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DOWNING STREET,

July 24th, 1923.

**Paper Presented to Parliament Relating to Indians in Kenya.**

An introductory note by the Secretary of State for the Colonies dated the 23rd July states that the following Memorandum summarises the history of the Indian Question in Kenya and sets out the general policy laid down by His Majesty's Government with the decisions they have taken on the practical points at issue.

Then follows the Memorandum.

Part 1 contains a historical retrospect including the Wood-Winterton proposals.

Part 2 reads as follows:—

**"1. General Statement of Policy.—**

The general policy underlying any decision on the questions at issue must first be determined. It is a matter for satisfaction that however irreconcilable may be the views of the European and Indian communities in Kenya on many points there is one point upon which both are agreed, namely, the importance of safeguarding the interests of the African natives. The African population of Kenya is estimated at more than two and a half millions according to the census of 1921. The total numbers of Europeans, Indians

and Arabs in Kenya (including officials) are 9,651, 22,822 and 10,102 respectively. Primarily Kenya is an African territory and His Majesty's Government think it necessary definitely to record their considered opinion that the interests of the African natives must be paramount and that if and when those interests and the interests of immigrant races should conflict the former should prevail. Obviously the interests of the other communities, European, Indian and Arab must severally be safeguarded, whatever the circumstances in which the members of these communities have entered Kenya. There will be no drastic action or reversal of the measures already introduced, such as may have been contemplated in some quarters, the result of which might be to destroy or impair the existing interests of those who have already settled in Kenya, but in the administration of Kenya His Majesty's Government regard themselves as exercising a trust on behalf of the African population and are unable to delegate or share this trust, the object of which may be defined as the protection and advancement of the native races. It is not necessary to attempt to elaborate this position. The lines of development are as yet, in certain directions, undetermined and many

difficult problems arise which require time for solution but there is no room for doubt that it is the mission of Great Britain to work continuously for the training and education of Africans towards a higher intellectual, moral and economic level than they had reached when the Crown assumed the responsibility for the administration of this territory. At present, special consideration is being given to economic development in native reserves and, within limits imposed by the finances of the Colony, all that is possible for the advancement and development of Africans both inside and outside the native reserves will be done. His Majesty's Government desire also to record that, in their opinion, the annexation of the East Africa Protectorate which, with the exception of the mainland dominions of the Sultan of Zanzibar, has thus become a Colony known as Kenya Colony, in no way derogates from this fundamental conception of the duty of the Government to the native races. As in the Uganda Protectorate, so in Kenya Colony, the principle of trusteeship for the natives, no less than in the mandated territory of Tanganyika, is unassailable. This paramount duty of trusteeship will continue, as in the past, to be carried out under the Secretary of State for the Colonies by the agents of the Imperial Government and by them alone.

## 2. Future Constitutional Evolution.—

Before dealing with the practical points at issue directly connected with the claims of Indians, it is necessary, in view of the declaration of policy enunciated above, to refer to the question of the future constitutional evolution of Kenya. It has been suggested that it might be possible for Kenya to advance in the near future on lines of responsible self-government subject to the reservation of native affairs. There are, however, in the opinion of His Majesty's Government, objections to the adoption in Kenya at this stage of such an arrangement, whether it take the form of removing all matters affecting Africans from consideration in the Council or the appointment of the Governor as High Commissioner for native affairs or provision for a special veto by the Crown on local legislation which touches native interests and they are convinced that the existing system of Government, in the present circumstances, is best calculated to achieve the aims they have in view, namely the unfettered exercise of their trusteeship for native races and the satisfaction of the legitimate aspirations of other communities resident in the Colony. His Majesty's Government cannot but regard the grant of responsible self-government as out of the question within any period of time which need now be taken into consideration; nor indeed would they contemplate yet the possibility of the substitution of an unofficial majority in the Council for a Government official majority. Hasty action is to be strongly deprecated and it will be necessary to see how matters develop, especially in regard to African representation, before proposals for so fundamental a change in the constitution of the Colony can be entertained. Meanwhile the administration of the Colony will follow British traditions and principles which have been successful in other Colonies and progress towards self-government must be left to take the lines which the passage of time and the growth of experience may indicate as being the best for the country."

Paragraph 3 sets out the practical points at issue which are dealt with in the following paragraphs.

