sir, that when during the Emergency, and I do not speak in favour of what happened, but we know that when one white person died, or when one act of subversion was committed by the villagers in an area, and the Government could not find out the person who committed the particular incident, the Government went right ahead and punished the entire village, collective punishment, collective fines, and so on, because they said they could not find out who the person was. In any case, Sir, they took measures which even went far beyond the proper limit of British justice in order to put right in their own sense something that had gone wrong.

Here we have 11 men killed, and we are told that nothing can be done. If collective punishment was considered fit for my people when the Government was not able to find out which person actually committed the incident in particular, why is it that collective punishment is not considered for these other men? I am not advocating collective punishment but I am simply saying that here the Government is acting on a double standard, and for me this is the height of criminal disregard of the worth of an African's life by a Government which says that it is here to civilize the African. Mr. Speaker, if this is the type of civilization that we are going to be given by the Kenya Government then I am glad that I shall remain uncivilized.

Mr. Speaker, the whole difficulty arises first of all because an attempt is made by various speakers, and they will do that today, to say that these men are fanatics, these men are abnormal or subnormal, in fact, Sir, somebody in the House of Commons said that they were sub-humans or something similar to that, that they are so tied up in their oaths and so on that



[Dr. Kioko] really an understanding attitude must be taken towards the officers whose difficult job it was to handle them, I would like to say that I do not consider myself any more of a special Kikuyu than these others, and I do not consider myself any more special than these others, and I do not believe that these men who are called irreconcilable are held by the power of the oath from being part of society. Is it not a fact that when these men are going through the so-called pipeline, that before they come back to their villages, is it not a fact that they are even asked, "Are you going to support the Government?" In other words the rehabilitation process has included, amongst other things, an attempt to change these men not simply away from violence, which we do condone and that should be made very clear, but in addition to that an attempt is made to make them pro-Government advocates of Government policy because they are asked straightforwardly, "Are you going to support the Government," and I can imagine a man like the Rev. Peter Ngondi, whom I know has been in Holo, being asked whether he shall support the Government and saying, "No, I will not support Government," and for that he might be called a irreconcilable, because I happen to know some of these men, I knew them in my younger days, I feel very old after being a Member of the Legislative Council, I knew these men when I was a young boy and I do not believe that the mere fact that they might have taken an oath is a thing which makes them what we are told is irreconcilable, I believe that some of them honestly and truly believe that this Government is evil and they refuse to say that they will support it. So, Mr. Speaker, we must look again into the methods of rehabilitation to find out whether these people are there simply because they have refused to support the Government rather than because they are dangerous to society.

I have heard it said that some of these people will not be accepted by their own people. In fact, just before this debate, it was said by the new Minister for Internal Security and Defence that loyalist opinion is consulted, and I would like to put it on record, Mr. Speaker, that most of the villagers are never asked whether they

want these people back or not. Most of the public, whether loyalist or not, are not asked whether they want these people back or not. Often it is an opportunity for the local headman, who is asked with one of his advisers, and that is taken to mean that these people are rejected.

I have heard it said that if some people like Jomo Kenyatta do come back they will not be accepted by their people. I would like to know which people have said "No", and which people have said "Yes". When you say that you consult loyalist opinion, or when you say that you consult the public, we must realize that even among the loyalist opinion there is a feeling which was put forward one day by the chairman of the African Elected Members, that "let bygones be bygones". And there are surely a lot of people, some of whom may be called "loyalists" and others who may not be who actually would not be emphatic to say "We shall not accept so and so in our society," I believe, Mr. Speaker, if somebody is violently inclined—if somebody is likely to kill—then that person, whether he is an ex-*Mau Mau* or not—whether he is a criminal or not, the law must take its course, but I do not believe that really half of these people have been actually and positively rejected by their own people. I think they are rejected by a number of people who are involved in the administration, and we are told this means the public. There is a difference between what the public actually want and what the administration say it wants.

Now, Sir, we come to the question of whether or not force was contemplated in the Holo situation. We are asking for the resignation of the Minister for Internal Security and Defence, although we know he is now on leave, pending retirement, because we feel that if he is allowed to retire honourably with this thing hanging in the conscience of Government and hanging over the society of Kenya, then it will be that we have actually condoned the way he carried out his job as Minister for Internal Security and Defence. And if that is the opinion of the Government—if it is the opinion of the Government that the former Minister for Internal Security and Defence carried out his job well, I must remind the Government

[Dr. Kioko] that many a day we have suffered from the disdainful attitude that he has always shown to the criticisms that we have been making about the way the prisons and detention camps are being run. Often he has treated us to monosyllables and so on, and when we asked for permission to go and see what it is going on they said "No, everything was all right" and "if you politicians go to the detention camps you might put back the rehabilitation process—you might have some negative effect". Now we know, Mr. Speaker, that one of the reasons that why perhaps they did not want us to go is because they had something to hide, if they did not have something to hide, then they should have found it quite easy to take us there and see for ourselves. But we were told no, if politicians go the rehabilitation process would be reversed. But perhaps if we had been allowed to go—perhaps this Holo incident might not have taken place, because we might have noticed something which they were not aware of—the point that physical force has been part and parcel of the rehabilitation process, although not approved by the Security Council, but still allowed to go on, and as I say, this is based on the personal testimonies of the many ex-detainees who have come out and told us personally, "I confessed as much in a hurry as I could to avoid the hardships of the detention camps. Is it not a fact that quite a number of Kikuyu, Embu and Meru have actually committed suicide in these detention camps? It would be interesting for the Government to tell us how many have committed suicide and for what reasons. I submit that some of the reasons are the hardships that they were going through—the fears—the intimidations—and so on. Very, very little of the confessions that Government has covered so far has been obtained from these detainees completely voluntarily. I question that unless the Government can prove otherwise.

Now, Sir, it is often said that we, the African Elected Members, and a few of us who talk of democracy, and who talk of the need for self-government in Kenya are a minority among the public of Kenya, and that most of the people are not interested, but I say if anything

has made us all the more desirous of being free it is the Holo incident. To be free it is the Holo incident which free ourselves from a Government which allows men to go unpunished after they have caused the death of 11 men—a Government which allows people to retire with gratuities and pensions after they have been proved guilty of criminal negligence with regard to human life—a Government, Mr. Speaker, which tolerates that kind of attitude—I must say is a Government that none of us can feel safe to live under, and that is a Government, therefore, that we must rid this country of and substitute it with another form of Government which will recognise that the life of an African is as important as the life of a white person—that the life of an African is as important as the life of a nation—that the life of every individual must be protected with the same zeal, with the same fervour, with the same vigilance, and no excuses made, just because somebody happens to have belonged to a terrorist movement. To say that these people were *Mau Mau* does not mitigate the Government's guilt in this regard. And therefore, I move, Mr. Speaker, that it would have been more honourable, for the Attorney General, for the Governor, for the Minister for African Affairs, for the Minister for Internal Security and Defence to have offered their own resignations before having to be asked to do so. But, Sir, since they have seen fit to do otherwise, since they have sought to protect themselves a little longer, despite the fact that we have lost faith in their ability to protect us from death, from beatings, from mishandling, we must ask for their resignation, and the substitution of that form of Government in which justice will know no race, no colour and no creed of the individual in question.

Lastly, Mr. Speaker, I say, if there is still time, there is still time for the Kenya Government to mitigate itself—to really reconsider the possibility of bringing these men to trial. There is still time. They could still, at least, do that bit of kindness to this country by bringing these men to trial. Should they refuse to do so, then, Mr. Speaker, they will stand condemned in the bar of world opinion that they too have condoned definitely, deliberate methods of causing death to the 11 men who died and the

[Dr. Kiiano]

suffering that has been left to the families of these people.

Mr. Speaker, this will be said to be an emotional speech, but man is not devoid of emotions, and emotions are part of our make-up, and I would like to make it very clear that this is an issue which is viewed not with the cold calculated legal mentality of our Government officers, but an issue that we look at from the point of view of possibilities of its repetition, because this could very well be a precedent. A precedent of saying, well Messrs. So-and-So were responsible for this and they were allowed to go with gratuities and was allowed to retire. It could be repeated and it should not be repeated, and therefore we say again that first we await the report of the Commission that has been set up to recommend new handling of the Hola situation, but we say, however, that the Hola rehabilitation system must be re-examined to find out whether or not they have been following—and I know they have been following—the wrong process which has included manhandling, and thirdly, Mr. Speaker, we say the compensation to the families of these people is almost an insult to them when nothing is being done to the people who actually did the killing, and lastly, the effect that some of these warders are still in Government service elsewhere, where they can go and do just what they did at Hola, create the greatest sense of insecurity in our minds. And therefore, Mr. Speaker, I beg to move that this House votes lack of confidence in the Kenya Government and that the two Ministers mentioned promptly present their resignations, court proceedings be instituted and an assurance be given that in the future Government will not treat the world with a whole series of untruths attempting to cover up their mistakes, but rather that we shall know what has happened immediately it has happened—without any attempt to cover up.

I beg to move.

MR. NAZARETH: Mr. Speaker, Sir, I beg to second the Motion. The Hola tragedy has left us with 11 men clubbed to death, the Superintendent of the camp, Mr. Sullivan, required to retire

Commissioner of Prisons, Mr. Lewis, feeling it his duty to request permission to retire, and Government graciously according that permission. In addition we have on hand an enquiry, not into responsibility for the deaths of these men, not into what has been happening in the camps, but into their future administration.

Why were these 11 men clubbed to death? Let it be made clear, very clear, that we hold no brief for these men. Some of them may have been of the dregs of humanity—some may have been convicted prisoners—some, perhaps, were men who were detainees not convicted whatever they may have been suspected of. Whatever they were, if they were killed while in the custody of Government officers, in the custody of the law, it must be shown that there was justification for their killing, otherwise those responsible for their killing must be held accountable before the law and at the bar of public opinion crystallized in, perhaps, its most important form in this House.

There is no doubt at all that their deaths were due to violence. In each case, according to the medical evidence, death was found to have been caused by shock and haemorrhage due to multiple bruising caused by violence. The magistrate who held the inquest into their deaths found the cause to be violence inflicted during the course of a major operation to compel the detainees to work.

Was the operation to compel the detainees to work justified in the eyes of the law? There is no law that authorizes prison authorities to compel persons to work. If a lawful order to work is disobeyed, the punishment, I believe, is 12 strokes with a light cane. The key phrase in the Cowan Plan to rehabilitate the detainees by making them work was as follows: "If they refuse they should be manhandled to the site of work and forced to carry out the task." It should be noted that in his findings the magistrate has pointed out that the force used to compel these people to work was illegal force. We have thus 11 men clubbed to death in pursuance, or in the course of an illegal operation to compel these men and other detainees to work. On whom lies the responsibility

[Mr. Nazareth]

Sullivan is the only person on whom has been placed a measure of responsibility. Mr. Sullivan is only the executioner on the spot of the operation. Does responsibility go no higher for this tragedy? Is he the only person responsible? Or is he in the main the scapegoat shielding the higher-ups? Is the Minister for Internal Security and Defence, Mr. Cusack, free from blame? Is the Minister for African Affairs free from blame? Cannot responsibility be traced to the heart of Government.

The Cowan plan which authorized an illegal operation to compel men to work had been sent to the Commissioner of Prisons, Mr. Lewis. He, in turn, had sent it to the Minister for Internal Security and Defence. It had been seen by the Minister for African Affairs and approved. It was returned approved by all these Ministers. The plan authorizing illegal operations to compel men to work had thus the approval of the appropriate Ministers of the Government. The chain of command—the links in the chain of responsibility proceed unbroken to the very citadel and core of the Government. The Minister and the Government cannot escape responsibility for the beating to death of men in their custody in the course of an illegal operation to compel these men to work, and they cannot escape that responsibility by finding one scapegoat who is required to retire without loss of gratuity, and by his superior, the Commissioner of Prisons, considering that his time also has come to retire.

By a remarkable coincidence, the time has also arrived for the Minister for Internal Security and Defence himself to go on leave pending retirement, on the eve of the commencement of this debate. His retirement has not been linked with any responsibility for the clubbing to death of these men who were in his custody. That is how it stands in the eyes of the Government. Is that how it stands in our eyes—in the eyes of hon. Members of this House? The Cowan plan was drawn up specifically for the men detained at Hola. Mr. Cowan, the Senior Superintendent of Prisons, had, on 6th February, been sent to Hola, and had then drawn up the plan for setting the unco-operative hardcore to work, the plan, which the Minister for Internal Security and Defence

returned approved. Mr. Cowan, Senior Superintendent of Prisons, Mr. Lewis, Commissioner of Prisons, and Mr. Cusack, Minister for Internal Security and Defence, and Mr. Johnston, Minister for African Affairs, knew well the kind of men whom they were going to try and force to work. According to the plan these unco-operative, intractable men were to be "manhandled to the site of work, and forced to carry out the task". To the magistrate the order Mr. Sullivan gave appeared to have gone no further than the plan itself, that the detainees would, if necessary, be "manhandled to the site, and forced to carry out the task". Mr. Cowan explained at the inquest that by the words "forced to carry out the task" he meant that "their arms would be worked; put through the motions for the task, and compelled to carry out the task". Was it conceivable that these intractable hardcore *Mau Mau* would allow their arms to be put through the motions for the task, and that the warders, armed with batons, would not use these batons to see that they did carry out the task? If Mr. Sullivan, Mr. Cowan, Mr. Lewis, Mr. Cusack and Mr. Johnston thought that the detainees would not be beaten to force them to carry out the task, they must be indeed remarkably stupid men.

The magistrate said: "I find myself drawn to the irresistible conclusion that there was a considerable amount of beating of detainees by warders with batons, solely for the purpose of compelling them to work or punishing them for refusing to work. . . . It would have been something like a miracle"—this is part of what the magistrate said—"something like a miracle if detainees were not beaten if they refused to work or were difficult." The magistrate further said: "Any reasonable person would construe those words alone as a *caric blanche* to use whatever force might prove necessary to ensure the performance of the task whether the detainees affected proved merely reluctant or completely obdurate." The chief warder in his evidence said that his instructions were "tell your askaris, if people refuse to work to hit them on their legs or their arms, but not too much". He added "I thought if there was any sort of trouble or refusal to work we could use batons." Asked to demonstrate how he had been

[Mr. Nazareh]  
trained—to use—long—batons, he went through a drill—"a hit on left leg, hit on right leg, a push in stomach, hit on left arm, hit on right arm, push in stomach". One is driven irresistibly to the conclusion that the Minister for Internal Security and Defence was responsible for a plan—so was the Minister for African Affairs—to carry out an illegal operation to force men to work which was bound to lead to men in his custody—in the custody of the law—being beaten, and in the course of which operation 11 men were, in fact, clubbed to death. And the sum total action taken by the Government is that one man, Mr. Sullivan, is required to retire without loss of gratuity, one man, Mr. Lewis, voluntarily retires, and one man, Mr. Cowan, the author of the plan, gets the M.B.E.

The Holo incident has been said, and rightly said, "stews inevitably from the tolerance of brutality which has underlain the Kenya Government's whole approach. The chain of command through which it operates starts at the highest level". For confirmation of this we need go no further than the statements made by Mr. Macpherson, the former head of the C.I.D. in Kenya, which were read in the House of Commons on 16th June, and which have appeared in our local Press.

Rightly has it been said, "to sacrifice those who are merely the agents of this policy while allowing its authors to go untouched is not to do justice but to pervert it". Not one single man has been prosecuted—not a single criminal charge has been preferred. In the law of the Colony so inadequate—so helpless—so unrealistic—so futile—that 11 men in the custody of the Government can be clubbed to death in the course of an illegal operation in broad daylight under the eyes of their warders, by their warders, and that no criminal charge can be preferred against any of the men who commanded or counselled the operation—this illegal operation—or against any of the men who carried it out?

I looked up section 198 of the Penal Code on manslaughter; I looked up the important sections—section 230 on grievous harm—section 233 on unlawful wounding—section 246 on assault, causing actual bodily harm. Then I looked

up section 23 on offences in the prosecution of a common purpose, and section 24 on counselling another to commit an offence, and it seemed to be difficult indeed—if not impossible—for a man engaged in that illegal operation of compelling men to work, in which operation men were beaten to death, to escape the net of the law, knowing, as we all do, that no man is justified in carrying out illegal orders. But that important officer of Government, the Attorney-General, who combines with that office the office of Minister for Legal Affairs, can see no likelihood of a successful prosecution. The Attorney-General, as we all know, is an honourable and a very learned man. He is in an unhappy position. He is an important member of that Government which many of us hold accountable for this illegal operation in which these 11 men were clubbed to death. He is, in our eyes, arraigned along with the Minister for Internal Security and Defence and the Minister for African Affairs, and other Ministers joined with him in collective responsibility in the Council of Ministers, and if he found a case for a prosecution he might find himself practically in the position of both accuser and accused. We rightly follow a rule that no man may be judged in his own cause. In the present case we seem to have been led by Gilbert and to have found at the end of the road only a Sullivan. I cannot, of course, ask the Attorney-General to prosecute or execute the Minister for Legal Affairs. He has, in all sincerity, acquitted the Government and himself. Today the Government majority which sits behind him will equally inevitably confirm the acquittal. I think we shall wait in vain for the day when this deep blot on the fair and honoured name of British justice and on the high standards of British administration will be removed, when the Government will be acquitted not merely in its own self-reflecting eyes but in the eyes of just and uncommitted men.

Mr. Speaker, Sir, I beg to second the Motion.

Question proposed.

MR. COOKE: Mr. Speaker, the Secretary of State speaking in the House of Commons the other day on the Holo debate said it was unfortunate that no member had brought up any justification

[Mr. Cooke]  
for prosecuting these men, and no evidence had been put to him by which action could be taken against the warders. I know, the Attorney-General has taken the same line, and I know that the magistrate has taken the same line, but I hope, Sir, to show, from quotations from the evidence as published in London, that there is not only evidence, but evidence of the very first class, that these crimes were committed.

