

G. O.

38077/37

*and (21)*

4

Mr. Flood. 9.10

Mr.

Mr.

Sir H. Moore.

Sir G. Tomlinson.

Sir C. Bottomley. 11.10

Sir J. Shuckburgh.

+ Perm. U.S. of S. 11.10 37

Party. U.S. of S.

X Secretary of State. *W.S. 11.10.37*

C. D.  
R. 12 OCT  
D. 12.

DOWNING STREET.

13 October, 1937.

Sir,

I have etc. to acknowledge the receipt of your confidential despatch No.131 of the 14th of September, in which you press your view that the fourth unofficial member of the Executive Council as reorganized should be a member of the Legislative Council *except in rare cases* ~~in all cases.~~

(This means that, if the fourth member is not chosen from among those who are already members of Council it will be necessary to provide for his addition to Council and for the addition also of a nominated official member to preserve the official majority.

2. The necessary amendment to the constitutional instruments would

DRAFT.

KENYA  
CONFIDENTIAL  
GOVERNOR

FURTHER ACTION.

take

take the form of altering Clause XV of  
the Royal Instruments by substituting the  
word "ten" for "nine" as the <sup>number</sup> number of  
nominated official members, and altering  
the concluding words to read: "and nominated  
unofficial members not exceeding three in  
number, of whom two shall be selected to  
represent the interests of the African  
community". These amendments would allow  
a certain elasticity in that it would not be  
necessary to appoint the tenth official  
or the third unofficial in the case where the  
fourth unofficial member of Executive Council

is already a member of the Legislative Council,  
3. Constitutional provision therefore  
is simple, and can be put into effect at the  
same time as the necessary amendment to provide

for the new composition of the Executive Council,  
I am ~~max~~ <sup>still</sup> reluctant to disturb ~~in any way~~  
the present composition of the Legislative Council  
as you know, the <sup>representation of the different interests in</sup> ~~points of interest~~ on that Council  
has always risen to much difficulty and any change

*or if the fourth member did not  
wish to sit in the Legislative  
Council and you were  
prepared to agree that he need  
not.*

C. O.

- Mr.
- Mr.
- Mr.
- Sir H. Moore.
- Sir G. Tomlinson.
- Sir C. Bottomley.
- Sir J. Shuckburgh.
- Perm. U.S. of S.
- Parly. U.S. of S.
- Secretary of State.

DRAFT.

**FURTHER ACTION.**

is liable to be viewed with suspicion,  
whether by the European unofficial  
element, or by the Indians. To  
provide for the possible addition of  
two more members who might be regarded  
as being both Government nominees  
might give rise to misunderstanding.  
Before, therefore, I proceed further  
I request that you will consider this  
aspect of ~~the matter.~~ <sup>the matter.</sup> If you can assure  
me that a change as proposed would not  
lead to difficulty with either the  
European or the Indian elected members  
and would not be used as a foundation  
for a demand for further changes in  
the composition of the Legislative  
Council, I ~~should~~ <sup>shall</sup> be prepared to agree,  
but, as I have said, I view the proposal  
to alter the Legislative Council with  
some misgiving, <sup>and I still think</sup> ~~and some might arise~~  
~~there may be occasions when~~  
~~where you could wish to secure the~~  
~~it may be desirable to select~~  
~~services of some gentleman of high~~  
~~some man who would be~~  
~~available to become a~~  
~~member of the Legislative~~ <sup>standing</sup>  
is

<sup>would</sup>  
standing who ~~might~~ be prepared to become  
a member of the Executive Council, but  
would not wish to <sup>become</sup> ~~be regarded as~~ a member  
of Legislative Council, or to take part in  
the debates therein.

(Signed) W. ORMSBY GORE.

requested in writing by any Member so to do, it shall be competent to such Member to require that there be recorded upon the Minutes his written application, together with the answer returned by the Governor to the same.

XIV. The Governor may act in opposition to the advice given to him by the Members of the Executive Council, if he shall in any case deem it right to do so; but in any such case he shall fully report the matter to Us by the first convenient opportunity, with the grounds and reasons of his action. In every such case, it shall be competent to any Member of the Council to require that there be recorded at length on the Minutes the grounds of any advice or opinion he may give upon the question.

Governor may act in opposition to Executive Council.  
Reporting grounds for so doing.  
Members may require their adverse opinions to be recorded on the Minutes.

XV. The Legislative Council of the Colony shall consist of the Governor as President, ~~eleven~~ *ten* ~~ex officio~~ Members, Nominated Official Members ~~not exceeding nine~~ *not exceeding three* in number, eleven European Elected Members, Indian Elected Members ~~not exceeding five~~ in number, one Arab Elected Member, and ~~two~~ *whom two shall be selected* Nominated Unofficial Members to represent the interests of the African community:

Constitution of the Legislative Council.