## "4. Representation in Legislative Council.—

(a) *Elective System.* In no responsible quarter is it suggested that the Indians in Kenya should not have elective representation upon the Legislative Council of the Colony. "The point at

issue is the method whereby such elective representation should be secured. There are two alternative methods (1) a common electoral roll (2) communal franchise. Under the former system, Kenya would be divided into a given number of constituencies in each of which the European and Indian voters on the roll would vote together at elections for candidates of either race and qualifications for admission to the voters roll would be the same for Europeans and for Indians. Under the latter system, European and Indian constituencies would be demarcated independently, not necessarily coinciding in number or boundaries, the qualifications for admission to the voters roll would not necessarily be the same for the two communities and, while Europeans would vote in European constituencies for European candidates, Indians would vote in Indian constituencies for Indian candidates. As a variant to the former system, there is a common electoral roll with reservation of seats. This arrangement would involve setting apart a certain number of seats in a given constituency for candidates of a certain race. For example, in a constituency returning three members with two seats reserved for Europeans and one for Indians, the two European candidates and the one Indian candidate highest in the poll would be elected, irrespective of the position in the poll of the other candidates of either race. A common electoral roll for all British subjects and British protected persons with a reservation of seats was proposed in the Wood-Winterton Report and it was further suggested that the qualifications for voters should be such as to admit, if possible, 10% of domiciled Indians to register for a common electoral roll. It was claimed that it would bridge the gap between Europeans and Indians by giving a candidate of one race an incentive to study the needs and aspirations of the other race. Further, Indian sentiment in India and Kenya strongly favour a common electoral roll even though a communal franchise exists in India itself. A communal franchise secures that every elector shall have the opportunity of being represented by a member with sympathies similar to his own, a consideration which in other Colonies has led domiciled Indians to press for its adoption. It is well adapted to the needs of a country such as Kenya. No justification can be seen for the suggestion that it is derogatory to any communities so represented and it is believed that, so far from having a disruptive tendency, it would contract rather than widen the division between races in Kenya. So far as Africans are concerned, communal franchise provides a framework into which native representation can be fitted in due season. From the point of view of the Indian residents themselves, this system permits a far wider franchise being given than would be the case if a common electoral roll were introduced and this alone should render it acceptable to all supporters of Indian claims who have at heart the political development of the Indian people. Finally, it allows the immediate grant of electoral representation with a wide franchise to the other community in Kenya which is ripe for such institutions, the Arabs of the Coast. These considerations were weighed before the Wood-Winterton Report was drawn up. The recommendation then made turned largely on the desire to meet Indian feeling so far as conditions in Kenya would admit. The result of reference to opinion in Kenya of a recommendation that a common electoral roll be adopted, even though combined with a reservation of seats, was to show that the advantages claimed for a common electoral roll would in practice have been illusory. In the special conditions existing in Kenya it was clear that no candidate, European or Indian, could stand as an advocate of the interests of the other race without sacrific-



ing the support of his own. If the elections were to be fought on racial lines, as they undoubtedly would have been in Kenya, the main advantage claimed for a common electoral roll, namely bringing the races nearer together, would be lost. Having regard to all the circumstances, His Majesty's Government have decided that the interests of all concerned in Kenya will be best served by the adoption of the communal system of representation.

(b) *Qualifications for Voters.* It is not intended to effect any alteration in the qualifications for admission to the register of European voters as laid down in Ordinance No. 22 of 1919, that is, adult suffrage. Subject to certain necessary and customary reservations under a communal system, His Majesty's Government is prepared to grant to Indians a wide franchise. It will be a matter for the Governor to ascertain the views of the Indian community and submit the necessary legislation to give effect thereto. The same procedure will be followed in the case of the Arab community.

(c) *Qualifications for Candidates.* His Majesty's Government is prepared to adopt a similar principle in regard to the qualifications for candidates, except that there must be a test to ensure that candidates have such a knowledge of the English language as will enable them to take their part in the proceedings of the Legislative Council. No system which would involve the use of two or more official languages in Council will be contemplated, but His Majesty's Government have no ground for supposing that the imposition of this necessary condition will create difficulties or limit unreasonably the choice of suitable candidates.