Now, Sir, it has been said by the magistrate that these men were non-co-operative and sullen—the detainees who gave evidence. Well, I think anyone would have been unco-operative and sullen if he saw 11 of his comrades beaten to death, 41 brought to hospital with broken arms and broken legs, and 81 altogether treated for wounds, and the magistrate dismisses the evidence of the detainees by saying that they were sullen and unco-operative. What did he expect them to be?

Now I would like to read—I cannot read them all because I will not have time—the evidence of certain of the detainees, and I will begin with John Maina, which is on page 92 of this report of the evidence given to the magistrate. John Maina gives his evidence—I think in a most truthful manner. It contains a lot of what are called undesigned coincidences, which as you know, Sir, as most people know, are some of the greatest tests to testify to the truth more often than really direct evidence. He says in his direct evidence: "I saw Sergeant-Major"—and he says afterwards: "Sergeant-Major Mawori hit a Turkhana (Ekeno Ekiro), who subsequently died, four blows on the shoulders. I also saw him hit a man called Ngethe Muchiri"—he saw him with his own eyes—and this man was subsequently treated in the prison hospital. "I also saw two Turkhana askaris beat up Ekeno"—that is the man who died. "I could recognize these two askaris again." Now, Sir, could any evidence be better than that? There is again right throughout this record of evidence, evidence of that nature—of people who saw these acts being performed, and yet my hon. friend says there is no evidence to justify taking action against them as to who struck the blow, and when and in what a manner the blow was struck.

He says that although obviously he must have read the evidence. He says there is no evidence to show who struck the blow, and yet we have this first-class evidence, and there is more still which I cannot now read. Now assuming for the moment that these people who gave evidence, these detainees, were double-dyed scoundrels. Assuming that you cannot believe a single word they said, but we have fortunately the evidence of two independent witnesses. One is a man called "Johannes Ezekiel", of whom the magistrate records that "he is an honest and truthful witness". Ezekiel says he saw "people dragged by the heels with their faces to the ground, and he was not 20 yards away when this happened". Later he moved 100 yards away and coming down, people being hit everywhere, askaris putting their whole weight into their blows—Sullivan was just behind—he could see perfectly well what was going on, is the evidence of Johannes Ezekiel. He "moved from group to group". "I could not stand this any longer—I went away". Anyway there was one decent man in that camp while all these murders took place. "When I left the beating was still going on, I heard cries from the detainees, and several Europeans in motor-cars were looking on." Now, there is in addition to that a Mr. Peters of the Public Works Department, who was also present, and he said that Mr. Marston, the district officer, was in the vicinity. He saw "warders with their long batons, armed wardens. All the detainees were beaten, while they were sitting down. The warders waded into them. Detainees protected themselves with their hands. There was no resistance on the part of the detainees. The beating was going on so I left. It is not the sort of thing—he records—I like to watch." Another decent man in the camp that day. And yet the Attorney-General says, Sir, I understand him to say, that there is no evidence with which to prosecute these men.

Now, my friend who has just spoken referred to the "common purpose". I think, it was section 24, and I have here, Sir, an extract from the *Daily Telegraph* which was dated, and in this only three or four days old, and in this case five ruffians in London drove up to a café and one of them shot a man dead, and they have all been arrested

[Mr. Cooke]

under this section of criminal law—“common purpose”—and on a charge of shooting with intent to do murder.

Now, if in England you can make use of this section of the “common purpose”, why can we not make use of it here. If it is possible to run these men in England as these five ruffians are being run why is it not possible to run these who beat 11 people to death—these 11 detainees.

Now, it was said also by the magistrate that it would not be possible for the warders to carry on beating for several hours as has been alleged. But we have evidence from the Sergeant-Major himself, the African Sergeant-Major, that the beating went on for four hours. Whether it was four hours continuously I would not know but I imagine that it must have, been because the beating started at eight o'clock and the Sergeant-Major went back and they all went back to camp, at twelve o'clock. So this beating went on for four hours, left 11 men dead—10 men dead and one died the next day—I admitted to hospital with broken arms and broken legs and 81 treated in hospital for more minor injuries. And yet my hon. friend says that it is impossible to bring any charge against these warders.

I do not know whether anybody on the other side of the House, African or non-African, can contemplate this matter without the deepest shame. And I cannot understand anybody voting against this Motion who is out to sustain the great traditions of British law. If they vote against this Motion it would seem to me that the obvious conclusion must be that they have a certain amount of sympathy with the beatings because the *Mau Mau* were so-called “hard-core” men. We have not even got that evidence because as we know a lot of those *Mau Mau* were detained on the evidence of informers and we know from the Devin Report what that Commission thought about informers. So you cannot even say—although the magistrate said it—that all these are hard-core *Mau Mau*. Admittedly many may have been but they were, most of them, arrested on evidence that was not very satisfactory. Indeed, I have always—and I tried to interrupt today to ask what a hard-core *Mau Mau* was—but I find it very difficult to believe as the district commissioner

said to journalists in Holo the other day that one man ceased to be hard-core *Mau Mau* and became the camp cook because he had confessed to 35 murders. It does seem to me a most remarkable thing that a man who confesses to 35 murders should cease to be a hard-core *Mau Mau* and the *Mau Mau* detainee who possibly has not committed any murder is still detained and flogged.

I would vouch for this man whose evidence I have just read out. It was entirely against his interest to give this evidence—entirely against it—because as he knew he was going back to the same camp that night where he might quite possibly have been flogged to death or beaten to death as the 11 others had. So that strengthens as well the value of the evidence given by this man.

Now, Mr. Lennox-Boyd pointed out in the House of Commons and also said in answer to the findings of the Devin Commission that Nyasaland was not a police state and that he did not agree with Judge Devin and his committee men and that this was so obviously, because if true the Government would not have agreed to a Commission of Enquiry. I thought that was a very extraordinary thing to say, that is, that if there had really been a police state in Nyasaland the Government of England would not have been such fools as to agree to a Commission of Enquiry. Well, if you will take the reverse, Sir, adopting the same argument, Mr. Speaker, I am going to suggest that the reason that the Kenya Government refuses to prosecute the European and African warder staff is that the warders in defence of themselves would make disclosures seriously involving those much higher up; that is the Kenya Government are frightened, scared, to bring those warders into court because those warders in defence of what they had done might implicate certain people higher up. If that is not so, Mr. Speaker, in face of the sworn evidence that I have produced today, why does the Kenya Government not accept this Motion? I have brought to the notice of the Kenya Government first class evidence; and why do they not accept therefore the Motion in the light of all this? The answer is that the Kenya Government are afraid, they have a craven fear, that by a full enquiry or full magisterial case that they will have before them evidence

[Mr. Cooke]

which will involve those far higher up than the unfortunate warders who were only carrying out what they had been ordered to carry out.

Sir, I support the Motion.

GROUP CAPT. BRIGGS: Mr. Speaker, Sir, with the time at my disposal I cannot adequately deal with the remarks made by the three previous speakers and I do not propose to attempt to do so. I would merely say that I gained the impression that they have studied the Report of the Conroy Committee clearly with a view to finding in it and using matters to make the great amount of political capital out of.

The Holo affair, Sir, to my mind is chiefly remarkable for the emotion it has aroused in the United Kingdom; and the amount of political capital that has been made out of it. As I have already said, the same thing applies here and in some cases—I am afraid by some of those who indirectly and perhaps unwittingly encouraged *Mau Mau* during the worst stages of it and also by their attitude at that time undoubtedly tended to prolong the Emergency and the consequent suffering and loss of life.

Now, I do not suggest that it was not deplorable that 11 detainees should have lost their lives and one can only condemn the disciplinary standards which permitted this to happen. But at the same time it must be remembered that these men, although in detention, were continuing their war against Government and against society. They are described in the Conroy Report as persons whose records were so black or whose records so brutal that they would not be accepted back by their communities. The last clause of the findings of the Committee also described these detainees as the “hard-core of *Mau Mau*” and, as several witnesses emphasized, any operation with these men contained some element of danger. These detainees were, as the magistrates found, potentially dangerous in the highest degree.

Now, Sir, in the light of these statements it must be clear that these were men who must have been involved in the most bestial practices and in torture, murder and intimidation on a large scale. It has astonished me that the reaction of the United Kingdom has been

far more violent, far more vocal, and far more political—heat has been generated by this incident than by any of the atrocities committed by *Mau Mau* against innocent people. One wonders what the reaction of the critics would have been had the savage attacks on officers and warders which have happened in the past resulted in a similar number of casualties. One wonders also how some of these chair-borne critics would themselves have dealt with the situation which arose so suddenly and in circumstances that suggest to me that they may possibly have been planned.

Now, Sir, certain letters were intercepted as is disclosed in the report. Now, that there were some intercepted, does not mean that all were, and it may be that some letters got through and hardened the attitude of the detainees in the camp. I would like to ask the Government if they have discovered the sources of those letters; if they have discovered the origin? And if so, if they were connected in any way with the new subversive organization which my hon. friend, the European Minister without Portfolio, referred to last week.

Now, Sir, when it is considered that 77,000 detainees have gone through the process of rehabilitation I think myself that it is remarkable that no such serious incident has happened before, particularly when it is borne in mind that European supervision has always been limited by finance and also by the availability of manpower. Indeed I believe that one of the several lessons to be learned from the incident is that if such occurrences are to be avoided it will be necessary to increase the European element of the establishment considerably. And I would add that if the risk of such incidents occurring would be removed altogether, then you must have an entirely European staff.

Furthermore, I would point out that it is impossible to maintain discipline unless the will to do so exists in the highest quarters unimpeded by political considerations and also unless the means to enforce that discipline do exist.

I naturally welcomed the announcement by Government that it is their intention to reorganize the whole system. It will not be an easy task for it is very difficult to find people of the right

(Group Capt. Briggs) — of them will ever be fit to return to society. Indeed, I believe great risks have already been taken and there is a limit to it. For we none of us know how far the process of rehabilitation has really affected the hearts and the outlook of those already released.

To conclude, Sir, I think that the rehabilitation and return to society of 77,000 detainees has been a most remarkable achievement on the part of the Government and I believe it reflects very great credit on them. It is indeed unfortunate that this record should have been marred by this regrettable incident which I nevertheless maintain should be viewed with some sense of proportion and very much less emotion.

Mr. Speaker, Sir, I beg to oppose the Motion.

Now, Sir, I was astonished to hear the decision of Government that they had decided to pay compensation to the relatives of those detainees who had died on the same basis of the compensation paid to the Kikuyu, Embu and Meru loyalists who lost their lives in the course of the Emergency. I would like to ask Government to explain the reasons underlying this rather curious decision, particularly having regard to the fact that from the records of the men who died, it appears very doubtful whether they would have returned to be of much value to their families in the light of their characters.

I would now like to mention one other matter on which I hope the Government will reply. Having regard to the records of the Hola detainees and their resistance to any normal human approach, the thought occurs to me that it is possible that some of them may well in fact be criminal lunatics and if so I consider that they should be dealt with as such. I would therefore like to ask Government to say whether these detainees have been examined by a medical specialist to ascertain their mental state and if so what the specialist report was. Furthermore, if this has not already been done I would like to submit the idea to the Government for their consideration.

Lastly, Sir, I would like to ask for an assurance that political pressures from the United Kingdom and elsewhere will not be allowed to hasten the release of the hard-core, irreconcilables from Hola. It is clear that these men are dangerous and I doubt very much myself if any

of them will ever be fit to return to society. Indeed, I believe great risks have already been taken and there is a limit to it. For we none of us know how far the process of rehabilitation has really affected the hearts and the outlook of those already released.

To conclude, Sir, I think that the rehabilitation and return to society of 77,000 detainees has been a most remarkable achievement on the part of the Government and I believe it reflects very great credit on them. It is indeed unfortunate that this record should have been marred by this regrettable incident which I nevertheless maintain should be viewed with some sense of proportion and very much less emotion.

Mr. Speaker, Sir, I beg to oppose the Motion.

MR. TRAVADI: Mr. Speaker, Sir, I rise to support the Motion moved by my hon. friend, Dr. Kiako. Before I start my comments, I would like to quote a saying which I recently came across which says "Never tell the truth to a liar, he will never believe you". Mrs. Barbara Castle, that gracious lady, a Member of the House of Commons, tried to go into this matter before even the deaths at Hola took place. Every obstruction was raised in her way but eventually the truth percolated like water in rainy days.

Now, coming to some small points which seem to have escaped the notice, it is said in the report of the Disciplinary Committee that there were 72 detainees attending the sick parade. So there were 72 sick persons reporting to the hospital there or wherever it may be. That means that when there is an average of 72 that I take it for granted that they must have been having beatings even before that.

Now, these detainees as has been just recently described were the inner core of the hard-core. But after all, they were committed to the custody, they must be secure in the custody of the detention authorities at Hola. They were never tried nor were their cases proved; but according to the Universal Declaration of Human Rights, Article 9, which I have here and which I would like to put on record says: "No one shall be subject to arbitrary arrest, detention or exile." The second which follows is:

[Mr. Travadi] — "Everyone is entitled to a full equality, to a fair and public hearing, by an independent and impartial tribunal in the determination of his rights and obligations and of any criminal charge against him."

Mr. Speaker, the facts are that this the inner core of the hard-core were never brought to trial.

Now, rule 22 quoted by the Enquiry Committee, of the Detention Emergency Rules, contains a provision that says: "Every person or for the time being detained in a special detention camp may be usefully employed in work which the officer in charge is satisfied will assist in bringing the Emergency to an end". Now, I do not understand what type of work the detainees were to be put to which would end the Emergency. I mean, it is a very curious thing. Now, those are tiny things though we are discussing the big issue of the 11 deaths.

Now the creator or originator of this Hola scheme of murder, I should say, was the Commissioner of Prisons. He in his letter says on page 11 that he visited this camp in November and found a number of detainees "evidently" able-bodied men malingering, he said, some with off-duty cuts from the doctor and others refused to work out of the camp. And the Commissioner thereafter thought that he should send Mr. Cowan to assess the problem and draw up a plan of action to be taken with a view to preventing an increase of this idleness and indiscipline. So now the Commissioner of Prisons wants to remove the idleness and indiscipline amongst the detainees and he thinks of sending Mr. Cowan, the architect. And he says, paragraph 25, line 14, that "from his experience that once token work had been performed by the detainees he would consider that he had broken the Mau Mau Oath which had by superstition previously prevented him from co-operation". Now, you realize that those words that I am now quoting are very important here. "Experience shows that once a detainee has cleared this psychological hurdle he will probably become co-operative and thus start on the road to freedom". Now those 11 men have gone "on a road to freedom", no doubt. I call this pure brain-washing.

Now, to send these hard-core detainees "on the road to freedom" four types of force are described and mentioned in the report. One is the compelling force; the second is the overwhelming force; the third is corporal punishment; and the fourth is, under the provisions of section 18 of the Prisons Ordinance. But these beatings according to the report of the Disciplinary Enquiry exceeded all these four provisions. It was shocking brutality which has practically staggered the conscience of the world and the whole of humanity, and actually it has so happened that even the British in England have been stirred from the depths of their hearts and tried to fight for the cause of these Africans.

I remember exactly 20 years ago, Mr. Speaker, there took place the "Black Hole" of Calcutta which they call it there it is alleged that in 1757, Mr. Siraj-ud-Daula, the then Viceroy of Bengal, when he found that the people of the East India Company were building—erecting illegal fortifications he advanced on Calcutta and captured 146 Englishmen and put them into a dark room, where without any ventilation it is said that 123 died and that only 23 survived.

Now, I can call this the "Black Hole of Kenya" where the people were battered to death and in a way which I would like to quote from the very report itself by non-violent, non-co-operation method.

And I quote page 37 of the Sullivan Report which I would like to read: "The pyramiding effect took place again. All the detainees dropped behind their picks and shovels and ran and merged together. It was violent but resistance—kicking of legs in order to avoid themselves being dislodged. They did not appear to be deliberately attacking warders but were throwing themselves around and the warders might have got hurt". The second quotation is from page 38. "The first group of recalcitrant detainees evidently refused to work and were taken to one side, made to squat down in fives and tens, do not know what happened then but the next thing I noticed was that the warders were using batons on the detainees who were squatting down". And detainees who were squatting down, again it says: "The batons were used, probably for five to ten minutes, and it was still going on when I 'picked up' Johannes and turned away to go to the

[Mr. Travadi] Ministry of Works camp." In the next paragraph it says: It was coming from the first squatting group on whom batons were being used; the others, I could not say. It started as the beating started, probably both together. I saw no form of disturbance on the site. As far as I could see the detainees stayed sitting and did not retaliate".

Again, on the same page: "The detainees were unwilling to march along. They passed me. They were quiet. The askaris were telling them "walk along, walk along".

I have got about five quotations to make. Page 39: "Then I saw them sit down, all the groups. I then saw batons raised up by the askaris and lowered on the detainees. This started all along the line at the same time, on all groups of non-co-operative detainees. I saw a European behind the askaris who was at the far end, with the furthest group. He was the Commandant. I identified Sullivan. I saw him move from group to group, coming towards me. Batons were being used as he came down. The askaris were those with long batons. The detainees were sitting. I heard cries".

Then on page 44 it says that they were dropping like flies and that they were "willing themselves to death."

Now, these are the things which give me an idea that if these people when they were being beaten remained so non-violent then it appears that era of ending the Mau Mau régime or whatever you call it has ended. But let me be a little optimistic and say that era of freedom will begin from the date of the deaths of Mau Mau at Holo.

According to the Motion, I feel that this Holo structure was conceived by the Commissioner of Prisons who is the originator of the idea: Mr. Cowan, the architect of the sin or the plan, the Minister for Internal Security and Defence and also the Minister for African Affairs were the people who approved the plan and Mr. Sullivan the executioner who actually carried out the plan and the warders who actually were used as carpenters and masons to build this Holo structure. I therefore feel that it is time that the Government took action. My

Area, has been able to quote a number of sections from the Penal Code which do really embrace the crimes of the nature that is described in the committee's report.

