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GAZETTE NOTICE No 4322

The following Despatch which has been received by His Excellency the Governor from the Secretary of State for the Colonies is published for general information —

DESPATCH

Kenya No 1948

THE COLONIAL OFFICE,
THE CHURCH HOUSE,
GREAT SMITH STREET,
LONDON, S W 1

24th November, 1958

SIR,

I have given careful study to the constitutional proposals submitted by the African Constituency Elected Members under cover of Mr Mboya's letter of the 28th June, and I shall be grateful if you will reply on my behalf to the African Elected Members' Organization in the sense of the following paragraphs

2 The proposals that the number of African Constituency Elected Members in Legislative Council should be increased and that the specially elected seats and the Council of State should be abolished run directly contrary to the principles underlying the present constitutional arrangements which were put into force as recently as April of this year. In forming my judgment of what I considered to be a fair solution of current political problems in Kenya, I was certain that any new arrangements must rest firmly on four main principles—

- (1) the maintenance of a Government in which all races in the country take part,
- (2) a limited but final increase in communal representation in the Legislature,
- (3) the creation of opportunities for representation in the Legislative Council based on the non-communal principle, and
- (4) the institution of a body of local people who from their background of wisdom and impartiality can prevent unfair discrimination detrimental to any community

GOVERNOR

THE HONOURABLE SIR EVELYN BARING, GCMG, KCVO
GOVERNMENT HOUSE,
NAIROBI, KENYA

I linked those principles with a decision that the proportions between and within the groups for whom the specially elected seats are preserved shall not be varied during the next ten years and that any alteration in the total number of such seats or in the method of filling them will be subject to the approval of the Council of State

3 In the months that have elapsed since the new Constitution came into force I have been aware of no circumstance which would justify any major departure from the settlement made by Her Majesty's Government I regret, therefore, that I am unable to entertain proposals for constitutional change designed to alter in any significant way those features of the present Constitution which I regard as fundamental to ordered progress in Kenya For these reasons I cannot agree to the proposals relating to the increase in the number of African Constituency Elected Members the abolition of the specially elected seats and the abolition of the Council of State

4 As regards the proposals concerning the Council of Ministers I would emphasise that the decisions recorded in Command 309 represent my considered judgment of the most efficient arrangements that could be devised in present circumstances in relation to the size and balance of the Council It is my view that for some time to come these arrangements must be afforded extensive testing In due course, however, and after sufficient experience had been gained of their effectiveness, I and the Government of Kenya would be very ready to review the existing arrangements to consider whether further adjustments were justified in the circumstances then prevailing It will be recalled that under the terms of section 10 of Command 309 you have discretion to make adjustments in the burden of responsibility carried by individual Ministers and I have no doubt that you will have recourse to this as and when circumstances warrant In this connexion I must point out that the scope of the second portfolio reserved for an African still remains to be finally determined Were the African Constituency Elected Members to put forward views about this very important matter they would be given the most careful consideration For the reason stated earlier in this paragraph, I am not disposed to reconsider, so soon after their inception, the question of the posts of Assistant Ministers In existing circumstances I hold these to be a valuable feature of the present constitutional arrangements but I would not rule out a reassessment of the position in the light of further experience

5 In explaining, as in the foregoing paragraphs, why I cannot contemplate radical changes in the Constitution, I wish to make it clear that, provided the principles enunciated in paragraph 2 are safeguarded and subject to the decision on the specially elected seats referred to in the same paragraph, there is no reason why the detailed working of the constitutional arrangements should not come under review from time to time It is my view that the Constitution is sufficiently flexible to provide opportunity at appropriate periods for the experience of its working to be discussed and assessed and for constructive proposals to be put forward designed to make improvements

6 In considering the whole question I have carefully studied the declaration of principles in the first part of the memorandum and the following statement of the aims of the African Elected Members' Organization I recognize that the adherence of the African Constituency Elected Members to these principles and purposes is sincere and I naturally respect their evident desire to aim at a democratic solution of the constitutional problems of Kenya The concept of democracy relates as much to the type of society to be found in any country as to the particular features of the machinery of government It has been the experience of countries like the United Kingdom that the evolving machinery of government has kept pace with the changing features of the social scene and particularly with the development of a fairly homogeneous population, where geographical unity and a sense of corporate nationhood have superseded through a process taking centuries to complete the cultural, racial and religious cleavages which for long divided the country The present constitutional pattern in Britain and other advanced territories in the Commonwealth rests on several features of society which are not yet present in Kenya, and these are unlikely to emerge until mutual suspicions have been allayed and ethnic and cultural differences have lost the undue political importance attached to them today One important feature of a mature society is a readiness to accord weight and respect to the opinions and interests of numerically smaller groups and a complementary confidence on the part of such groups This must underly the free working of fully developed democratic institutions It is therefore to the promotion of a sense of nationhood that we must advance and I can conceive no more potent instrument to this end than the development of a multi-racial or non-racial Council of Ministers, in which policies can be evolved aiming at an integrated approach to the blending of the aptitudes and aspirations of the various communities in a sense of national purpose and achievement This principle of the participation of all groups

in the executive government of the country is a gateway to the future and not a barrier to the advancement of any community. In accordance with my despatch No. 662 your present Ministers have all accepted the obligation "to promote racial harmony and friendliness and to develop opportunities for all loyal subjects, irrespective of race or religion, to advance in accordance with character and ability." This pledge might well be adopted by all as a major signpost towards the future of Kenya.

7 Within the ambit of its fundamental principles the Constitution is thus intended to evolve so as to ensure that the machinery of government can be modified from time to time to take account of the development and progress of the peoples for whose benefit it is designed. I venture to express my hope that African Members of the Legislative Council will be prepared to enter discussions, first of all with you as Governor and thereafter with the other groups, so that a determined effort can be made to create a basis for mutual understanding. If this course can be set in Kenya I am convinced that responsible members of all communities will come to realize that the present settlement is expressly designed as the instrument which, as it is modified during the years, will make possible the progress of the country to full nationhood.

I have the honour to be,

Sir,

Your most obedient, humble servant,

ALAN LENNOX-BOYD