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## CABINET

### KENYA

#### MEMORANDUM BY THE SECRETARY OF STATE FOR THE COLONIES

The Kenya Conference, which opens on 14th February, is designed to settle the future Constitution of Kenya. If we follow the normal precedent established elsewhere the conference, if successful, would be followed by a new General Election based on revised franchise arrangements, a period of full internal self-government starting either just before or just after the elections, and then further negotiation with Her Majesty's Government leading up to ultimate independence.

2. It is widely believed that the date we have in mind for independence is some time in the first half of 1963.

3. The people who most impressed me during my visit to Nairobi two months ago were the Provincial Commissioners. They gave me their unanimous advice:

- (i) That the rate of advance to independence, which they assumed would come in the spring of 1963, was too rapid.
- (ii) They could think of no way in which it could now be slowed down.

Must we really accept this advice, or is there some way, either of taking some of the dangers out of independence, or of retarding the date, or of doing both? This is the question we shall have to settle in the course of the coming months.

4. The dangers themselves are not difficult to see. In political maturity the indigenous people of Kenya are far behind even the West Africans. The number of trained administrators, and the number of officers and senior non-commissioned officers available are very small. There are strong tribal antagonisms that can easily be fanned into violence by irresponsible leaders and they are based on fears, that have much substance, of Kikuyu domination. There is a large European population with a great and long-established stake in the country. Land-hungry Africans are casting jealous eyes on the European lands, but it is European agriculture that provides the foundation of Kenya's economy. Over everything broods the threat of Mau Mau, the influence of the ex-detainees in the Kenya African National Union (K.A.N.U.), and the persistence of personal violence. Small wonder in these circumstances that confidence is rapidly disappearing and that the economy of the country is running rapidly downhill. The European farmers and the European administrators, upon whom the country depends, have little incentive to stay.

5. These dangers can be avoided only if we can ensure an administration that is adequately efficient and incorrupt (standards are bound to fall to a considerable extent in any case), a Constitution which provides reasonable protection to the individual and to minorities and which cannot be taken away by legal means, and reasonable confidence that law and order can be maintained by security forces operating under the control of a Government that itself respects the Constitution. We shall have ultimately to decide whether in our view there is a reasonable chance of this being achieved on independence. If we think there is not, we shall have to face up to all that is involved in postponing independence and continuing to govern ourselves, probably in such circumstances by decree and without any African co-operation.

6. I think it is important that we should take our decisions in stages and in the right order. For example, the question of maintaining facilities for British forces in Kenya cannot be tackled adequately until there is a responsible Government with whom to negotiate. Approaches at the moment to the two political parties cannot produce anything but a rebuff. The stage we are now facing is the Constitutional Conference, and our aim in this, I suggest, should be to try to frame a Constitution which gives the maximum of legal protection to minorities and to individuals.

7. The two parties—K.A.N.U. and the Kenya African Democratic Union (K.A.D.U.)—have been working hard on their constitutional ideas with the assistance of Sir Ralph Hone, whom I sent out as constitutional adviser, and other legal experts whom they are employing. While I am encouraged that they should be tackling this task so seriously, it must be admitted that their ideas are still far apart. K.A.D.U. are pinning their faith to what they call a federal or regional system, while K.A.N.U. are in favour of a single unitary system of government, with substantial powers for local government units entrenched in the Constitution.

8. But though their views are at present wide apart, I believe, myself, that underneath it all there may be more potential agreement than appears at first sight. If we can sweep away the verbiage about federalism and unitary state, and so on, and come down to the hard facts of powers and safeguards, we may be able to reach some agreement. What K.A.D.U. and their supporters need is protection for minority tribes in such matters as land rights, tribal customs, etc., in a form which cannot be destroyed. K.A.N.U. are prepared to make reasonable provision in these matters, and the problem will be to ensure that this provision is lasting. I doubt if a provision that amendments to the Constitution can be made only by say a 75 per cent. majority will be adequate, but I believe it should be possible to devise a system whereby features of the Constitution which affect minorities can be changed only with the consent of certain bodies outside the central Parliament, *e.g.*, the local or tribal authorities. If this can be done we shall have achieved something really worthwhile for the minority tribes.

9. The position of the Europeans is more difficult. K.A.N.U. obviously are determined to separate the Europeans from the African tribes, and if they wish to do so, I don't see how it can be prevented. Protection for the Europeans must lie in a Bill of Rights and an independent judiciary. Both these are provided for in the K.A.N.U. and, I understand, K.A.D.U. proposals but the problem from the European point of view will be to ensure that in practice they will be fully effective. This, it seems to me, is the real debt we owe to the European community in Kenya.

10. I conclude, therefore, that so far as the present conference is concerned, we should try hard to get agreement on a Constitution that provides, so far as any legal system can provide, protection for tribal minorities and for European individuals.

11. Looking to the future, the great question will be, to what extent it is likely that an extremist group or party would overthrow such a Constitution, thus leading to a breakdown of law and order on a major scale. On our answer to this must depend the view we take about the date of independence and the future of British forces. I suggest we cannot make this assessment now, until we have seen how the conference goes, and until we have had a few months' experience thereafter. In the meantime, however, there will be clear advantage if the "moderate" wing of K.A.N.U., led by Mboya, can be split off from the party generally, and in particular from the extreme group—men of violence and of Communist contacts—led by Kenyatta, Odinga and Ngei. The Governor thinks that this could perhaps be done. While I would not rate the chances very high, it would be of so much advantage for the future of Kenya and for the solution of our problems there, that I think the possibility is well worth pursuing, and I shall take any opportunity of doing so that presents itself at the conference.

R. M.

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