In the end I feel that it would be better if we adopt the policy of "Forget and Forgive" and if the Africans or the "Kenyaans" as we now call ourselves, if we feel that we would like to fulfil in the very near future our desire, our cherished goal of independence, I would certainly advise including myself and my community that they should adopt a way of non-violence, peaceful and constitutional methods to achieve the aim they have in view.

I beg to support the Motion.

MR. MATE: Mr. Speaker, Sir, the Holo incident is a most serious reflection upon the administration in the detention camps and in the prisons as far as the K.E.M. are concerned.

Mr. Speaker, Sir, more than anybody else this incident affects the people of Central Province. Other people may comment but we in the Central Province feel it. And Mr. Speaker, let it be clear that between the detainee and his brother who is at home and his brother who is a loyalist, they are members of the same family, members of the same group. The loyalist feels as hurt as anybody else over the Holo incident.

Mr. Speaker, Sir, the difference between a loyalist and a man who was in the Mau Mau is that both differed in their approach to the problems of the country. One thought violence was the answer to the problems and the others felt that it was not and we should not be mistaken in thinking for a moment that indignation was only confined to people who were detained or people who are mad. I know many people in the Central Province and the K.E.M. who were very much annoyed over the Holo incident and I would like to ask the Member for Mount Kenya when he talks of these detainees as if they were men from the moon, from another place who have been found in a certain camp and have been maltreated somehow by the good people and some people get annoyed about, why should we not be annoyed about it? After all, this is what happened; Maybe

[Mr. Mate] we are waiting for them to reform and come back and coming back is not what has happened now.

Mr. Speaker, Sir, when the Member for Mount Kenya questions the right of the families to get assistance: I wonder whether he considers himself an equal Kenyan with the Kenya people. I would like the Member for Mount Kenya, when he talks in terms of "we", to say what he means by "we." Does he belong to this country?

Mr. Speaker, Sir, one wonders how the various camps and prisons are administered if at the end of the Emergency, when the Authorities have had a lot of experience in dealing with these men, how such an incident can happen. It is very surprising that when the Government has been priding itself on its experience in handling these people such an incident should happen under their noses, Mr. Speaker, Sir, there are many classes of people involved in detention camps. There are those who are restricted, those who are imprisoned, and there are others who are just detained. How are we to be assured that they get the best treatment to help them to reform? If the detainees in a camp have been so treated then what about those others who were restricted from even moving about the country, and how shall we know that the Government does as it does regarding their freedom? I will give an instance, Mr. Speaker, of the case of a man I knew very well, Mr. James Gichuru, and I would like the Government to explain why he should be so restricted. Is it the general attitude of the Government just to take these matters lightly as evidenced by the Holo incident? I would like to ask the Government if this action and intention of the Government is representative of the Government as a whole? Is it punitive? Is it meant to be an action to show the people of the Central Province that anything can happen to any one of them and nobody would ask? Mr. Speaker, I should feel very much happy if our Government would do something to show that they do see the seriousness of the situation to the Central Province? If our Government could take some real measure to show the country here that they feel that something is wrong, I would be happy. Human beings have

been wrong, and if they could show that it would be doing Kenya a good service. At this time, Sir, we, in the Central Province, are looking forward to a period of prosperity, to a period of what the Government says will be prosperity. Are we to let such a thing go by unchallenged?

Mr. Speaker, I would like to refer to the conduct of people who have been to camps like Manyani, Lodwar, and so on, who come back and who are with us. Many are employed in Government service, in offices, in shombas, and why should they be so talked of as such specimens of human beings who can die so easily that nobody can know anything about it. It is a challenge to the Kenya Government here.

Mr. Speaker, it is not only the men who were concerned here, it is all the population in the prisons and in the detention camps and those who are restricted. When are they coming back? If the Government's attitude is that anything can happen to these people, including death, and nobody needs to be worried about it, then anything can happen.

I would like to rejoin the new Minister for Defence when he talked of the hope that Government are going to make these people come back to their homes. I hope that the new Minister will make sure he leaves no stone unturned and makes sure that they all should come back, those who are restricted; those who are imprisoned, and those in detention camps.

I would also like to ask the Government as to how hard they are trying to find out what the ordinary man and woman in the Central Province thinks regarding such an incident? Whose opinions do they go by? I challenge him to go to any public meeting in the Central Province and to talk to the villagers, anybody, and ask what they feel about this. If the Government feels that something ought to be done to honour the confidence that our people today have then they should show most clearly that they do take into consideration the opinions of the bulk of the people.

Mr. Speaker, some people claim that they are not racists. I speak as an African. I am a Meru. My argument is this. We feel strange that the whole



[Sir Charles Markham] this debate will not be taken as an opportunity for politics to outweigh the emotion and for ulterior motives to be used in the course of this debate to further that emotion and party politics. I believe, Sir, that certain Members of the House of Commons are thinking of their own election date when they make some of their speeches, and certainly as the Member for the Central Area mentioned, the hon. and gracious lady, if she can be called that, spoke yesterday, and she has always, as Chairman of the Labour Party, used the political weapons she can. However, I can understand the Members of this House being emotional and I do not somehow think, Sir, when the hustings start in England Kenya will take any part unless it is to win votes.

I do hope, Sir, that when we debate Motions such as these Members will realize that from the European community we too, have bitter memories of *Mau Mau*. We have bitter memories of the Lari Massacre, and therefore our sympathy and although we are distressed and horrified at the fact that people in the care of the Kenya Government could die in such circumstances as we know today, nevertheless we have also got to remember that this incident was part of a very difficult problem. I cannot excuse the Government, Sir, but nevertheless I find myself in the position of saying that if I had had to do something could I have done any better? Sometimes, Sir, although again I get this laughter on my left, I wonder what the Member for the Coast with his vast experience of administration—

MR. COOKE: I would never have beaten anyone to death, at any rate.

SIR CHARLES MARKHAM:—could have done to try to get back these people into rehabilitation. I think, Sir, that we might have had an even bigger disaster.

Sir, finally, before I sit down, I want to ask one final question I forgot regarding the medical history. The House may remember that the man who had been injured were moved from Holo to Manyani a little later on. I would like to ask, Sir, that those people, according to the newspaper report, were all in plaster because of the broken bones they had suffered during this beating-up. I

would just like to ask the Government, Sir, after investigation, how many in fact of these people who were in plaster during this move did suffer from broken bones which were mentioned at this time. I think it is important, continuing my own argument I made previously, regarding my doubts on the only cause of death being the beating, but I am not disputing this very serious beating.

Finally, one of the reasons which I have which prevent me from supporting this Motion, is that I did ask, Sir, the hon. Member who moved it whether he would not agree an amendment, to move an amending Motion, which, to start with, would only be concerned with Holo. Unfortunately, Sir, the hon. Member could not see his way to do so, but this Motion, Sir, goes far beyond the terms of Holo. It is in wide and general terms and it talks about prisons, although no speaker as yet has touched on that subject. It talks about the other camps and calls for the resignation of the Minister for Internal Security and Defence. That Minister, according to this Motion, is the person who took the oath of allegiance in this House yesterday and I certainly do not think we should call upon him for his resignation. He may, Sir, say that Mr. Cusack is still the Minister while pending retirement, but so far as we are concerned in this House, we look upon Mr. Swann, if I may refer to him by name a moment, as the new Minister for Defence. The same remarks apply to the Minister for African Affairs.

Sir, I see that my time is up, and I beg to oppose the Motion because of its too wide terms.

MR. MUMI: Mr. Speaker, Sir, this question of the Holo incident is one which we should view with the greatest concern. I was somewhat discomfited by the speech of the last speaker when he tried in a way to minimize the seriousness of the Holo affair. Mr. Speaker, I would like to ask the House to think in a different direction concerning the Holo incident.

The other day when my hon. friend Dr. Kiano, was speaking to a young settler, a friend of his, on what the situation would be if the Africans came to power at some future date, and I must say this was in a friendly talk. The young

[Mr. Mumi] said that if the Africans came to power then the Europeans would go into the forests and become another *Mau Mau* and shoot the Africans.

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

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

I wonder what treatment the white settler in this country who surrendered as *Mau Mau* terrorists to the Africans would expect? I wonder whether he would expect to be treated in the manner that the *Mau Mau* detainees were, who, many of them, surrendered to the Kenya Government. Nevertheless I must use this very strong term, Mr. Deputy Speaker. They were deliberately murdered, and I want to be excused by the legally-minded gentlemen for using that term, because that is the way we feel about the Holo incident. These 11 people in the custody of Her Majesty's Prisons were beaten in the eyes of officers drawing their salaries from this Government from the money that we provide in the form of taxes, to beat undefended people, many of them, dead. It is a matter which we should not view lightly. Even in our primitive wars, in our primitive tribal wars, in the old days, mercy was shown to those who surrendered. If a *Massai* surrendered to an *Akamba* he was protected. He was not murdered. When an *Akamba* surrendered to a *Massai* he was not murdered. He was protected.

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

SIR CHARLES MARKHAM: I would not risk it.

MR. MUMI: This is the truth, whether you like it or not. The Motion is not strong enough. It should require the resignation of everyone from the topmost in this Government to the very last one who was concerned in this matter. Otherwise, when we preach of creating a non-racial or multi-racial Government in this country, I do not simply see the sense of it. Let me put it to the Government that when certain Members object to the compensation that the families of these men will receive, this serves no useful purpose—for these people would have been used on a project which would

have benefited this country. If today I hunt an animal to death, then, in the eyes of the Minister for Game and Fisheries, I shall go in for it. Is that not a fact? When you beat a human being to death you can get away with it without the slightest punishment on you. There is nothing more shameful on this Government than what has taken place after the Holo incident in spite of what we have pleaded to this Government and this House to go into the question of the prisons and the detention camps in this country. How long have we to wait? How many men have to be murdered before this Government is awakened and takes action? This is a matter of great concern.

I surprised everyone when the findings of the Attorney-General amounted to the fact that there was no evidence that this or that warder or that officer lifted any finger to beat this or that detainee. Oh no, I have not heard from the Minister or from anybody suggesting as to whether that Department at Holo had any timetable at all to show the workings of the camp, to show this and that person were detailed for duty on these incidents on March 3rd. I am sure that they know them very well. Nevertheless they are not prepared to bring them to light, and it is for this reason, Mr. Deputy Speaker, that we feel that the Government cannot excuse itself in whatever manner and Government deserves condemnation for not taking a different action to show at least to the people of this country that they are sincere in what they do.

Mr. Deputy Speaker, I would also, on this question of compensation, like to draw the attention of this House to a law that was passed just a few days ago, the Affiliation Bill. A man who causes a woman to have a child, this Government penalize him to a fine of some Sh. 38,000 over a period of 16 years. Nevertheless, Sir, somebody who murders—

THE TEMPORARY MINISTER FOR LOCAL AFFAIRS (Mr. Conroy): That is quite untrue. The hon. Member must be responsible for his facts of what he says.

MR. MUMI: Well, Sir, I think I am not far from right when I say—

THE ACTING CHIEF SECRETARY (Mr. Griffith-Jones): On a point of order, Sir, the hon. Member must show us that he is exactly right.



MR. MUIMI: I would like to ask the Attorney-General and his colleague the Solicitor-General to read the HANSARD, but—

THE TEMPORARY MINISTER FOR LEGAL AFFAIRS (Mr. Conroy): Mr. Deputy Speaker, on a point of order, if the hon. Member makes these statements, and they are untrue, must he not withdraw them? They are not even a little bit true.

MR. MUIMI: Mr. Deputy Speaker, it says, under this law which I am referring to, that a guilty person shall pay a lump sum of Sh. 24,000 to the custodians of—

THE TEMPORARY MINISTER FOR LEGAL AFFAIRS (Mr. Conroy): Perhaps I might help the hon. Member. The Ordinance does not provide for a fine. It does not provide for a conviction. It merely provides that the father shall undertake the responsibility of paying to the mother of the child money in order to support his child.

MR. MUIMI: Mr. Deputy Speaker, I think I had better tell the public what it is.

THE ACTING CHIEF SECRETARY (Mr. Griffith-Jones): On a point of order, Mr. Deputy Speaker, is this not so irrelevant as to be unrelated to the Motion?

THE DEPUTY SPEAKER (Mr. Bechgaard): The Member can now continue with the main body of his speech and abandon the point concerning maintenance.

MR. MUIMI: Mr. Deputy Speaker, I obey your ruling.

The point that I wanted to make is this, that, even according to the tribal customs, murder or killing another one, the compensation must be substantial to meet the offence. But merely to say that the compensation that the Government has decided to pay all these detainees' dependants is too much, I do not simply understand.

MR. DEPUTY SPEAKER, I have but very little time left and I would like to draw the attention of the House to an incident which took place in 1927 in the Machakos District, where some people known in those days as "King'ole" who put an action against one who they thought was dangerous to the tribe, stoned a

certain woman who they thought was a witch and they killed her, murdered her in other words. Now, these persons were brought to court and were prosecuted. There was no excuse whatsoever in the eyes of the law that these people, in whatever circumstances, they killed this woman, were not jointly connected with the murder of the woman. Therefore, when the Attorney-General goes to speak in favour of the action taken, and alleging that the warders, the officers, and those concerned were not implicated in the murder of these 11 detainees, it is simply a great injustice and it shows, how, we view with much concern the way that the law can be twisted in order to punish certain people and give excuse to some others.

My last word, Mr. Deputy Speaker, is that in one of the despatches which the Governor of Kenya wrote to the Colonial Secretary, he said that he admitted that there was a serious administrative situation in the prisons of Kenya, and he went further to say that this situation had led to the incidence at Holo because the Government did not take sufficient caution to see that these prisons and detention camps were corrected. When all those implicated in the murder of 11 people escape scot-free it is a matter of great concern, and I would only ask that not only should they resign—the two Ministers—but those implicated in the murder of these people should be brought to court.

I beg to support the Motion.

MR. NOALA: Mr. Deputy Speaker, Sir, this shameful tragedy of Holo was apparently prepared by the Government. The Holo incident, Sir, has been a gross abuse of British justice. As such, Sir, we are deeply horrified, and the Ministers in front of us do have a collective responsibility, and we forthwith demand that they should all resign.

MR. DEPUTY SPEAKER, Sir, I knew there was something wrong at Holo since 1957. Holo is one of the small villages in my constituency and of course I was knowledgeable of what was going on in both the closed camp and in the open camp. I took the first opportunity, Sir, of asking permission from the Minister for Defence to visit that area, and to visit the camp as well, because I knew that

[Mr. Ngala] the detainees there were not willing to speak or talk to any Government officer, because they were so frustrated.

MR. DEPUTY SPEAKER, Sir, to my surprise, I was refused a permit to visit these people. I believe, Sir, that if I had been allowed to visit this camp, these people would have talked to me very willingly, and I would have been in a position to give the Minister whatever advice I thought fit. Still, Sir, I was not discouraged by the attitude of the Minister. I approached him again in 1958 when I thought the position was getting even worse. Again, I was turned down and I also received a letter from the Minister for African Affairs that he could not consider allowing me to visit the camp at all. I made a very strong protest to the Provincial Commissioner of the Coast, Mr. O'Hagan, and showed my protest against the decision of the Minister for African Affairs. But all this was in vain, Sir, when the position in the camp was all the time deteriorating. I happened to be in Holo in September, 1958. On the spot, there was the Minister for Defence, and the Minister for African Affairs and another officer whom I did not recognize.

I asked for permission on the spot at the time when the detainees were behind the barbed wire and were shouting for me to go to talk to them and hear their grievances, but even on the spot I was turned down.

Now, I think, Sir, that the Government must have been aware of the grievances and the sort of things that were going on in the camp, and I think Government made a very purposeful attitude in refusing me permission to talk or to see the people when I would not have done anything more other than to reflect the genuine complaints of the detainees to the Minister for proper action.

Sir, the nature of the work that these people were asked to do is completely irrelevant to the ending of the Emergency. It was an irrigation scheme at Holo by the ALDEV. This scheme, as described by the Provincial Commissioner whilst giving evidence at Mombasa, said that it comprises 800 acres of land which Government intends to turn into useful land, not only for detainees but even for the tribes in the district of

the Tana River. The Wapokono can take advantage and can take up the two or four-acre plots that will be given out. The Walongu, too, can take advantage and can get two or four acres that are distributed. As such, Sir, I feel very strongly that it was entirely wrong to force the detainees to do this work and beat them to death if they did not do the work.

Sir, the British Government is not only democratic, but I believe that it is a Christian Government, and as such I think this is a very shameful, unchristian attitude of the Government officers. I really personally deplore this to the depth of my heart.

Sir, I know very well what the position was at Holo on 3rd March. The detainees had refused to work on 2nd March, and early in the morning on the 3rd, they were expected to go to work at about half-past seven in the morning. Government had prepared itself with additional military battalions—more forces flown from other places—surrounding the camp—the closed camp. On the same morning, the detainees who should have gone to the dispensary for their treatment, I understand, Sir, that they were refused treatment that morning.

Now, the detainees and other people around the village were very surprised because of the great preparation and pains that Government was taking in preparing for this beating-up. The dispenser or the dresser in charge of giving medicine to these detainees went to the dispensary and found there were no people to serve, and he reported this to the local doctor, and the local doctor appeared to know the plan. This, Sir, was not a thing which happened by accident. It is a thing, I feel, that was planned.

When the time came, Sir, for work at seven-thirty in the morning, these people—the 85 people who were in the working gang were forced on to work: they were led to the place of work, they refused to work, and they were helped to handle the spades for work. They did not work, and they threw themselves down, and the beatings then started.

Now, somebody has said on this side, that the detainees were a potential danger. There is no evidence, Sir, in the memorandum or in evidence that the

[Mr. Ngata] detainees started the beatings. They did not even defend themselves. It is shown very clearly that they made some cries when they were in pain and they were being beaten, and this cry has been called a *Maini Mani* cry. While they were dying and being beaten, they cried, and the cry is given this name just to deceive the public. I feel strongly Sir, that this is an attitude that will not help the good relations that we expect to have in this country. It is quite absurd for Government to try to cover up a position which is so shameful and so horrifying, as the hon. Member for Ukamba has described it.