(d) *Numbers on Legislative Council.* The question remains of the number of seats on the Council to be allocated to each community. As matters stand there are eleven elected unofficiaries (Europeans) on Council and, as a provisional measure, authority was given in 1921 for the substitution of four nominated Indian members for the two elected Indian Members contemplated in Lord Milner's despatch of 21st May, 1920. After full consideration, His Majesty's Government have decided that provision should be made for five elected Indian unofficial members on the Council, while for Arabs it has been decided that there shall be one elected member in addition to the nominated Arab official member for whom provision already exists. The Europeans will continue to return eleven elected representatives. The number of nominated official members will be fixed so as to maintain an official majority on Council. In the opinion of His Majesty's Government adequate representation of the interests of each community will be secured by this allocation. It is desired, however, that the views of Indians in Kenya should be ascertained before a decision is taken upon the actual arrangement of constituencies to be represented by the five Indian members. No articulate expression of opinion can be yet expected from the African tribes in Kenya and the time has not come to consider what should be their representation on Council. The educational development of individual natives will undoubtedly precede the political education of the general body of natives. There are indeed signs of this already. In present circumstances the Governor has the advice of the Chief Native Commissioner in all matters affecting the African population and with the official majority can ensure the enactment of any measures for the betterment of natives which may be approved by His Majesty's Government. It has, however, been suggested that a nominated unofficial member

chosen from among Christian Missionaries in Kenya specially to advise on such matters should be added to Council until the time comes when the natives are fitted for direct representation. His Majesty's Government see no objection in principle to this arrangement and agree that provision should be made accordingly. It will be for the Governor to select a suitable person for nomination from time to time, but it will, of course, be understood that there is no question of representation of missionary bodies as such and consideration of religious denomination will not affect selection nor will the nomination of this one member relieve the Governor and his advisers of their full responsibility for representing native interests.

**5. Representation on Executive Council.**—As regards Executive Council, the present position as set forth in the Wood-Winterton Report will be maintained except that the Governor will be given authority to nominate as an additional unofficial member a suitable person, preferably a missionary, whose advice on matters affecting Africans will, in the opinion of the Governor, be of value.

**6. Representation on Municipal Councils.**—The only Municipality set up in Kenya is Nairobi. The Municipal Corporations Ordinance, 1922, provides that Municipal Councils shall consist of so many Councillors as the Governor shall determine and the appointment of these Councillors rests with the Governor. It was not desired to suspend the enactment of the various amendments to the existing law which are included in this Ordinance until the policy of elections for Municipal Councillors had been determined. Consequently, provision for the constitution of Municipal Councils was re-enacted generally in the form in which it appeared in the Municipal Corporations Ordinance, 1909. Lord Milner contemplated in 1920 election in lieu of nomination of Municipal Councillors, but no concrete scheme was submitted by the Colonial Government for giving effect to that policy. The matter is one requiring careful examination, but in principle, if the elective basis is now introduced, it follows from the decision in regard to the Legislative Council that Municipal representation must also be on a communal basis due provision being made for the protection of interests of Africans until such time as they are fit to exercise the franchise. It will be an instruction to the Governor to put forward proposals for the consideration of the Secretary of State for the Colonies after he has been able to consult his advisers in Kenya.

**7. Segregation in Townships.**—The next matter for consideration is the segregation of European and non-European races. Following upon Professor Simpson's report, the policy of segregation was adopted in principle and it was proposed by Lord Milner to retain this policy both on sanitary and on social grounds. In so far as commercial segregation is concerned, it has already been generally agreed that this should be discontinued, but with regard to residential segregation matters have been in suspense for some time and all sales of township plots have been held up pending a final decision on the question of principle involved. It is now the view of competent medical authorities that as a sanitation measure the segregation of Europeans and Asiatics is not absolutely essential to the preservation of the health of the community; a rigid enforcement of sanitary, police and building regulations without any racial discrimination by Colonial and Municipal authorities will suffice. It may well prove in practice that different races will, by natural affinity, keep together in separate quarters, but to effect such separation by legislative enactment except on the strongest sanitary grounds

would not, in the opinion of His Majesty's Government, be justifiable. They have, therefore, decided that the policy of segregation between Europeans and Asiatics in townships must be abandoned but for the present at any rate it is considered desirable, as in other native dependencies, to keep the residential quarters of natives so far as practicable separate from those of immigrant races. In the case of individual natives, such as servants, strict segregation is unworkable, but it is important, when areas have been fixed in townships for native residence, that those areas be regarded as definitely set aside for the use of natives and no encroachment thereon by non-African races be permitted.

Paragraph 8, which is entitled **Reservation of the Highlands** recites the history of the question since 1906, the main points being:—

(1) The system of alienation of Crown Lands was then allotment not auction.

(2) The Governor had the right to veto all transfers.

(3) Lord Elgin's pronouncement did not mention transfer because it was unnecessary to do so.

(4) The changes inserted in the Ordinance of 1915 gave effect to previous practice and did not set up any new principles.