Provided that if after a dissolution of the Council less than five persons are elected to be Indian Elected Members, or if at any time the number of Indian Elected Members is less than five, the vacancy or vacancies so arising may be filled by the appointment in the manner hereinafter provided of Nominated Indian Unofficial Members:

Provided further that the appointment of Nominated Unofficial Members to represent the interests of the African Community shall be discontinued in pursuance of instructions from Us through one of Our Principal Secretaries of State when it shall appear to Us that such appointment is unnecessary:

Provided further that if one of the Nominated Official Members is not specially appointed to represent the interests of the Arab community there shall be a Nominated Unofficial Member to represent such interests.

XVI. The *ex officio* Members of the Legislative Council shall be the persons for the time being lawfully discharging the functions of Colonial Secretary, of Attorney-General, of Treasurer, of Chief Native Commissioner, of Commissioner for Local Government, Lands, and Settlement, of Director of Medical Services, of Director of Agriculture, of Director of Education, of General Manager of the Kenya and Uganda Railways and Harbours of Director of Public Works, and of Commissioner of Customs.

Ex officio Members of Legislative Council.

*ten*  
*not exceeding three in number of whom two shall be selected*

Nominated  
Official  
Members.

XVII. The Nominated Official Members of the Legislative Council shall be such persons holding office in the Public Service of the Colony or of the Protectorate of Kenya as the Governor, in pursuance of instructions from Us through one of Our Principal Secretaries of State, may from time to time appoint by an Instrument under the Public Seal. They shall hold their places in the Council during Our pleasure and shall in any case vacate their seats at the next dissolution of the Council after their appointment, but may be re-appointed.

Provided that if any Nominated Official Member of the Council shall cease to hold office in the Public Service of the Colony or of the Protectorate of Kenya his seat in the Council shall thereupon become vacant.

European  
Elected  
Members.

XVIII. The European Elected Members of the Legislative Council shall be such fit persons as may be elected in accordance with the provisions of the Ordinance entitled "An Ordinance to provide for the election and nomination of Members to the Legislative Council of the East Africa Protectorate" passed by the Legislative Council of the East Africa Protectorate on the Tenth day of July 1919, or of any law adding to, amending or substituted for the same by the Legislative Council of the Colony and for the time being in force thereon.

Indian and  
Arab Elected  
Members.

XIX. The Indian and Arab Elected Members of the Legislative Council shall be such fit persons as may be elected in accordance with the provisions of any law enacted for the purpose by the Legislative Council of the Colony. The Nominated Unofficial Members to represent the interests of the African community shall be appointed by the Governor by an Instrument under the Public Seal in pursuance of instructions from Us through one of Our Principal Secretaries of State. The Nominated Unofficial Member (if any) of the Council to represent the interests of the Arab community shall be such Arab or other person representing such interests and not holding office in the Public Service of the Colony or of the Protectorate of Kenya as the Governor in pursuance of instructions from Us through one of Our Principal Secretaries of State may from time to time appoint under the Public Seal. All such Nominated Unofficial Members shall hold their places in the Council during Our pleasure and shall in any case vacate their seats at the next dissolution of the Council after their appointment, but may be re-appointed.

Nominated  
Indian  
Unofficial  
Members.

The Nominated Indian Unofficial Members (if any) shall be nominated from among those persons whose names are entered on the register in force for the time being of voters for the election of Indian Elected Members prepared in accordance with the provisions of any law enacted for the purpose by the Legislative Council of the Colony and shall be appointed by the Governor by an Instrument under the Public Seal in pursuance of instructions from Us through one

of Our Principal Secretaries of State. The Nominated Indian Unofficial Members shall hold their places in the Council during Our pleasure and shall in any case vacate their seats at the next dissolution of the Council after their appointment or at the termination of such period as may, in accordance with any instructions from Us through one of Our Principal Secretaries of State, be provided in the Instrument by which they are appointed, whichever is the earlier.

XX. The Members of the Legislative Council shall take precedence as We may specially assign and, in default thereof, first the *ex officio* Members in the order in which their respective offices are above mentioned; secondly, the Nominated Official Members according to the priority of their respective appointments, or if appointed by the same Instrument, according to the order in which they are named therein; thirdly, the European Elected Members in order of date of election, or if elected at the same general election, according to the alphabetical order of their names; fourthly, the Indian Elected Members and the Nominated Indian Unofficial Members (if any) in order of date of election or appointment, or if elected or appointed on the same date, according to the alphabetical order of their names; fifthly, the Arab Elected Member; sixthly, the Nominated Unofficial Members representing the interests of the African community and the Nominated Unofficial Member (if any) representing the interests of the Arab community according to the priority of their respective appointments.

Precedence  
of Members.