Sir, these detainees were beaten to death, and surely the Minister concerned, or the Superintendent of Prisons could not pretend that he had no time warn, or to give proper notice, because these askaris who were surrounding the closed camp stayed there for over one hour before the real action, and anybody on the spot could have had the time to give them instructions as to how to deal with the people. This was apparently not given, Sir, and as I have pointed out it was a planned thing which was planned the day before the incident took place.

Mr. Deputy Speaker, Sir, I feel that this work should have been properly done by AIDEV itself, and that these people should not have been killed or murdered just because of a development project which concerns the whole country.

Mr. Deputy Speaker, Sir, I also understand that as a result of this incident, 22 other people have been made cripples. I would like to know from the Minister exactly who these people are, because it is not just people who have received injuries, but I understand that 22 of them in the camp have been made cripples, and this is an even more serious situation. I also understand, Sir, that of the 11 murdered people, four only had been convicted as *Maini Mani* people. That means seven were just as normal as any Member in this Council. Nobody has so far proved that the seven were convicted, and there is just as good a chance of them being free as we are free in this Council.

Mr. Deputy Speaker, I hope that the Minister will also clarify that position when he stands to reply to the debate.

Now, Sir, the condition of the detention camps, I understand needs to be gone into and thoroughly gone into, and we as African Elected Members have persistently asked the Government to let us have a share of advising them on how to manage and run and also to help in the methods used to run the camp. All we have received so far, Sir, is a complete rejection and the complete deaf ear of the Government. I hope that the new Minister who has just been sworn in will have a different attitude from the former one, because we cannot make any headway if this attitude continues in the Ministry of Defence.

I strongly feel that if this had been Great Britain, the Ministers themselves would have resigned long before the Motion was brought to the Council. I do not know why the Ministers concerned are still in the Government, but probably this is because the murdered people were Africans.

Mr. Deputy Speaker, Sir, the African public will only appreciate the attitude of Government if Government forces the Ministers concerned to resign. The punishment—or the so-called punishment which has been given—is completely something just to bluff the African public, and I believe strongly that we are at a stage when bluffing is not the thing. We would like a real punishment on the Ministers and on the people concerned in this issue, because this is something, which if it is not put right, there will be a permanent scar in the minds and the mentality of the Africans in Kenya.

With these few words, Sir, I would like strongly to support the Motion.

THE TEMPORARY MINISTER FOR LEGAL AFFAIRS (Mr. Conroy): Sir, so many untrue statements have been made from the other side of this Council today, that I thought it was time that I interjected into this debate a little of what the hon. Member for the Central Province South called the "cold, calculated logic of our Legal Department".

(Sir, as I understand this Motion, it seeks to achieve three ends: the first is that the Government should immediately dismiss the officers and warders concerned; the second is that the Minister for African Affairs and the Minister for Defence should be called upon to resign; and the third is that the Government

[The Temporary Minister for Legal Affairs] should institute criminal proceedings against the officers and warders at Holo who were involved in this incident.

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

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

Sir, I only have fifteen minutes at my disposal, and I propose, therefore, not to deal with Head two but to leave that to other speakers on this side.

I propose to deal, firstly with the request for criminal proceedings, and secondly to the question of the immediate dismissal of officers and warders concerned.

Sir, hon. Members opposite have been at pains to criticize the Attorney-General for his decision not to prosecute in this case, and I would at the outset say this, Sir, so that there can be no doubt whatsoever about the position. That decision, Sir, is not the decision of the Government; it is the decision of the Attorney-General. It is my decision to decide whether a prosecution should be instituted or not, and I do so, Sir, entirely uninfluenced by any political ends, by any political attacks or by any political vilification.

The reasons have been set out in Command Paper 778, which I think most hon. Members have had. They were carefully, as the hon. Member for the Central Province South was kind enough to say, based on cold and calculated logic. He urged that the Court should prosecute on emotion. He said: "I am emotional about this and I want a prosecution. I do not want no prosecution on the logic of the Attorney-General." Well, Sir, hon. Members, even those who are not lawyers will appreciate just how far you will get in Court on emotion. You try putting emotion in the witness box and see how far you get with your prosecution.

Sir, it is the fundamental basis of the British system of criminal law that the prosecution has to prove the accused guilty. It is not, Sir, that we can put a man in the dock and say prove yourself innocent. There is no burden on him to prove himself innocent, the burden is on the Crown—on us—to establish his guilt

beyond any reasonable doubt. Another way, and possibly a simpler way of putting the same doctrine as this—if at the close of all the evidence the court says: "I am not satisfied that the prosecution's story is true," then the accused must be acquitted. It is not a question of benefit of the doubt—it is the right of the doubt—he is entitled to be acquitted.

Also if at the close of the evidence given both for the prosecution and for the defence and at the end of the case the court says "Although we do not believe the accused's story, nevertheless, it might reasonably be true"—then he is entitled to be acquitted.

Now, Sir, I have been at some pains to underline this principle, because it must be the basis on which one can form any opinion as to whether a prosecution would succeed or not, in this case and in any other case. I am sure that all hon. Members will agree with me—although after listening to some of the speeches this afternoon, perhaps that is an over-optimistic expectation—I hope all hon. Members will agree with me that it would be wholly unjust to put a man on trial on a serious offence, when the Crown knew there was no reasonable prospect of success in that prosecution.

The burden on the prosecution was increased in this case by the willful obstruction by those stupid and misguided men, the detainees. For those who care to read, they will find the evidence before the Magistrate the difficulties up against which the Criminal Investigation Department officers ran. Sir, if the detainees had come forward voluntarily and willingly to give statements to the Criminal Investigation Department officers.

MR. COOKE: They would have had another beating that night.

THE TEMPORARY MINISTER FOR LEGAL AFFAIRS (Mr. Conroy): Sir, the hon. Member for the Coast has made his speech, and if there is something he has forgotten, he should talk to me about it afterwards. It is contrary to the rules of this Council for him to try to make another speech now.

We know that the detainees were obstructive—in assisting the Criminal Investigation Department in unearthing evidence and in obtaining identification.

[The Temporary Minister for Legal Affairs]

Then, Sir, when they gave evidence what did they do? They were guilty, as the Magistrate said, of "blatant lying".

The hon. Member for the Coast seems to find this amusing, Sir, I do not. I find this a very serious and tragic debate. If the hon. Member for Coast can extract amusement from this, he can extract amusement from anything.

The hon. Member for the Coast had this to say about the learned Resident Magistrate, and I thought it was the most unfair and prejudiced criticism: "The Resident Magistrate dismissed the evidence of the detainees as sullen and unco-operative." Sir, that is untrue. If the hon. Member, and I give him the benefit of the doubt, had taken the trouble to read—

MR. COOKE: I have read it.

THE TEMPORARY MINISTER FOR LEGAL AFFAIRS (Mr. CONROY): The hon. Member admits that he has read the evidence? Then, Sir, I find it very difficult not to impute a motive to him to what he says today—if he has read the evidence.

If we look at what the learned Resident Magistrate did say. It was not a question of sullen and unco-operative— he said this: "having most carefully considered the evidence of all the witnesses"—(some 65) he went on to say this: "the reason for this uncertainty"—that is the evidence—"is to be found partly inherent in the disorder itself, partly in the contradictions and covering up generally of the prisons staff, but in my opinion, mostly to the blatant lies of all the detainees themselves whose sole concern seemed to be to paint the blackest possible picture against the entire prisons staff, irrespective of how practically impossible, and even ridiculous their evidence sounded." Then, Sir, later in his analysis of the evidence, he said this: "I am not prepared to accept the evidence of the detainees, both because I am convinced they none of them attempted to tell the whole truth and because there would be a great danger of their setting old scores against unpopular prison staff, and I regard it as significant that it was the Sergeant-Major whom they attempted to incite me to

How unfair to say of the Resident Magistrate that he just dismissed their evidence as "sullen and unco-operative".

Sir, the best way to discover whether a prosecution is going to stand a reasonable chance of success is to divorce emotion from your mind and you put yourself to the practical test of saying "what charge shall I lay against this man?" and then you say "what have I got to prove?" and then you say "what evidence will I be able to put into court to support my charges and discharge the burden of proof which rests on me?"

The obvious charge here is manslaughter, and if not manslaughter, then some grievous or aggravated assault. In order to prove manslaughter, what have we got to prove? We have got to prove that the particular detainee in respect of whom the charge arises was killed. We have got to prove that he died because of the accused's act, and we have got to prove that that act was illegal.

Now, Sir, there is no difficulty about proving the death, it is there: nor do we have difficulty in proving that it was caused by blows—again, the proof is there. Then, Sir, what else would come out in the evidence? It would come out, Sir, that in the course of the trial, on the day of this mostly ghastly tragedy, and I can in no way seek to minimize it, it would be proved that the deceased, in company with the 84 other detainees, was involved in a number of mêlées. Sir, in those mêlées, as the Magistrate found, and as the evidence proved (if anyone is prepared to read it with a disinterested eye), you will find that blows were struck which were legal, and blows were struck which were illegal. Now, not one speaker on the other side of this Council has today mentioned the fact that the Magistrate found as a fact that there was an attempt for escape by these detainees. We have all been told what splendid fellows they were and how they were suddenly beaten up, and how there was nothing to suggest that they in any way caused this beating. Sir, the Magistrate found differently. He sat for many weeks to consider this. He heard the evidence of many witnesses. He examined a considerable bundle of documents. He

[The Temporary Minister for Legal Affairs]

spoke to approximately 50 detainees, and that was his considered opinion, Sir.

What evidence has the Crown to put into the witness box? That this man, the deceased, might have been killed by a legal blow, or he might have been killed by an illegal blow. Then, Sir, how do we identify the man who struck the blow? It is no good saying, as was suggested by one of the hon. Members opposite—"Well you have the list of people who were on duty." That is right, Sir, there were 119 of them on duty that day. What are you going to do—put them all in the dock and say—prove that you were not the man who struck the blow? That is the suggestion from opposite.

MR. COOKE: He said he saw it with his own eyes.

THE TEMPORARY MINISTER FOR LEGAL AFFAIRS (Mr. CONROY): I am coming to that, Sir, the only possible result of such a prosecution would be an acquittal.

It is nonsense for hon. Members opposite to suggest that this decision was reached just because the deceased were black men: Sir, they conveniently forget that the accused would be black men too. Sir, I am on the side of justice, and the accused has as much right to justice as the dead man, and the dead man was black, and the accused would be black too.

Now, Sir, I see that time is nearly up, and I must cut myself short. (Cries of "Resign!")

Sir, the hon. Members opposite seem to think that logical arguments can be replaced by a parrot-like cry of "Resign". Sir, it does not convince me, and it does not make any difference to the exercise of my quasi-judicial discretion in this matter. (Cries of "Resign!")

Sir, the hon. Member for the Coast treated us to an analysis of the evidence, and what he said, Sir, was this: "Look at the evidence of John Maina." and then, Sir, he read out a small extract from his evidence, and John Maina you will remember was one of the detainees whom the Magistrate said were blatant liars; the hon. Member—who was not there and who did not hear the wit-

nesses, says he thought he was a witness of truth. I will now quote to you part of this gentleman's evidence which the hon. Member for the Coast chose to ignore.

He said that he was convicted—this man John Maina—and sentenced to imprisonment because he had gone to Russia and brought 30,000 men to fight against Europeans in Kenya.

Then, Sir, it was perfectly true, what the hon. Members said in drawing our attention to a couple of lines in many pages of this evidence—it is true that he said he saw the Sergeant-Major hit a man, but, Sir, that was on the road, on the way to the works site, when the Magistrate found that there was an attempt to escape and the blows were probably legal—so that is not going to help us in any way.

Then, Sir, this witness of truth put forward by the hon. Member says: "We were beaten, not because we refused to work—we were working, and they stopped us working, took the tools away, and beat us." It simply does not do us credit, Sir, for being intelligent people to suggest that this evidence could stand any test. This man, in the witness box, would be torn to tatters by the defence, and no one would believe him.

Then the hon. Member said: "Oh, Mr. Ezekiel said that they were dragged with their faces to the ground." Sir, when Mr. Ezekiel was questioned about this, but the hon. Member chose to ignore, or possibly overlook this part of the evidence. This is what Mr. Ezekiel said, and I am quoting from the evidence to the committee: "Where I say that the two detainees were being dragged along the ground, I mean that they were being carried, and they sagged in the middle and sometimes touched the ground. They touched the ground occasionally." That, Sir, is, according to the Member for the Coast "being dragged along the ground on your face".

Then, Sir, the hon. Member chose to say that Mr. Peters was a witness of truth, and indeed I think the hon. Member is right there. Mr. Peters, who was a disinterested witness said this; and the hon. Member did not choose to quote this: "Their bodies were not being dragged along the ground, but they might have touched the ground two or three times."

[The Temporary Minister for Legal Affairs]

Now, Sir, when the Crown presents its case as an officer of the court it is my duty to put in front of the court every jot and tittle of evidence, whether it helps the prosecution's case or whether it does not. Sir, we are not concerned to get convictions; our job is the case by getting convictions; our job is to ensure that justice is done. Therefore, Sir, we have to put in front of the court 100 per cent of the evidence.

The hon. Member, Sir, takes a sentence here, an expression, there, a word, somewhere else. When prosecuting, you are not allowed to make such a vindictive selection. You have to put all the evidence forward, and anyone who has read all the evidence will find that the Attorney-General's decision not to prosecute this case is amply justified, because you cannot identify the man who struck the blow. That is where your chain breaks.

Sir, as I listened to the hon. Member for the Coast's speech, I wondered why he differed from the Attorney-General of England in criticizing the Attorney-General here; why he differed from an ex-Attorney-General in England; why he differed from the Resident Magistrate, Sir? The answer is, of course, Sir, that he has taken a small—prejudiced—and biased selection of the evidence and has ignored the great body of evidence.

Sir, I leave it to the judgment of hon. Members in this Council as to which course is the juster. Is it juster to look at all the evidence, or is it juster to pick out a little bit of biased evidence? I leave it to the judgment of this Council, and Sir, I leave it to the conscience of the hon. Member for the Coast. (Cries of "Resign!")

MR. COOKE: On a point of order—on a point of information—what was said to the Resident Magistrate by Mr. Ezekiel—I did not want to interrupt the hon. Minister—the sworn statement to the Magistrate by Mr. Ezekiel was this: "They sat down"—that is the detainees—

THE TEMPORARY MINISTER FOR LEGAL AFFAIRS (MR. CONROY): I never said the hon. Member did not say that. He has said it once already.

MR. COOKE: Well, I am quoting now—you say Mr. Ezekiel did not say this.

THE TEMPORARY MINISTER FOR LEGAL AFFAIRS (MR. CONROY): On a point of explanation, I never said anything of the kind.

MR. COOKE: Oh, well, in that case your argument falls.

MR. BLUNDELL: Mr. Speaker, owing to the time limitation available to us, each speaker can only deal with certain aspects of this Motion. I would like to say this: from some of the things said in this House today, one would imagine that everyone in this House had not the gravest concern over what happened at Holo. I think I would speak for every Member of this House on the other side as well as on this, when I say we regard the incident with the greatest worry and disquiet. I deprecate tremendously, Sir, the suggestions which have been made in this House, that because the people who were involved in the incident were people of one colour or another colour, variations would take place in our concern. I would like absolutely to deny that, from the Members at any rate on this side of the House for whom I can speak; They were the people of this country and this is our country and I would urge the Members of the House not to introduce into the question of a subject matter as grave as death, the question of the colour of the people who were killed.

Secondly, Sir, in view of the concern which all of us have, I would like to record to hon. Members opposite that I feel that the Minister for Defence who has now left the country should have been asked to change his arrangements so that he could have been present for this debate. I do not think that would have been a hard thing to ask in such a grave matter. I would ask hon. Members to cast their minds back to the gravest days of the Emergency when the Minister for Defence of that time, Mr. Hartwell, sought to go on leave at the very height and at the worst period of the Emergency, and we on this side of the House showed the very gravest concern over that decision and as a result of the pressures which we developed he stayed here to conduct his business during the Emergency debates; and I do feel, Sir, that perhaps the hon. Leader of the House might give us the reasons why it was not

[Mr. Blundell] possible for the hon. Minister for Defence to stand here and indicate to us clearly his responsibility or not in the matter which is now before the House.

Now, Sir, the third point I wanted to mention is this. Speaking for myself I have not lost confidence in the Government of this country, and I would like to record that unhesitatingly. At least one speaker suggested that if the Government of this country could, as it were, stand on their own feet, such an incident as this might not have happened. I would like to record that unless the people of this country are really ready for the responsibilities which are now shouldered by many hon. Members on the other side of the House, we might well be faced with an incident, not the incident of Holo, like that which took place in a neighbouring country to our north, where 161 people who had been involved in riots and disorders were suffocated to death in a courthouse into which they had been jammed. Surely the lesson to be learned is that freedom which is gained ahead of maturity is freedom which can be gained at the very greatest expense. I think it is just as well to record these things.

Now, Sir, I would have lost confidence in the Government of this country had they attempted to conceal any of the facts, but if we are honest and responsible we must admit that no single Member on the other side of this House has attempted to cover up the gravity of the incident at Holo or the concern which the Government itself felt. We not only have had the Report of the Conroy Committee which laid it completely bare, but I understand from the advance despatches—despatches which show some of the advance advice of the Fairm Committee—that the report on the prisoners administration of this country, which is also in this Motion, will be favourable to that administration.

Therefore, Sir, I must record that I cannot support a Motion which expresses no confidence in hon. Members opposite on this particular incident. In doing so, Sir, I would make a personal plea to the hon. Minister for Legal Affairs or the hon. Leader of the House—I would urge him to make absolutely certain that there

is no repetition, by reason of arrangements which may have been made in the past, there can be no repetition of such a terrible event as took place at Holo. That is the way in which the Government of this country will best retain the confidence of the people of this country.