(5) These changes involved no legal discrimination since it is possible for the Executive to alter the practice without amending the law.

The memorandum proceeds:—

"In adhering to the position adopted by his predecessors in this matter Lord Milner when Secretary of State made it clear that the reservation of a certain area for Europeans implied that a similar reservation should be available for Indians who wished to take up agricultural land and he contemplated the reservation of such land in the Lowlands of Kenya on the understanding that the land offered to Indian settlers would be examined as to its suitability and adequacy by a representative whom the Indian Government might send. After reviewing the history of this question and taking into consideration the facts that during the last fifteen years European British subjects have been encouraged to develop the Highlands and that during that period settlers have taken up land in the Highlands on this understanding, His Majesty's Government have decided that the existing practice must be maintained as regards both initial grants and transfers. An area of land in the Lowlands which can be set aside without infringing native reserves and without conflicting with native requirements will be temporarily reserved in order that it may be ascertained by experience what demand there is for agricultural land on the part of Indians who will give suitable guarantees of their intention to develop the land themselves. After the expiration of a limited period, the reservation of this area in the Lowlands will be reconsidered in the light of the experience so gained.

**9. Immigration.**—Finally, the question of immigration into Kenya has been canvassed by Europeans and Indians. It is sufficient to say that the line taken has varied with the point of view and it is not necessary to present the arguments which have been advanced. It may be stated definitely that only in extreme circumstances could His Majesty's Government contemplate legislation designed to exclude from a British Colony immigrants from any other part of the British Empire. Such racial discrimination in immigration regulations, whether specific or implied, would not be in accord with the general policy of His Majesty's Government and they cannot countenance the introduction of any such legislation in Kenya. The existing immi-

gration regulations of the Colony are of quite general application. It is clearly as important in the general interests of Kenya to prohibit the entry of undesirable persons from Europe or America as from Asia. There is no reason to suppose that the regulations in present circumstances are inadequate to this general purpose but the consideration which must govern the immigration policy in Kenya is purely economic and strict regard must be paid to the interests of the African. When the question is re-examined from this standpoint, it is evident to His Majesty's Government that some further control over immigration in the economic interests of the natives of Kenya is required. The primary duty of the Colonial Government is the advancement of the African and it is incumbent upon them to protect him from an influx of immigrants from any country that might tend to retard his economic development. In the course of time, as natives progress intellectually, they will no doubt take the place which Africans hold in other parts of the British tropical Africa in mechanical and subordinate clerical work and in small trade, and it must be the aim of the British Administration to further this development by all possible means. With this object, the Colonial Government must weigh so far as practicable the effect on native interests of admission to the Colony of would-be immigrants of any race. No information is yet available to show what number of immigrants following any particular occupation the Colony can absorb. The problem is complicated by the position of the separate dependency, Uganda, to which normal access lies through Mombasa and Kenya and this necessitates careful consideration before any scheme is definitely decided upon. Further, some arrangement must be devised for securing the strictly impartial examination of applications for entry into Kenya, possibly by a Board on which the various communities including the natives would be represented. It will therefore be an instruction to the Governor of Kenya to explore the matter further on his return to the Colony and in concert with the Governor of Uganda to submit proposals to the Secretary of State for the Colonies for giving effect to that amount of control of immigration which the economic interests of the natives of both dependencies require.

**10. Conclusion.**—In conclusion, His Majesty's Government desire to record that the decisions embodied in this memorandum have only been taken after exhaustive review of the several complicating factors which have led to the present unhappy controversy. Their constant endeavour throughout their deliberations has been to relate the principles which must govern the administration of a British Colony in tropical Africa to wider considerations of general Imperial policy as enunciated in the resolution of the Imperial Conference in 1921. It is regretted that on certain material points it has not been possible to meet the wishes of the Government of India whose views have received the fullest consideration from His Majesty's Government at the instance of the Secretary of State for India. It is not to be expected that issues so grave can be composed to the immediate satisfaction of the several interests concerned but His Majesty's Government believe that the decisions now taken, resting as they do on the broad basis of British trusteeship for the African, provide an equitable adjustment of those interests. It is the confident expectation of His Majesty's Government that if the whole matter is viewed in its true perspective, the decisions so based will be accorded general acceptance, and it is their earnest hope that a sincere effort will be made to restore in Kenya that spirit of co-operation and goodwill which is so essential to its welfare and development."

The full text follows by mail.

SECRETARY OF STATE.