Sir, before I finish there are two points with which I wish to deal which do concern me greatly. There has been, in the United Kingdom, very great concern over this incident at Holo and, as I stressed in the opening of my speech, that concern is more than endorsed and supported by every Member in this House. But, Sir, I want to say this. Certain aspects of the attitude of people in the United Kingdom have left me with a very grave distaste. As a member of this country, as a citizen of this country who has lived in it for 35 years, who regards the people of this country as his fellow citizens, I want to record the grave distaste that I feel at the way in which political capital has been lost in my own country has been made in some quarters in the United Kingdom. I do not believe that incidents which involve human death should be used for one of the cheapest methods to gain political advantage in the Mother of Parliaments in which, quite frankly, Sir, every Member has got responsibility for us, and I want to record that because I feel strongly about it.

Secondly, Sir, I want to say this. I was disturbed, in reading in the *Times* today the plea which Mr. Dingle Foot made in regard to the legality of the detention of the detainees, and I wanted to assure the Government of our support in regard to this matter. Let us be frank: Why are many people detained at Holo? It was for one reason and one reason only. It was the complete collapse of the ordinary principles of British justice by which a witness can go into the box and give evidence without fear of intimidation. Sir, that needs to be recorded. It is no good standing up 4,000 miles away and saying the whole of Government's procedure is contrary to the principles of British justice. Let us be quite frank. No justice can operate where witnesses are so intimidated that the truth cannot be ascertained. Surely, Sir, that is borne out by the instance which was put forward by the hon. Member for the Coast gave us of the man who was in that camp with 32 murders to his discredit.

[Mr. Blundell]

So, Sir, I want an assurance from the Government that they will not allow—and I suspect that it will develop—the political capital which is sought to be gained in the United Kingdom out of this incident to deter them from their firm intention to release men who are now deemed irreconcilable only when that can be done in accord with public safety. I feel that is most important.

Lastly, Sir, I have one further point I want to make. Nobody on this side of the House, I am sure, and I think that nobody on the other side of the House, believes that any of these men are necessarily irreconcilable permanently, and I wanted the Government to realize that when we emphasize the necessity of public safety we do not exclude the thought that with proper treatment many of these men may be able to return to the normal conditions of life in this country. In that, Sir, I have one thing I would like to advise the Government on, I would have done it had I still been—which I might well have been—a Minister in the Government and it was in my mind to raise it, but the circumstances of my own resignation and of my absence from the country have prevented me from doing it. Sir, I believe that the Government should not fear to allow some of the Members of this House on this side to visit these camps. I do not believe that hon. Members in the House at the present time, whatever may be the emotion of their speeches, are the agents of subversive ideas, and I believe that if the Government is sincere in wishing to bring some of these men from irreconcilability into the freedom of an ordinary life, they might be well advised to seek the help and support of some hon. Members on this side of the House, and in conclusion I would ask the Leader of the House, when he replies, to give us his views on that point. It seems to me that Members on this side might, for a number of reasons, well be able to indicate to the Government the tensions which are arising in the camps which might not be available to the Government itself within the channels of its own administration.

—Sir, with these words, I would like to oppose the Motion which is before the House.

MAJ. ROBERTS (Rift Valley): Mr. Speaker, Sir, before anyone can demand heads of people be delivered on a charger over this matter, they should really try to view the matter in true perspective and see what responsibility can be laid at the foot of the persons who were responsible in this unfortunate affair.

First of all, Sir, if one considers the victims—who were they? They are part of the remnants—hard core—of the most bestial criminal organization that this country has ever experienced, an organization that has horrified the world. Now, Sir, these detainees were arrogant and defiant and it is small wonder that those warders who had day by day to deal with them took an opportunity which was suddenly thrown open to them to vent their feelings on these people.

Now the whole fault of this tragedy, Sir, is that certain circumstances were able to arise whereby those warders had the opportunity to vent those feelings, and the question therefore arises as to how orders were issued that, in fact, gave that opportunity, and it is very simple to appreciate when one reads the report on the Holo incident.

Sullivan was responsible for the execution of a plan. In fact, Sullivan never received that plan. He had discussions with an adviser, but no written instructions were given to him, the Commandant of the camp, who had to carry out and execute the orders. The mistake Sullivan made was that instead of refusing to execute the plan, he should have referred the matter back to his superior and asked for orders to be given him in writing. Instead, Sir, he put into force a plan which he thought was correct. He had no evil intention. He did not think he was doing wrong. He was guilty of no crime. He was inefficient; he was negligent; and he is paying the price for inefficiency. He lost his job.

Now, Sir, we go to the man who should have given the orders to Sullivan. Lewis. He thought that a copy of Cowan's Report had, in fact, been received by Sullivan. He should, Sir, have checked on that. Cowan was not an executive; he was not responsible for giving orders. He was an adviser. An adviser's report is not an order. Therefore Lewis, in my opinion, as the man

[Major Roberts]

responsible for giving Sullivan his orders, should not only have himself issued and signed those orders, but on a matter of such importance he, Lewis, in my opinion should have been careful to have seen that order put into execution. Now, Sir, he thought he was acting properly. He had no evil intention. He thought that Sullivan had understood the order. He is not a criminal. Again, inefficient, and as a result, Sir, he took the right course. He offered his resignation. I think that, Sir, is quite the right thing to have done.

Now, Sir, we turn to the Ministers, whom my hon. friends here say they want their heads on a charger. The Ministers gave their approval to the plan. It was not part of their duty actually to implement the plan. They gave their approval to it, but it was Lewis, who was the Commissioner, who should have been responsible for issuing the detained order. I cannot, Sir, see that in this case the Ministers can be held to blame. When one looks at it in that perspective and after one has heard what the Attorney-General has just told us in relation to the happenings, surely one must realize that the Government have taken the right course in this matter and, Sir, I cannot help feeling that anybody who takes a different view is doing so entirely for political gain.

Mr. Speaker, Sir, I beg to oppose.

MR. OLE TIPSIS: Mr. Speaker, Sir, I rise to support the Motion before the House wholeheartedly. It has been a great shock to me this afternoon to hear some of the speeches made by some hon. Members on this side of the House in trying to defend what is actually indefensible, and if I may say so I was really disgusted to listen to the speech of my hon. friend, the Member for Mount Kenya. This gentleman was all the time trying to imply that the African in this country has no respect for law and order whatever, which is not the case. Now I would like to ask him to answer a few simple questions and those are, if he thinks in his mind that the African has no respect for law and order in this country, what part did he actually play in fighting the *Mau Mau*.

THE SPEAKER (Sir Ferdinand Cavendish-Bentick): That has nothing whatever to do with the Motion.

MR. OLE TIPSIS: And also whether the so-called loyalists which he is out to defend all the time—are his constituents or our constituents.

THE SPEAKER (Sir Ferdinand Cavendish-Bentick): I have already ruled that that has nothing whatever to do with the Motion.

MR. OLE TIPSIS: Now if I may drop that, Mr. Speaker, we are told 11 detainees died through beatings by the warders on 3rd March at Holo, but what we have not actually been told is the actual number of detainees who have sustained serious bodily harm which can be regarded as disabling them permanently.

Now, Mr. Speaker, listening to the arguments of the hon. Minister for Legal Affairs on the happenings and things taking place in the country as a whole, one cannot fail to see that there is some loophole somewhere in putting actual justice in this country in order. He went on arguing that these warders who beat these people to death, that there was insufficient evidence to prove as to who struck the blow which killed that particular convict. Now surely, Mr. Speaker, on the other hand, we have seen it on several occasions in this country, that even under the present Emergency Regulations if a man commits a crime in a certain locality and this Government fails to arrest the man responsible then they go round imposing a collective punishment on the villagers of that particular area. Why could this not be applied in this case? Even today he argued that whoever the prosecutor is, the court has to prove that the accused is really guilty. Now when you impose this collective punishment, which is punishment as such, have you proved that everybody who suffers through this collective punishment is guilty?

He went on talking about the danger which some of these hard-core *Mau Mau* are to the good society of the country. Now my submission is this. I think it is only human that even in any war, even in the world wars that have been fought in this world, either you shoot the enemy there on the front line and finish with him completely, rather than torture him, having captured him. Even people like we, the African Elected Members, and I am sorry to say that we have not got a

[Mr. ole Tipis] legal expert, but even people like we, we would deal with a situation such as this using our common sense and setting an example to these people, and I am glad that we are not on the other side of the House to share this disgraceful state of affairs.

Now the hon. Minister for Legal Affairs went on advancing as an excuse—a very bad excuse—that some of the detainees were trying to escape. Surely he would find himself in the same position if he found that some of his colleagues on the Front Bench—two of three of them had been knocked down and beaten and some of them dying—he would also be escaping.

Now, Sir, on His Excellency's Despatch dated 18th July to the Colonial Secretary, paragraph 5, with your permission I will quote: "In framing our views on what action should be taken in respect of Mr. Sullivan my Ministers and I have had to take account of extenuating circumstances which the committee found to have existed in his case. These included not only his character and past good record but the fact that no written instructions were sent to him and that he was not given proper assistance and supervision by senior and experienced officers. Having regard to these factors by Ministers and I have recommended, and you have agreed, that he should, in the public interest, be required to retire from the service without loss of gratuity."

Surely there is a mistake somewhere, Mr. Speaker. I mean, if written instructions had to be sent to Mr. Sullivan who was the main executive of the Cowan plan—why let him carry out the plan if he had any doubts? Apart from that, could he not really use his common sense, as such? This is quite intolerable. If he is inexperienced, who appointed him to be the commandant of this particular camp? If Government could not trust him to carry on this plan without written instructions and without the advice and the assistance of qualified officers, why have him there? On the other hand, these experienced senior officers, why were they not sent there on this particular day to supervise the plan being executed? It is very unconvincing.

To take it further still, Mr. Speaker, from the time when my hon. friend, the Member for Central Province North gave notice of this Motion, there has been quite a bit of delay, and on the day that this same Motion was put on the Order Paper the two Ministers responsible for this affair disappeared completely from the Colony. Now are we going to be treated in this way, Mr. Speaker?

Now it goes on to say that well, there was a bit of a mistake on the part of Mr. Sullivan, but all the same we will require him to retire without loss of his gratuity. To retire, and that is all! Nothing else done! For something which has resulted in loss of 11 lives, nothing is done, and that man has to retire and gets out of it scot free. Then we are told that there is a sort of administration of justice here, and there is somebody who could say it is proper administration. We cannot keep on covering these things in the way we are trying to cover them.

With these few words, Mr. Speaker. I beg to support.

MR. KHAMIS: Mr. Speaker, Sir, I have just a few questions in this debate. In the first place I should like to say that I want to associate myself with the views that have been expressed by the hon. Mover of the Motion, and fully support the Motion before the House.

I would like to add, Sir, that although I enjoyed very much the speech of the hon. Minister for Legal Affairs which he made with great excitement and emotionalism, I am afraid I am not going to be as emotional as he was.

Now, Sir, in this report on page 60, I find I would like to mention a few things about the 11 people who died. The first deceased, Kahuthu s/o Karnaui died of fractured jaw. The second one, Ndungu s/o. Kibaki—died—of fractured skull. Deceased No. 6 Karanja s/o Munihi died of laceration of mid-brain, and others died of broken arms and broken legs and so on. Now, Sir, if we look at another part of this report we find that the Commandant, Mr. Sullivan, said that on that morning he had, or, the night before, he had instructed his warders to this effect: if these men make trouble and much noise you shall beat legs. Do not beat completely, beat a little,

[Mr. Khamis]

Now, Sir, although his statement to his warders was to the effect that they should beat the legs, we find that these people were not only beaten on the legs but they were beaten on the head and on the arms and all over the body. They were clubbed to death.

Sir, on the evidence in this report of the Chief Warden Mwoiki it is said in this basic Swahili that the actual words which were used by Sullivan were: "*Kesho tuta-peleka mahabusi kazi. Tutapeleka kwa nguvu*", which means "We shall send prisoners by force". Then he goes on and says: "*Mwaweza kutimila nguvu kabisa, kama unaoona 'ko na mawe au kitu kibaya mkoni*", which means that if they attempt to take up stones or any dangerous thing then they are allowed to kill, because it is said "*kuimila nguvu kabisa*" which accepts club to death. Now, Sir, those are the warden's words and I can translate that Swahili to mean that because I speak no other language except Swahili.

Now, Sir, it is clear therefore that this man, the commandant of this camp, gave orders to his warders that in any event they should use complete force, which means all the force at their command.

Now, Sir, we also find that they used this force in defiance of the orders they were given by the commandant because he said if they see the detainees picking up stones or (Inaudible)—but according to this report, and according to the evidence which was given by this chap, Sullivan, and the evidence given by Peters, which the Commission accepted, it is very clearly stated that these people never caused any trouble whatsoever and, in fact, they had sat down and they were clubbed where they were sitting down. Now, Sir, if at all there is any more evidence that the commandant and the warders were using excessive force, I think that may be something found in this report. And therefore, I am still unconvinced by the Minister for Legal Affairs who feels that there is no case for any of these warders and even for the commandant to answer to us here on the law. It is inconceivable to us here on this side of the House to find that 11 people were clubbed to death by the orders given by the commandant in very clear and precise terms here, and that no action can be taken. There were people,

like Mr. Peters and Mr. Ezekiel, who were within a very few yards of the scene of the incident, who can testify in any court of law that the incidents they saw were that these people were clubbed while they were sitting down, and they made no attempt whatsoever to defend themselves, and even there is no evidence in this report to the effect that there was any attempt by these people to escape when they were being marched from the camp to the place of work.

Now, Sir, these things are very clear and straightforward, and what is at issue here is whether this Government is going to just ignore and keep quiet and refuse to convict these people for the action they have taken. There is no evidence whatsoever, and we have not heard it from the Government benches that any disciplinary action, even—(Inaudible)—was taken against these warders for disobeying the orders of the commandant, and no disciplinary action whatsoever was taken against the commandant himself, who caused the death of these people. I think that is the crux of the whole matter, that the Government could just ignore and just sit put and just watch and completely say that they will take no action whatsoever against the death of 11 people. Sir, we know, Mr. Speaker, that some of these people were *Mau Mau* fanatics, perhaps, although I do not know what a fanatic looks like, but we do know, however, that they were a relic of *Mau Mau*, but that alone does not give permission and licence of any commandant of any prison to club a man to death simply because he was a *Mau Mau* convict.

Now, Sir, if these prisons are being administered properly I suggest, Sir, that the African Elected Members should be given a free licence so that they could visit these prisons at any time so that they can find out what is going on inside the prisons, and the detention camps. But it does appear—we have not even heard from the Minister for Legal Affairs telling us that from now onwards the African Elected Members will be allowed to visit these camps. On one or two occasions I, personally, approached the Minister for Security and Defence, and pointed out to him the concern which is felt over the administration of these prisons arising out of the representations I had received from some of these



(Mr. Muliro) If we think we can get better management by bringing a special man to look after the detention camps, in fact we are going the wrong way, and furthermore, as far as I am concerned, Mr. Speaker, I feel this way, that once we have got people in charge of these places, detention camps and prisons, they should allow say the elders from various districts to visit these areas and they should allow respectable and responsible people like ourselves to visit the areas and try to interview those people whom the Government has regarded as irreconcilable. The definition of irreconcilable is known only to the Government. We do not know that definition. Therefore to satisfy ourselves that there are actually people in these detention camps who are irreconcilable, for goodness sake, allow us to go there and try to find out the truth.

And the Member for the Rift Valley, Major Roberts, says that these are criminals of the worst type. They commit bestial crimes, but I would only say this, that if these people committed very serious crimes they committed that crime for what they considered in their mind a good cause. But as long as the causes of *Mau Mau* are not known and are never disclosed by this Government there have been no commission to investigate, and give reports on the causes of *Mau Mau*. These people still although we regard them as blameable, I think the Kenya Government, the Kenya social economic set-up is more to be blamed than these people, and with these few remarks, Mr. Speaker, I endorse strongly every word the hon. Mover used in his Motion, and the Ministers concerned should resign.

The hon. Member, Sir Charles Markham, the Member for Ukambani, said that the Mover wanted the Minister to resign but if that Member had actually repudiated the Motion as it stands, he would never have made such a statement because what the Motion says is that it urges Government to dismiss from its service officers and warders at Holo involved in 3rd March incident. Therefore the people who are involved—those officers involved in the Holo incident on 3rd March, I think the hon. present Minister, Mr. Swann, who was yesterday

sworn in in the House is not at all involved.

THE ACTING CHIEF SECRETARY (Mr. Griffith-Jones): On a point of order, Mr. Speaker, the hon. Member has claimed that the Motion does call for the resignation of the Minister for Internal Security and Defence. If he will read on after the part which he has read so far, and which is by itself thoroughly misleading, he will realize that the Motion does call for the resignation of the Minister for Internal Security and Defence. I am quite prepared to accept that it does not mean my hon. friend on my right, but it is a point of order, Sir.

THE SPEAKER (Sir Ferdinand Cavenish-Bentick): I am afraid that you are almost making a speech.

THE TEMPORARY MINISTER FOR LEGAL AFFAIRS (Mr. Conroy): Mr. Speaker, might I raise a point of order? Mr. Speaker, the hon. Member has said that the Motion does not call for the resignation of the Minister for Internal Security and Defence, and he has read two lines of the Motion and refuses to read the next two lines which specifically do call for this. Surely he must be responsible for what he says?

THE SPEAKER (Sir Ferdinand Cavenish-Bentick): Although the Mover may not have intended to make the implication the Motion does undoubtedly allude to the Ministers for Security and Defence and for African Affairs. It does not specifically state the Ministers at the time.

MR. NAZARETH: Mr. Speaker, might not the matter be by just putting the word "them" before the words "Minister for Defence". It obviously refers to the Minister for Defence who was involved in the incident.

THE SPEAKER (Sir Ferdinand Cavenish-Bentick): That would have made the intention clearer. I do appreciate, however, from what the Mover and other speakers have said that what was intended was reference to the Minister at the time.

DR. KIANO: Surely the Government knows when the Motion is moved, and they know clearly that notice was given a long time ago.

THE ACTING CHIEF SECRETARY (Mr. Griffith-Jones): The Motion was raised today.

Several hon. Members rose.

THE SPEAKER (Sir Ferdinand Cavenish-Bentick): It is quite clear that what the hon. Members mean is reference to the Ministers who held office at the time. I do not think we need any more interruptions on this subject, and I now call on Mr. Muliro to continue.

MR. MULIRO: Thank you very much, Sir, I think the Government is lightly confused and I know they are ashamed of coming out of an action which they have taken, so they want the new Minister involved in this incident. The Minister in question is the Minister for African Affairs, Mr. Johnston, and Mr. Cusack, the Minister who is now waiting retirement—those are the people who should have been dismissed.

With these few words, Mr. Speaker, I beg to support the Motion.

SIR ALFRED VINCENT (Nominated Non-Government): Mr. Speaker, Sir, very briefly, and with no repetition, first very briefly, and with no repetition, to the of all I would like to pay tribute to the quality and the fairness of the Conroy Report. I do not think any speaker yet has challenged anything in that Report. When I read it, I thought, it was a very fair document—very clear—completely free from bias—and the sort of Report we would expect from the hon. Member.

The other point, Sir, is one for which I make no apology. I want this on record because I want to give the lie to something which came over the broadcast from the B.B.C. on Tuesday morning. I did not take it down verbatim, but I was shocked at the contents of the phrases used. A Member of Parliament stated that she, or he, had no confidence in the Attorney-General of this country, because he was certain, or she was certain, that had the deaths been the deaths of 11 Europeans instead of 11 Africans, then much more severe action would have been taken by the Attorney-General. I think that this was a dastardly expression of opinion on anybody's part, even in the House of Commons, Sir.

On the contrary, in my very humble opinion, if it had been the deaths of 11 Europeans I do not think that to many

Members of Parliament it would have meant the same and we should probably have heard nothing more about it. But as this is a subject which will appeal to the electorate in England all this fuss has occurred. I deplore like everyone else this Holo incident, but I also deplore the attitude of some Members of Parliament. I very much regret that it is impossible for me to accept the political Motion before the House.

MR. NYAGAH: Mr. Speaker, Sir, I do not wish to keep this House long for the few remarks that I want to make in this debate. It is rather unfortunate that we should be discussing this most horrible incident at all today. It is not because the Government had not been warned that there was some unrest and trouble at Holo and some of the other camps. It is difficult to produce any evidence of that, but the Minister concerned—at least one of them—would be aware of representations made to him with letters smuggled out of the camps showing that there was something happening in these camps.

This informal way of tackling the problem was calculated to try and stop having anything publicly known that would embarrass anybody in this country. It was done in the spirit of trying to help rather than hinder. It would have been better that warning would have been taken. As a result we have Holo and other cases coming into the public eye. It is quite true, Sir, to say that the people at Holo are mainly what were formally termed irreconcilables. Today the Government has adopted a Christian view and in its approach to such cases considers that there is no one that is beyond redemption or beyond rehabilitation. Another time these people were outcasts, lost, their relations would never see them again and these people adopted a state of frustration and losing hope that they would never go back and they were beyond repair.

Mr. Speaker, Sir, if this debate is now going to do anything else it should leave the Government well convinced that from today onwards they should listen to the representatives of the people however feeble the allegations and the evidence they have to present to the Government may seem before just throwing them like that. Personally, Sir, I had letters smuggled out of some of these camps



[Mr. Nyagah] and presented them to the Government. If the Government were taking care they would have stopped the trouble before it bubbled up.

Now, Sir, I would like to speak on the attitude of the loyalists today. We speak very much about the attitude of the loyalists to these people who have got to be returned to the villages and reserves. But I wonder whether the Government is aware that today the loyalists are wavering. They are not very sure as they were at the height of the Emergency as to whether the Government is really a just one. The latest blow has been a case which the Government brought forward of one of its officers, Samuel Githu, and today, Sir, the talk among all the people—loyalists and non-loyalists—is why does the Government adopt a different attitude to people in similar circumstances as those at Holo? I can tell the Government that the attitude of the loyalists has been demoralized.)

Again, Sir, the Government since the Holo incident took place have not publicly taken the trouble to let us know who were the people who died; neither do we know from where they come. One gathers information here as we go round in our constituencies. We are the most attacked people as we go around in our constituencies: the officers of the Government are too far away to be reached by the common man and we have no answer.

Mr. Speaker, Sir, challenge has been made time and again on the types of rehabilitation methods used. It may be that some of the methods used at the height of the Emergency were justified, but today they are not justified. People who have been rehabilitated and left the camps keep on telling us—this again the Government must accept—that occasions of maltreatment and mishandling and physical rehabilitation have taken place at camps like Manyani, Holo, Aguthi, Mackinnon Road and all the other places in Mwea Camps.

I would like to call upon the Government to change its methods of rehabilitation, particularly the physical rehabilitation which is taking place even in present times. I have evidence to show that within the last three or four weeks this type of rehabilitation has been used. It

is unfortunate, Sir, that we should have to call upon the Government to take such drastic action such as is asked by this Government—but I would appeal to the Government so that we may never repeat an unfortunate incident of this sort in future that they should listen more to the representations made by the representatives of the people, however feeble they may appear to be, because we are all the time—most of the time, at least—living among the people (with the fathers, brothers and other relations and the impartial people) of the people that we are trying to rehabilitate.

Mr. Speaker, Sir, in conclusion I would like to welcome, late as it is, the Government's realization that a person to whom we would give the responsibility of the prisons and camps should be appointed. This should have been done long before so that we would not have had the opportunity of attacking two people and no doubt if they were here each one would try to show his side of his responsibility.

Again, Sir, it has been rather unfortunate that the Government as is trying to deal with allegations they have not seen it fit to ask people not connected with Government service to look into the allegations.

I do hope, Sir, that this Government will listen to that appeal—and take warning that in future we may avoid having a repetition of one of the unfortunate disasters in the world.

I beg to support the Motion.

MR. TOWETT: Mr. Speaker, Sir, I really do not know what to say this afternoon because from my knowledge of how things should go I think our Government has gone the wrong way. The Government now is trying to condone what we tried to show should have gone another way. Mr. Speaker, Sir, I am surprised to see some of my friends on this side of the House saying that they are opposing the Motion. It is quite a shameful thing to hear the Opposition supporting the Government which is full of civil servants and those very civil servants are not trying to put anything right that has gone wrong in this country. The mistake of British democracy in the colonial countries is the use of civil servants, of employees, to govern the people.

[Mr. Towett] I am not blaming individuals. They came here either to earn their living or to run the country, but it is the British Government at home which is to blame. I more than the civil servant here. I would have done the same if I were a civil servant. I could not have chosen otherwise. Now we have got to shift the whole blame on to this colonial domination of the British Empire by civil servants.

Mr. Speaker, if I seem heated it is because of the deaths of 11 human beings under the hands of the British Government. What Empire is this, Sir, which tries to cover up and send people home and ask them to retire with a gratuity and also to send some people home who should be answering here some of the questions which are being asked? I am surprised to see that the Chief Secretary, who is the head of the Government of this country today, is not present, Sir. It is a shameful thing and on top of that there is this terrible Ministry that we have always objected to—the Ministry of African Affairs. Its head, Sir, is not present. And the Minister for Internal Security and Defence, who has done no work for our internal security, is also not present here, Sir, to hear some of these views. From my point of view, Sir, it is apparent and everybody knows who thinks correctly that it was the plan of this civil servant Government to send home or leave the Chief Secretary, plus the Minister for Internal Security and Defence and also the Minister for the so-called African Affairs Ministry. It was a cunning plan, Sir, and who is here today apart from temporary or new Ministers appointed to fill those vacancies because those people are ashamed to be in this House and hear some of the shameful things that have been committed in this country in Holo Camp.

Sir, I feel that the Government has got to examine and re-examine itself. Those who are worth the name of honourable men should ask for a transfer from the Colony. It is better that way, Sir, if anybody were to go out of the Colony tomorrow and you say that you come from Kenya—the Colony—of the civil servants who allowed the tragedy of Holo, you would be ashamed, Sir, because they will be associating you

in person and me in person and everybody with the Holo incident. It is shameful, Sir, to admit 11 persons died in the hands of the Kenya Government—just listen—and you will be satisfied.

There is a stage of governing a people and when you are in that stage you must have your humanity in you. When that humanity disappears it is a sign that you should also disappear. That is why I say, Sir, that the present employees who are the heads of the Government should ask for transfers and we should get some more civil servants or extra civil servants from somewhere else who will not be associated with the terrible incident that has taken place at Holo. So long as our Government today and the officers who are at the top of the Government remain, they will not be free, Sir, from public blame and from public ridicule and public suspicion. They are not free. Let them take that from me, Sir.

Now I feel, Sir, that to go down the scale of all the employees from the Ministers right down to commissioners and to the officers and to the wardens would take a long time. But I feel that whoever is responsible at the top is the one to take all the blame and not the junior men, some of whom are just put there because they probably happen to be favoured or liked despite the fact that they do not even know the language they are using to their wardens. Now, what is it that we have from this committee report: some misunderstanding by somebody lacking sufficient Swahili; somebody saying "Matata kidogo, kidogo, kidogo". Now, Sir, we have been here trying to tell the Government what is right for the Government. We have urged that Swahili should be made compulsory and the Government say that it is sorry and the Government say that it should be English. And then when they go down to Holo they do not speak in English, but they use broken, uneducated Swahili. And, Sir, we have the deaths of 11 persons probably because the information given was not precise enough through a misunderstanding in the language: somebody saying "Matata" means something else outside and something else at Holo. It is in-credible that we, the Opposition, as well as the Government, of the civil servants—as the Government are today. It is not proper. We should have all resigned a long time ago. And as long as the civil servants

[Mr. Powell]

of the Government allow such things to happen it is no business of the man who is elected by the people even for one day to support such a Government.

Sir, what I was going to say here is what does this side of the House think it is doing allowing the Civil Service to go the way it does? And you call that democracy, Sir. The democracy is to come and is not the democracy which is here at the moment.

Sir, I feel that the Government in its idea of condoning what happened at Holo, must take the responsibility today of educating and feeding and housing and clothing all the relatives and children of those people who died in that terrible tragedy at Holo—those 11 persons. The Government can do that. The Government have got to do that. If this Government of our present civil servants wants to have its faith restored in about 40 years' time the only thing it can do, Sir, is to take the responsibility of feeding, clothing, housing and educating the children and the direct or near relatives of those people who perished at Holo. It is a terrible thing and the whole of Kenya has been made black more by the tragedy the Government have allowed due to carelessness more than the blackness of *Mau Mau*. I can assure the House, Sir, when you have an organized body like the Kenya Government sanctioned by the Colonial Office and that organized body allows the death of 11 souls that is more terrible than what happened during the days of the *Mau Mau*, Sir, when disorganized bodies went about killing and fighting people.

Now, Sir, what have we to do with this Government? I said the other day that we should overhaul it. The best thing to do with it is to appeal to the persons in this part of the Government in this country to ask willingly for transfers to different places—other Colonies—and those, Sir, who were due to retire should retire now and get pay for the next six months until the time when they should be retiring. I think that, Sir, is the only thing which will cure Kenya from the world-blame, Sir. I do not know which court to go to but I think unless the Government does what I say, unless the Government clothe and feed and house and educate the children of the

relatives of those who died at Holo and unless the heads of the various Ministries ask for transfer or retirement, Sir, there should be some law to be instituted against the Kenya Government for deliberate negligence and allowing for the death of 11 persons at Holo.

Sir, with those points and with awful shame which I now feel, because I am associated with this present Government I feel I should say I support the Motion and oppose all those people who do not have humanity in them, who oppose this Motion, Sir, I beg to support.

Mr. NGOME: Mr. Speaker, I rise to say something and at the end I shall say whether I support the Motion or not. We have the Motion here about the incident at Holo, I quite agree that the 11 people who died at Holo has brought a big, world-wide political atmosphere. Before I go to the question of Holo I must remind this House of the Question of Lari where the women and babies were murdered. If we think of one thing only—11 people died at Holo this year—we must not forget those innocent people who were murdered at Lari: some babies, women, who were nothing but good and loyal citizens of this country. It is all very well for this House today to talk a lot about detainees at Holo but I have a report here which was given to every Member and I wish to read from page 7 of that report, Mr. Speaker, just a few words:—

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

[Mr. Deputy Speaker (Mr. Bechgaard) *took the Chair*]

"The choice of whether they remained in the Closed Camp or whether they were released to the Open Camp was theirs to make. If they agreed to work on the scheme (for which they would be paid) and to co-operate with the Government, they would be released to the Open Camp. Many took advantage of this offer. Some did not, because to work for the Government on the scheme would, in their view, be a breach of their oath not to co-operate with the Government."

[Mr. Ngome]

Now, these were people who were removed from this country to Holo with the object of removing these people, because of the necessity for the security of this country. Probably if these people were not removed from this place to Holo it would increase the number of murders committed by *Mau Mau* in this country. I am not here to support the *Mau Mau*, nor am I a member of *Mau Mau*. I am here to speak for the good, loyal African citizens and law-abiding Africans in this country.

I have met a few people lately in the town here—men and women—who say, "My husband was murdered by *Mau Mau*" or "My wife was murdered by *Mau Mau*", and we have got to consider whether it was the intention for those 11 detainees to be killed at Holo or whether it was due, perhaps, as we read in this report, because of the oath they had taken that they were ready to die or to kill somebody rather than co-operate with the *askaris* or the Government. That is what the report says and that is what we hear from public opinion outside.

But, as I say, we have to feel strongly about the death of the people who died in this country. I have some friends who were murdered in Nairobi some years back and I believe their family even today are still crying for their people who were killed in this country rather than the cry of the *Mau Mau* detainees at Holo and I would appeal to this House and to the country to consider about the number of people—I do not know how many but when I asked this question of some people outside this House they said about over 10,000 people were killed by *Mau Mau*—now consider the 11 people and consider which side one should be sorry for. I would then remind this House to go to the Information Department and see the pictures of the babies and the cattle, young women, men; the pictures are there. If you go to the Information Department of the City Hall you will see the pictures of the people who were murdered and you will be more sorry to see those pictures than in the consideration of the 11 detainees although I am sorry about the 11 detainees who were killed at Holo in March of this year.

Mr. Speaker, I will not waste the time of this House but I would oppose the Motion.

THE ACTING CHIEF SECRETARY (Mr. Griffith-Jones): Mr. Deputy Speaker, it has been said or at least implied by a number of people who have spoken in this debate that the Government was entirely indifferent to the occurrences at Holo on 3rd March. It has been suggested that they have condoned the offences that were committed on that occasion. It has, even, I think, been suggested or at least indirectly implied that it planned and carried out these offences through its agents deliberately.

Sir, I wish first of all to disabuse any who are labouring under any such delusion. No person's horror, no person's disgust, at what occurred at Holo on 3rd March rivals that of the Government, and no person in this country or overseas views that occasion with greater gravity than the Government. It was a disaster and a tragedy and the Government has throughout recognized that. And whatever any person may see fit to attack the Government for let them say I suggest that it was indifferent, that it is indifferent, to these occurrences. Let them not suggest that it in any way condones them.

I also wish to point to the determination which the Government has made which manifest that every possible step should be taken to ensure that such a thing can never again happen. I will deal with that in greater detail later.

I also want to make it perfectly clear to the House that the Government is indeed, and has been throughout, deeply concerned that responsibility for this disaster should be fairly ascertained and fairly allocated where it belongs, but—and this is the truth that lies in justice—in accordance with objective and dispassionate standards undistorted by political pressures and influenced by political expedients.

Now, let me deal first with the question of prosecution because there is undoubtedly a good deal of confusion in the minds of some Members on the subject of the responsibility for prosecution. I in my capacity as Attorney-General, and I alone, look, and accept responsibility for, the decision not to

**[The Acting Chief Secretary]**

institute prosecutions in this case. Constitutionally, no one, whether he be in the Government or outside the Government, no one has any right to attempt to influence me in my capacity of Attorney-General either to prosecute or not to prosecute in any given case. And I think if hon. Members will just dwell on that for a moment—it is one of the fundamental constitutional principles—if they will dwell on that for a moment, they will see that in that principle lies the safeguard of justice; that no faction can legitimately influence the Attorney-General to prosecute a Member of another faction or to withhold prosecution from a member of his own faction. There is as a matter of constitutional principle, no question of an Attorney-General either prosecuting or deciding not to prosecute merely on grounds of political expediency.

Now, Sir, I should also like to make it perfectly clear that in regard to this particular case, when I took this decision which, as hon. Members I think will realize, I took only after the most lengthy and most anxious consideration taking counsel among my advisers, I should like them to realize that at the time I took that decision I was well aware, it already having been made perfectly clear in the House of Commons, that the decision which I, on consideration of the evidence, had to reach would be a most unpopular one; that it would incur on me personally great criticism and unpopularity; that it would bring the Government—of which in another capacity I am a member, not as Attorney-General—also under criticism and unpopularity and that it would bring Her Majesty's Government in the United Kingdom under criticism and unpopularity. But just as in the true exercise of the functions of my office I am not entitled to, and would never, take into account considerations of popularity, whether personal or of the Government, so in this case I had to put completely aside—in fact, if never entered my head that my decision should be influenced by—any such consideration.

I knew perfectly well what the result would be. It had already been stated in the House of Commons that it would be "intolerable" if I decided not to

prosecute. Now, let me make it perfectly plain, Sir, that the decision was mine, it was taken after the most careful deliberation and in the full knowledge that it would meet with criticism and unpopularity. It is not in those circumstances, as hon. Members may realize, always a very easy decision to take but the line is so clear and the tradition of my profession so firmly established that it would never enter into the head of an Attorney-General to do otherwise than to disregard considerations of popularity or criticism.

Finally, on this point, I should just like to quote from the statement of reasons which were given in this House in answer to a question—a statement of my reasons for not prosecuting. The last paragraph of that statement reads as follows: "While the public interest clearly requires that any person or persons who can be proved to have been criminally implicated in such a shocking and tragic occurrence should be brought to justice, it requires no less than that no person should, in this or any other case, be placed in jeopardy on a criminal charge unless there is available sufficient evidence which, if believed, would establish his guilt. In this case the Attorney-General decided that the available evidence was insufficient for this purpose, and he accordingly decided that no prosecution should be instituted." As Attorney-General I claim no infallibility. My decisions can be differed from. They have been differed from by the hon. Member for the Coast. I would rather prefer to look to the more professionally experienced opinions which have been expressed on that decision.

MR. COOKE: What about Sir Frank Soskice?

THE ACTING CHIEF SECRETARY (Mr. Griffith-Jones): My hon. friend has asked me, "What about Sir Frank Soskice?" This is precisely what Sir Frank Soskice said in the House of Commons, and I quote from *Hansard*—"Nor am I concerned to criticize the decision of the Attorney-General of Kenya not to institute criminal proceedings. I do not say that had I been in his position, I would have reached necessarily the same conclusions that he reached, but, I respect his decision as sincerely given and I recognize that it was a very difficult decision."

MR. COOKE: That is exactly my contention.

THE SPEAKER (Sir Ferdinand Cavendish-Bentley): Order! I must ask hon. Members to maintain silence while another Member has possession of the House.

MR. COOKE: Mr. Speaker, I am not breaking the custom of the House of Commons or of this House.

THE SPEAKER (Sir Ferdinand Cavendish-Bentley): I consider that you are exceeding that measure of latitude.

THE ACTING CHIEF SECRETARY (Mr. Griffith-Jones): Mr. Speaker, I do not propose, neither have I the time, to traverse the course of the history of the Government's rehabilitation endeavours over the past seven years, or to dwell on the successes in terms of numbers and human achievements which it has attained. The Colonial Secretary recently put these features in their true perspective in the House of Commons. I propose to content myself in this regard with reminding the House of the choice which lay before the Government when it was faced with the need to immunize society from the evil menace of many tens of thousands of persons who it had therefore to secure in custody. That choice still lies before the Government now today in relation to the residue of those persons, greatly reduced in numbers but including the most intractable elements among them all. Now, this was the choice. On the one hand the Government could have adopted a passive policy of mere containment, with no attempt at reclamation, a policy of docile submission to the difficulties entailed and a refusal to accept the risks and hazards of any attempt to purge the evil and restore these persons to decent society and to individual liberty, a policy, in short, of pusillanimous resignation to the indefinite detention of these persons in custody for the rest of their lives. This would have been the "let them rot" mentality. The alternative was a positive policy of rehabilitation and of restoration to and reabsorption in society of these persons, surmounting the difficulties and accepting the risks but minimizing as much as possible the hazards. Now, work is one of the most important features of rehabilitation; and it has been said, both here and elsewhere, that to make men go through the motions of work is

farical, now, throughout the Emergency in Kenya there have been a number of psychological phenomena which no one, I think, would have predicted, and in relation to going through the motions of work it has been found, and I am not speaking of my own experience but I am speaking of the experience of persons who have been engaged in this work over several years and with great success, that the incubus of the oath which lies on these people is lifted even where there is a symbolic motion of work. That is to say that if their limbs are moved in the motions of work, however involuntary, the power of the oath which requires them not to co-operate with the Government, not to work, is partially broken. It is the first step, and it has been found, again I speak of the experience of those who have been engaged in this work over many years, that from that time there is progress in rehabilitation until eventually the whole power of the oath is removed and the individual detainee is visibly and immensely relieved and then continue to make very great progress very much more rapidly under the greater momentum which comes of freedom from the superstition of the oath. Those are facts which have been ascertained in the course of our rehabilitation undertaking, but in relation to the two choices which I have postulated, the one, the passive policy of containment, the second, the positive policy of rehabilitation and restoration of these people to freedom, there could be, there could have been then, and there could be now, no real choice. The second alternative, the positive policy of rehabilitation was the only choice which could have been adopted. It does not present an easy course or a course without peril. If we wished to take the safe and easy way we would have adopted the other alternative and played for safety, and thereby incidentally we would have abdicated our responsibilities and condemned the country and its peoples to an indefinite protraction of the Emergency, and 80,000 people to indefinite detention in custody.

But let us not underestimate the difficulties or hazards of the task which we are left. There are difficulties of misjudgment, human fallings, individual shortcomings of character and

[The Acting Chief Secretary] temperance. There are physical hazards inherent in dealing with the form of intransigence which we have to deal with among the residue of Mau Mau detainees, and intransigence reinforced by a propensity for violence and a sworn resolve to employ violence. Let it not also be forgotten that not only are we dealing with a most formidable human problem but that we must also use human instruments in the solution of that problem. Instruments, in the form of staff, which are subject to all the fallibilities of human nature, the limits of patience, the limits of resistance to deliberate provocation, to temptation and to discouragement, and in any readiness to criticize and eagerness to condemn, let there be thought for those engaged in this unenviable task, let there be some understanding of their difficulties and the dangers which they face; let there be an appreciation of the fact that they are ordinary men and ordinary women and not congenial sadists as they are sometimes made out to be; and that whatever they do, whichever way they resolve their difficulties, there are those waiting to pounce and declare them wrong, not with the measured judgment of objectivity but with the distorted hindsight and chronic partiality. I ask this Council those of us in this Council who live in Kenya and have perhaps that knowledge and understanding of the problem which comes of close association and indeed familiarity with it, to make it abundantly clear, first, that in no circumstances will brutality be tolerated, but also, secondly, that we recognize the difficulties and hazards of the task and the invidious position of those engaged in it and the devoted service which they are rendering to the country. Their morale has taken a very heavy blow over the Holo incident and the consequences. It is most important to the country, and to those who remain in custody, that that morale should be restored as soon as possible because until it is, there will be no confident restoration of firm and fair discipline.

Now, Sir, the Government has taken, as has already been announced, in one way or another a number of remedial measures and precautions for the future. It has announced a reorganization of the administrative arrangements for dealing with the detention camps and de-

tainees, and the appointment of a Special Commissioner, Mr. R. G. Wilson, who will have a senior prisons officer as his deputy to assist him on technical aspects of supply and administration of camps. Now, the Special Commissioner will head a new organization within the Ministry of African Affairs which will be staffed by selected officers chosen from the Administration and from Prisons, mainly from the administration because, on the advice of the Fair Committee, from that source we will find the most suitable material for the special task entailed, but we will find staff from any other sources from which suitable staff can be obtained. This new organization under the Special Commissioner will have executive responsibility for the administration and control of detention camps but not of prisons. That is one of the principles of this reorganization. Prisons will remain the charge of the Prisons Department, giving rise to essentially biological problems. The camps are being transferred entirely to the new Special Commissioner and his new organization. Now, these decisions, which are referred to in the Despatches which have been published, accord with the conclusions and the advice which the Government was able to obtain from the Fair Committee in advance of the preparation of their Report.

The other remedial measures the Government has taken are the disciplinary committee, the enquiry into the charges against Messrs. Sullivan and Couitts of which the outcome is known; there have been fresh directives issued in respect of a number of matters which arose in regard to the incidents at Holo and about which we want to make quite sure there can never again be any misunderstanding or ambiguity.

Now, it has been suggested in this debate that certain Ministers should resign. It has been suggested that the former Minister for Internal Security and Defence, Mr. Cusack, should have resigned. But the fact of the matter is that, if it is looked at objectively, it will be seen that the Minister for Internal Security and Defence saw the Cowan Plan, as it has been called, with, incorporated in it, all the safeguards which would have avoided, had they been followed, the tragedy that did occur. He was entitled to suppose—

[The Acting Chief Secretary] Minister is concerned with the broad heads of policy, not with the details—he was entitled to suppose that the plan which would be carried out at Holo would be the plan which he had approved and which he was satisfied had been specially worked out by Senior Superintendent Cowan with Superintendent Sullivan at Holo and fully explained to Sullivan. He was therefore entitled to expect that the plan he approved would be the plan carried out and there is no question but that had that plan been carried out with the safeguards imported by Senior Superintendent Cowan this tragedy would have been avoided. The Government is perfectly satisfied that there is no ground therefore for culpability on the part of Mr. Cusack or for the suggestion that he should resign his office.

In regard to the Minister for African Affairs, he is not concerned with prison operations and this was a prison operation. Although it was in a detention camp it was carried out by prisons staff. He is concerned with the rehabilitative part of the Holo closed camp and in so far as he was concerned with detail he, too, saw the plan incorporating all the safeguards which Senior Superintendent Cowan from his great experience had insisted on including in it.

Now, some hon. gentlemen in this debate have suggested that the operation was unlawful. That is not so. There is power in our law to require detainees in such camps to work. I have explained the importance which is attached to work in the process of rehabilitation, and provided in regard to the use of force to make men work there is not punitive force, provided it is merely compelling force and not punitive force, then the use of force introduced into such an operation is in our view perfectly justified. It is on the basis, or by analogy to, force which one might apply in a prison. I think hon. Members will realize that prison discipline must depend ultimately on enforcing orders, and if a prisoner or convict in a prison, ordered to come out of his cell, refuses to do so, then it is no good saying, "We will try corporal punishment!" because you have got to get him to the place where you have to apply corporal punishment. You must

then go on and move him physically, manhandle him. Similarly, if you have a prisoner or detainee or convict, and may I point out that the powers in relation to both in this regard are identical, it is actually the system of prison discipline which is applied with reference to detention camps, if you are going to make the detainee work, then it is legitimate in law to manhandle them to the site and it is legitimate in our view to make them go through the motions, provided, of course, that any force used is no more than is necessary for the purpose and that it is not punitive force. No one would attempt to defend beating men to make them work or beating them to punish them for refusing to work. I want to make that quite clear.

Now, having referred therefore to both the Ministers and pointing out that there was nothing inherently unlawful in the operation, that there was no cause why either of these Ministers should have suspected that the plan which was approved and which incorporated all the necessary safeguards would not be carried out, there is therefore no ground for holding that they should resign. In fact, Sir, it would be an absolutely sterile gesture which I do not think could be called for on any objective ground.

Now, the next person I wish to come to is the Commissioner of Prisons, Mr. Lewis. He is a gentleman, whom many people of this country have known for many years as a gentleman of honour. He has readily accepted personal responsibility for the admitted administrative failures at Prisons Headquarters. He has not attempted to evade that responsibility or to pass it to anybody else. He has therefore taken the honourable course at the end of a very long career in the course of which he has done great service for this country and for its people; he has taken the honourable course of seeking to retire prematurely, and I should like to remind the House that whatever has happened on this particular occasion, however right I believe it to be that he should take the course that he has taken, he has over seven years, and in the face of very great difficulties and shortages of staff, he has carried a very great burden as Commissioner of Prisons, with a greatly expanded number of persons in custody

[The Acting Chief Secretary] under his charge, and a very greatly expanded Prisons Service of therefore diluted quality, in carrying out his task. He really has made a very great contribution to the progress which we have made in the Emergency.

It has been suggested that Superintendent Sullivan should have had more condign punishment. I have no cause to attempt to defend what Superintendent Sullivan did. On the other hand, as the Conroy Committee pointed out, in fairness one must take into account the mitigating factors which indicate that he lacked the guidance and direction and supervision which he might have expected to receive, and therefore that however much one may condemn his stupidity, possibly his vanity, in doing what he did and in carrying out the plan in such a distorted form, abandoning all the major safeguards of the plan, when one considers all that there are still the mitigating factors that which the Conroy Committee have pointed out which must affect the steps taken when he is punished. He is having a career cut short after five years. He is not pensionable. He has earned in the course of these five years a small gratuity, and the decision was that in fairness he should be required to retire, but without losing the small gratuity. It is by virtue of the mitigating factors alone that that decision was taken.

Now, I do want to make one point in regard to public officers generally, and that is that great harm and disservice can be and indeed is done to the public service when it is apparent that they are not necessarily to be judged objectively but in a sense they are kicked around the political arena. That is most destructive of morale in the service and confidence in the service and of the sense of security within the service. I personally feel that it is greatly to be deprecated.

It has been suggested in the course of this debate that the Government covered up this tragedy at Hola. Now that is really a fantastic suggestion if anybody has taken the trouble to assess the facts. On the day on which this incident occurred the Government, in the sense of an agent of Hola, reported the matter to a magistrate, as is required under the law, with a view to an inquest being held. On the same day the C.I.D.

were sent in to open their criminal investigation. The following morning at 10.30 a.m. at dawn, the police pathologist was flown to Hola and later on the same day a senior Government medical officer was sent in to assist with the treatment of the injured. That is hardly the action of a Government seeking to cover up, because if it was seeking to cover up it was taking every possible step to ensure that it would be found out.

The original statement issued was an unfortunate one. It was a mistake. But it was a mistake made in good faith in an attempt to follow the policy which the Government has followed throughout the course of the Emergency of taking the public into its confidence as quickly as possible. It has taught us a great lesson. We shall not be so quick to take the public into our confidence another time. If we do so, we shall do it on very much more noncommittal ground.

There are a few points, Mr. Speaker, which I feel I should mention in regard to the points raised by my hon. friends opposite in the course of their speeches. I was asked by the hon. Member for Mount Kenya whether the Government had discovered the source of intercepted letters. As a matter of fact, Sir, I am informed that the letters intercepted which I think the hon. Member referred to were letters out of Hola and not into Hola.

He also asked me about the question of compensation paid to families of these dead men. That compensation is calculated on the same basis as compensation paid to members of the security forces throughout the Emergency for similar losses. I would hardly think that there could be any question of unfair discrimination against the families of those people. It has been suggested that certain people were surprised at Government's decision to pay compensation to the families of those men. The fact remains, though, that those men did meet their deaths when they were in the charge of the Government and for that reason the Government felt it right that their families should be compensated.

Two hon. Members opposite asked for an assurance that political pressures from the United Kingdom would not be

[The Acting Chief Secretary] allowed to affect the release of the remaining members of *Mau Mau* in detention before it was safe in the interests of security to release them. I can give them that assurance, but the Government certainly hopes that we shall be able to release considerable number of those still remaining in detention provided that rehabilitation continues with some success.

There is only one last point that perhaps I ought to deal with, Sir. That is that it has been suggested that hon. Members opposite should be allowed to visit camps. I should like to say that the Government will consider this, and wherever it deems it possible that a visit to any of these camps by Members of this House would be useful, the Government will grant permission for such visits. There is nothing to hide at all, but when there is a succession of visits of this nature it is extremely unsettling both to the staff and to the detainees. I hope to be able to inform hon. Members later—we have not had a chance of discussing this—that arrangements will be made, if they so wish it, for five to visit camps, and see the conditions, including Hola, although the closed camp at Hola is now almost empty.

Sir, it was suggested that the Minister for Defence, Mr. Cusack, should have been here for today's debate. Sir, I should make it plain that he had intended to be. It is only very recently that this debate, which was originally fixed to take place last week—we put off to this week, and Mr. Cusack, with his country after some 30 years, with his family—could not at the last minute alter the arrangements which he had made—shipping dates and various other dates—for that purpose. Had the debate come on as was forecast originally, last week, Mr. Cusack would have been here.

The suggestion that Mr. Coutts should not have gone on leave, I think, is a little unfair.

Finally, the hon. Member for Nyeri and Embu suggested that Government had never taken the trouble to let people know who the 11 dead men were. Of course, that was what the inquest went into. The inquest was public and the proceedings have been made public.

He also said that he had evidence that "physical rehabilitation" was still going on within the last few weeks. I should be most grateful if he would pass any information of that nature on to me.

Sir, I beg to oppose.

THE SPEAKER (Sir Ferdinand Cavendish-Bentick): Dr. Kiiano, under Standing Orders I understand you wish to surrender your right to reply to this debate to Mr. Mboya.

MR. MBOYA: Mr. Speaker, Sir, the text of the Motion before the House is that in view of the gravity of the incidents that have been taking place at the Hola Camp, this House expresses its loss of confidence in the Kenya Government's administration of prisons and existing detention camps, and urges Government to suspend all present officers and warders at Hola and to seek the resignation of the Minister for Internal Security and Defence in order to restore full faith in Government's competence and vigilance in protecting the well-being of prisons and detainees under its charge.

Now, Sir, replying to a debate of over five hours in 30 minutes and trying to cover most of the points that have been made by hon. Members on both sides of the House is not a very easy task, and I would like very briefly, in the first instance, to deal with some of the points that have been made by hon. Members on both sides of the House, and I would start with the last hon. Member who spoke from this side of the House.

Our friend, the hon. Specially Elected Member, Mr. Ngome, made a most interesting, if I may say so, and most interesting contribution or addition to this House. First of all, as purely a point of interest, his geography is so confused that he does not seem to realize that Hola is in Kenya. Maybe we can excuse him for this, but his biggest embarrassment to the House and the Government is the obvious implication in his speech that because of *Mau Mau* or because of certain deaths in the last six years, it is quite all right to eradicate 11 detainees in the charge of the Kenya Government. All he stands to tell us here is to go to the Information Department and see the pictures. Maybe we should ask him to go also to the Information Department and ask for the pictures of the 11 men clubbed to death by agents of this

[Mr. Mboya] Government. Does the sight look any better because they have been killed or clubbed to death by Government agents? Is it any different to the people who died that they were clubbed to death, on one hand, by Government agents, or that they were killed at some other place by someone else?

Mr. Speaker—I have to say this—our friend is a very sorry specimen.

THE SPEAKER (Sir Ferdinand Cavenish-Bentick): Order, order. I do not think, Mr. Mboya, that that is a proper remark to make about a fellow Member of the House, however much you disagree with him. You must withdraw.

MR. MBOYA: Mr. Speaker, I am sorry if I speak with a great deal of strength on this, but I think it is necessary.

THE SPEAKER (Sir Ferdinand Cavenish-Bentick): Mr. Mboya, I must again ask you to withdraw that adjective and description, as applied to a fellow Member.

Mr. MBOYA: I was not going to speak about the matter.

THE SPEAKER (Sir Ferdinand Cavenish-Bentick): Mr. Mboya, I must insist that you withdraw your remark.

MR. MBOYA: Mr. Speaker, if you ask me to do so, I will withdraw the adjective.

Now, Sir, the Director of Medical Services, Dr. Walker, has made some statements regarding the medical evidence or the status of the medical evidence at Holo. He has sought to explain the circumstances in which some very confused information was given to the public after a meeting at Government House on 4th March, the day after the incidents. He sought to convince us that in fact there was justifiable reason for this confusion. Mr. Speaker, I find it difficult to believe that there was some justifiable reason for this confusion. Whereas it is stated clearly that the doctor—and this is repeated here by the Solicitor-General—that the doctor, in his original or initial statement, indicated that death may have occurred as a result of pneumonia—the death of the first two witnesses—now we are told, Sir, that it was quite justifiable that there should have been some confusion over the statement, implying very clearly that that

was from drinking some water. I cannot understand how the Government could accept these conflicting statements and in fact try, at this very late stage, to justify the type of information—very false information—that was given to the public.

THE ACTING CHIEF SECRETARY (Mr. Griffith-Jones): Will the hon. Member give way? I think him for doing so. I think he may be under a misapprehension. The aspiration pneumonia would, in fact, have arisen from drinking water. Aspiration pneumonia and drinking water are not incompatible.

MR. MBOYA: Mr. Speaker, we know as well as the Acting Chief Secretary that it did not. We also know that that water was drunk by many more detainees than the 11 and that the water was drunk by many more detainees than those who were being forced to work. The co-operating detainees were also drinking the same water and there were no complaints.

Mr. Speaker, the hon. Member for Rift Valley, I think, also tried to make the same point—the point of these people being some of the worst criminals, belonging to the most bestial organizations in this country. Is this intended to be in defence of the killing of 11 detainees? Is it intended to suggest to the House that two wrongs are making a right? Is it intended to suggest to the House that when the Government has in its charge a criminal or a prisoner or a convict or a detainee that they have free licence to kill that man? I know that is not what the Government intends to imply; nor has the Government suggested it, but the hon. Member on this side has made one of the most unfortunate statements. If, Sir, we were to accept the hon. Member, as he always tells us, to have faith in European leadership, then, of course, I would tell him I am satisfied with African leadership.

Now I come to the leader of the New Kenya Group. He made one or two points that some people may agree with. He opened up by trying to draw the attention of the House to the fact that we should approach this from a completely non-racial attitude. Now, Sir, nobody agrees with those sentiments more than myself. I was thinking, you know, as he sat down, that he was going to get further

[Mr. Mbatia] and say that very soon he would support us; for example, that in the administration of justice, in this country, all races will be entitled to trial by jury. Anyway, I do not wish to introduce this at this stage.

I agreed with him when he expressed anxiety over the fact that the then Minister for Internal Security had to leave this country before this debate took place, despite the fact, Sir, that it was placed, at the request of Mr. Speaker that this debate had to be delayed until the report of the Government was published. We of the Government was particularly affected of such gravity and especially affecting the person of this particular Minister that it was absolutely necessary that he should be here. There is no use facing us with a new Minister who, I humbly beg to submit, knows nothing about these things. I hear some groans on Government Back Benches. Maybe they are suggesting that the new Minister knows everything about Holo camp and that he was involved. I am only being fair to the new Minister and saying that he did not have anything to do with it. He was not even at the Central Government offices for that matter, and why present him here on this particular day when we have held over this debate until today because the Government so requested? We cannot understand.

It is quite a coincidence too that on this day the Minister for African Affairs, who is also involved in this matter, and the Chief Secretary, who is the leader of the Government, should also be on leave. Now I do not know if I am intended to look sympathetically at the statement of the Acting Chief Secretary that may be Mr. Couits could not have delayed his leave, but I think, Sir, that when matters of this importance are before the House and the country, Mr. Couits is paid to be here.

Now, Sir, the leader of the New Kenya Group, the Specially Elected Member, Mr. Blundell, went on to speak about the period of intimidation of witnesses, and in this connexion was referring to the status of detainees at Holo camp. Now I hope that he also appreciates the period of intimidation and fear reigning today, and in the last six years in the African areas—fear of the Government—fear of Government informers and so on,

We are being asked to look at this whole problem on both sides of the picture, and maybe the leader of the New Kenya Group should also look at the psychological effect of the murder—or the death—the killing—the clubbing to death—of these 11 detainees—the psychological effect to all those Africans today in detention camps and prisons. The psychological effect to the Africans in the reserves—some of whom are still afraid that if they are too outspoken against the Government they may be detained tomorrow, or have restriction orders made against them, and probably face the same situation.

Mr. Speaker, Holo is not the only incident of this kind in the last six years. The Government is aware that there have been several other incidents and they cannot expect always to have the better side of things. The Government has to accept, and indeed I thought I had detected in the speech of the Acting Chief Secretary a tone of apology for what has happened. But that is not enough. Government has to take some definite positive action in this matter to reassure the country that no recurrence will take place—to reassure the country that they are as grieved as we are.

I associate myself with the Specially Elected Member, Mr. Blundell, in the request that we should be allowed to visit detention camps, and here I agree with him, and hope that the Acting Chief Secretary's promise to look into the matter will soon result in our visiting these detention camps and seeing for ourselves what it is that Government has been afraid of our seeing in the last six years.

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clubbing to death of 11 African detainees in a Kenya Government prison or detention camp, may I ask, is the New Kenya Group beginning to change its policy and agreeing with us that Kenya should be free immediately?

Now, Sir, reference is made to the speeches of British Socialist Members of Parliament, and everybody tries to say this is election year, therefore it is just a political issue, but Mr. Speaker, with your leave I beg to read the following from the *East African Standard* issue of today—a statement by a Conservative Member of Parliament. It says—and this man is not just an ordinary Conservative Member of Parliament—he is a very important one because he was a former Financial Secretary to the Treasury. He told the House that: "Many things that had been said by the Opposition with which he could not agree. However, it could never be to the credit of this House, or of this country that the matter should rest where it now stands." He declared "the affair of Holo camp was a great administrative disaster. The Kenya Minister of Defence and the Minister for African Affairs had taken upon themselves not only the responsibility for the Cowan Plan, but the responsibility for allowing the deformed version of it to go forward. The documents and the evidence proved conclusively that the responsibility lay not only with Sullivan and Lewis, but at a level above them". Mr. Powell added—"It lies with those to whom they vainly appealed for help, whom they warned of the dangers, from whom they received a decision which transferred the responsibility upwards, but no other help or guidance". Now, Sir, what political motive could Mr. Powell, a former Secretary to the Treasury—what political motive could he have against Lennox-Boyd—a Conservative like himself, under whom he would gladly serve? Now, Sir, it is not only the Socialists who are wicked. Maybe, the Conservatives are also interested in Kenya.

Now, Sir, the Temporary Minister for Legal Affairs—the one, at the end of the bench—now he aply, I think, puts this whole question—the ends of this Motion or the purposes of this Motion—when he says the Motion had three ends. Resignation of warders, resigna-

tion of Ministers, and institution of criminal proceedings against those involved. He says that the decision and this has been repeated by the Acting Chief Secretary, the decision as to whether or not to prosecute lies entirely with the Attorney-General. Now, Sir, we do not come here to contest the fact that constitutionally the decision lies with the Attorney-General, but, Sir, we have a right—a right to challenge—a right to express our views and opinions about that decision, constitutionally too. And what we are saying to the Attorney-General is that in these particular circumstances his decision was wrong, and we are saying to him, he, too, should resign.

Now, Sir, a lot of play has been made here about the hon. Member for the Coast Area, when I think it was the same gentleman, the Acting Attorney-General, who said something about the Member for the Coast having disagreed with the Attorney-General for Kenya, the Attorney-General for Britain, a former Attorney-General in a Socialist Government in Britain. The fact, Sir, is that Sir Frank Soskice says, and I quote the *Hansard*, which has been quoted by the Acting Chief Secretary: "I do not say that had I been in his position I would have reached necessarily the same conclusions that he reached." Now, Sir, if that does not express some doubt, then I do not know what does.

THE TEMPORARY MINISTER FOR LEGAL AFFAIRS (Mr. Conroy): Sir, if the hon. Member will give way, a point of explanation. What I said, Sir, was that the hon. Member did not agree with Sir Frank Soskice, who did not criticize the decision of the Attorney-General in Kenya, which is a very different thing.

MR. MBOYA: Mr. Speaker, I found it a bit difficult to follow the Acting Attorney-General's arguments today. I think he mainly tried to establish this, that at Holo on 3rd March, there were some legal blows and some illegal blows. Consequently, legally, some use of force was justified. Now, I have read and re-read the report of the Conroy Committee, and I have, after studying that report, come to the conclusion that at no time has it been established that there was any attempt by the detainees to escape. In fact, the analysis of the Conroy

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Committee of the evidence given by Sullivan over the incidents when the detainees were walking from the camp to the *shamba* is such that it only implies one thing—that if there was any disturbance or incident at all between the detention camp and the *shamba*, it was at that stage when the detainees made some noises or howled, and piled themselves together in a human pyramid. Now, Sir, it is quite a new discovery that people attempting to escape should pile themselves together in a human pyramid.

THE TEMPORARY MINISTER FOR LEGAL AFFAIRS (Mr. Conroy): If the hon. Member would be so good as to give way. On a point of explanation he is misrepresenting what I said. I said that there was an attempt to escape.

MR. MBOYA: Now, Mr. Speaker, the report—the very thorough report—everybody here says it is very thorough—a committee presided over by the hon. gentleman himself, establishes very clearly that at no time did they in their investigation find a situation in which Mr. Sullivan could have been entitled, legally or otherwise, to use any amount of force. Mr. Speaker, I do not have to remind the Attorney-General that legally under the prisons laws or under the Penal Code or under the Emergency Regulations, there is no provisions for the officials to use force against detainees. The only provision, and it is referred to by the Member himself in this document, is where it is stated that in the event they refuse to obey a legal order they may be punished by 12 strokes with a light cane. This implies that before that punishment is, in fact, imposed, they would have to be brought in and faced with a charge of refusing to obey a legal order and then punished. In this situation, Sir, we are being asked to believe that the Government, which has tried to impress on us the fact that they were dealing with the most fanatical remnants of the *Mau Mau* movement, hoped, and even sincerely believed, that all they needed to do to get these people to work was to go to each detainee, and if I may, Mr. Speaker, and hold their hands and ask them, with no tools at all, to dig a trench. We have been told to believe that, and the Government believes very sincerely that

they could have achieved it without any trouble. But the inconsistency of this is expressed even further because the report of Mr. Lewis, the Commissioner of Prisons—to the Minister—was a clear warning that he, himself, not Sullivan this time, but that he, Mr. Lewis, was rather apprehensive of trying to implement the Cowan Report because he feared someone may get hurt and someone may get killed, and as my friend, the Mover of the Motion, has said—to this warning the Minister for Security's reply was "This does not imply any change in policy.

Carry on the plan." Mr. Speaker, we are definitely entitled to ask, does the policy, or did the policy include getting people hurt, and even taking the risk of some people getting killed, and how, in those circumstances, can the Government represent the word "non-hand" as just a word meaning holding the detainees' hand gently and getting him through the motions of work? Can that involve any degree of hurting the man, or killing the man? My submission, Sir, is that it could not kill him however long you held his hand, and continued in the motions of working.

Something is wrong somewhere, and whereas I was going to compliment Mr. Conroy, the Acting Attorney-General, on the excellent report that his committee has produced, I am beginning to wonder whether we are having the same person speaking in two different places on different subjects. The whole thing is we are talking about Holo—the Ministers in the House today are defending the position of the Government over Holo, and this should be clearly understood—it is so simple—and yet we are having so many versions, so many interpretations of these words and so on.

Mr. Speaker, my submission is that I am in entire agreement with my friend, the hon. Member for the Western Area, when he says that this was an illegal operation—illegal in the context of force—conception included the use of force—illegal use of force—and yet Ministers in high positions allowed this plan to be implemented—allowed it to be implemented, and as the Mover of the Motion indicated, the Minister for African Affairs, in fact, said: "Please carry it on. Do it quick."

Now, Sir, the Member for Uamba—I think he made a very apt statement when



[Mr. Mboya] he said "power corrupts, but absolute power corrupts absolutely". Now, who has been corrupted by power? Mr. Speaker, I am beginning to wonder whether in these detention camps which should be rehabilitating the detainees or the officials. Something is wrong, and maybe the time has come when we should have camps where these officials can be rehabilitated. Someone ought to begin telling them that we are no longer in the heights of the Emergency—that this country is moving towards a peaceful country, and that the methods they used must be consistent with the change in circumstances of our situation. Mr. Speaker, these officials—now we get a chap like Mr. Sullivan, who has been punished. What is his guilt, and who framed the charges against him? The charge is clearly limited in the suggestion of the committee to Sullivan and Courts. The charge clearly states what the committee should do or look for. The charges excluded any question of a general enquiry into the circumstances in which Sullivan may have made his mistakes, into any sort of conditions that may have resulted in some disruption in the line of orders from the Ministry to Sullivan. How Sullivan, Sir, is guilty of a dereliction of duties and falsely informing his superiors about the happenings in Holo. The only evidence available against Sullivan is that some time in February when Mr. Cowan visited the camp, he talked to him about a possible plan which Mr. Cowan had to go back and write. There is conclusive evidence that at that stage Mr. Sullivan received the letter from Cowan or in writing, the plan itself. At every stage, Sir, we find that this piece of document was being passed from a secretary's desk to a Minister's desk, to another Minister's desk. We have evidence where Ministers actually agreed that they did not even read the document properly. They just thought "Well, pass it on". Who is more guilty of dereliction of duty? Who is more guilty in this case? Sullivan, or the careless Ministers at the top? Why should the Ministers go "scot free" and Sullivan become their scapegoat. I am not in any sense suggesting that Sullivan is not guilty. I think he is, but he is not the only one who should be punished. The Government should have introduced a general enquiry into

the whole situation that should have included the whole question of the administrative process leading to the Holo Camp tragedy. It is no use holding Sullivan as the scapegoat to cover up for some higher ups in Nairobi. They failed even to send the plan from Nairobi to Holo Camp after all the trouble that Cowan and everybody else was put into to work on the plan, to get it read and corrected, nobody bothered to send it, and the only excuse, Sir, is that "I thought it was sent". Ministers are paid not to think it was sent, but to see that it was sent.

THE SPEAKER (Sir Ferdinand Cavenish-Bentley): Mr. Mboya, you have had over half an hour.

MR. MBOYA: I have finished now, Sir. Mr. Speaker, let me finish then, with the Member for Mount Kenya.

Now, Sir, you know the Member for Mount Kenya makes statements here which can only make most of us a bit ashamed and embarrassed about his presence in this House, as hon. Members are responsible to a country and for a people. I was wondering as he spoke what is the interpretation of a Christian way of life—of civilized standards—of European leadership, and all the rest of it. He only reminded me of one thing, Mr. Speaker, and that is what many people would have referred to as the law of the jungle.

GROUP CAPTAIN BRIGGS: Mr. Speaker, Sir, on a point of order, could I ask the hon. Member to say what he is referring to?

MR. MBOYA: Mr. Speaker, the Member knows very well I am referring to his speech, which he can read tomorrow in the HANSARD.

GROUP CAPTAIN BRIGGS: Mr. Speaker, Sir, may I ask to what particular speech he is referring? I made no reference to the jungle. I made no reference to the hon. Member in person.

MR. MBOYA: Mr. Speaker, Sir, if the hon. Member listened instead of indulging in a lot of rearranged action, I said he made me think of the law of the jungle. I did not say he said it, but I still think that way.

MR. SPEAKER: If I were to accept some of his statements, I would be led to think that the Western countries, Britain, the

[Mr. Mboya] Government, and if we say nothing else, let us only say this, that we hope we shall not have this Government for too long a time.

United States and so on, would today not have anything to do with Germany at all, because some time, six years ago, someone made the mistake of committing a crime, we held it against him permanently. We say this man is no good to the country. What is the use, Sir, of the legal machinery. What is the use, Sir, of the punitive measures that we take, which are also intended to be corrective measures, if that is the attitude that we must adopt.

May I conclude, Sir, by merely saying to the Government, please before me are two files. Files of letters and complaints that we have received about detention camps and prisons. Mr. Speaker, one must ask, had the Government accepted our Motion last year to investigate the whole question of prisons and detention camps, would we have had a Holo? Mr. Speaker, one must wonder at the coincidence on the day before in the House of Commons the Labour Party had moved a Motion calling for the investigation in February of this year—investigation of conditions in detention camps and prisons in Kenya, the next day the Government gave a signal for the Cowan Plan to be implemented. What a coincidence after denying the previous day in the House of Commons, I am sure Mr. Lemmon-Boyd spoke with the knowledge and on the advice and information from the Kenya Government. But after asserting on the previous day, that all was well in the detention camps, our Government was embarking on a plan that resulted in the clubbing to death of 11 detainees.

Mr. Speaker, there could not be a more sordid history and record of a

Government, and if we say nothing else, let us only say this, that we hope we shall not have this Government for too long a time.

#### DIVISION

The question was put and Council divided.

The question was negatived by 45 votes to 14.

AYES.—Messrs. Cooke, Khamil, Dr. Kiano, Messrs. Mate, Mboya, Mumi, Nazareh, Ngala, Nyagah, Oguda, Pandya, ole-Tips, Towell, Travali.

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#### ADJOURNMENT

THE SPEAKER (Sir Ferdinand Cavenish-Bentley): That brings us to the end of the business on the Order Paper, and I therefore adjourn Council sine die. The present intention, I think, is that we probably reasonable about 29th September. I adjourn now sine die.

The House rose at Forty Minutes past Eight o'clock.

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VOLUME LXXXI

21st July, 1959, to 29th July, 1959

### Explanation of Abbreviations

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