XXI. Whenever any Nominated Member of the Legislative Council shall, by writing under his hand, resign his seat in the Council, or shall die, or whenever the seat of any such Member shall become vacant from any cause other than the dissolution of the Council, or whenever any such Member shall be suspended from the exercise of his functions as a Member of the Council; or be declared by the Governor, by an Instrument under the Public Seal to be incapable of exercising his functions as a Member of the Council, or be absent from the Colony and from the Protectorate of Kenya, or shall be acting in an office the holder of which is an *ex officio* Member of the Council, the Governor may, by an Instrument under the Public Seal provisionally appoint some person to be temporarily a Nominated Member of the Council in the place of the Member so resigning or dying, or whose seat has become vacant, or who has been suspended or declared incapable, or who is absent, or sitting as an *ex officio* Member.

Provisional  
appointment  
of Nominated  
Members.

Provided that when any person shall be lawfully discharging the functions of more than one of the offices the holders of which are *ex officio* Members of the said Council, the Governor may, by an Instrument under the Public Seal, appoint any fit person to be provisionally a Member of the Council so long as the functions of the said offices shall continue to be discharged by one person as aforesaid.

Every such provisional appointment may be disallowed by Us through one of Our Principal Secretaries of State, or may be revoked by the Governor by any such Instrument as aforesaid.

Every person so provisionally appointed shall be to all intents and purposes a Nominated Member of the Council until his appointment shall be disallowed or revoked, or superseded by the permanent appointment in his place of a Nominated Member of the Legislative Council, or until the person in whose place he has been appointed shall be relieved from suspension, or declared by the Governor by an Instrument under the Public Seal to be capable of exercising the functions of a Member of the Legislative Council, or shall have returned to the Colony or the Protectorate of Kenya, or shall have ceased to sit in the Council as an *ex officio* Member, as the case may be.

Provisional appointments to be immediately reported.

Oath of allegiance to be taken by Members of the Council

Standing Rules and Orders

XXII. The Governor shall, without delay, report to Us, for Our confirmation or disallowance, through one of Our Principal Secretaries of State, every provisional appointment of any person as a Nominated Member of the Legislative Council.

XXIII. No Member of the Legislative Council shall sit or vote therein until he shall have taken and subscribed the following oath before the Governor, or some person authorised by the Governor to administer such oath:—

" I, A. B., do swear that I will be faithful and bear true allegiance to His Majesty King George the Fifth, His heirs and successors according to law."  
" So help me God."

Provided that every person authorised by law to make an affirmation instead of taking an oath may make such affirmation instead of the said oath.

XXIV. The Governor shall frame and propose to the Legislative Council from time to time for their adoption such Standing Rules and Orders as may be necessary to ensure punctuality of attendance of the Members of the Council, and to prevent meetings of the Council being holden without convenient notice to the several Members thereof, and to maintain order and method in the despatch of business, and in the conduct of debates in the Council, and to secure due deliberation in the passing of Ordinances, and to provide that before the passing of any Ordinance intended to affect the interests of private persons due notice of the same is given to all persons concerned therein.

Until further Standing Rules and Orders shall have been made, the Standing Rules and Orders of the Legislative Council now in force shall remain in force and apply so far as the same are applicable to the Council established in accordance with these Our Instructions.

All such Rules and Orders, not being repugnant to any Orders in Council or to these Our Instructions, or to any other Instructions which the Governor may receive from Us, shall at all times be followed and observed, and shall be binding upon the said Council, unless the same or any of them shall be disallowed by Us.

XXV. The Governor, if present, or, in the absence of the Governor, such Member of the Legislative Council as the Governor shall from time to time appoint, or in default of such appointment or in the absence of the Member so appointed, the Member present who stands first in order of precedence, shall preside at the meetings of the Council. Who to preside at the Council.

XXVI. All questions arising at meetings of the Legislative Council shall be determined by a majority of votes, and the Governor or other presiding Member shall have an original vote in common with the other Members of the Council and also a casting vote if upon any question the votes shall be equal. Voting.

XXVII. The said Legislative Council shall not be disqualified from the transaction of business on account of any vacancies among the Members thereof; but the said Council shall not be competent to set in any case unless (besides the Governor or the Member presiding) there be present at and throughout the meetings of the Council six Members at the least. Council may transact business notwithstanding vacancies Quorum.

XXVIII. It shall be competent for any Member of the Legislative Council to propose any question for debate therein; and such question, if seconded by any other Member, shall be debated and disposed of according to the Standing Rules and Orders: Provided always, that no Ordinance, vote, resolution, or question, the object or effect of which may be to dispose of or charge any part of Our revenue arising within the Colony, or to revoke, alter, or vary any such disposition or charge, shall be proposed, except by the Governor or with his consent: And provided further, that no vote, resolution, or question, the object or effect of which may be to suspend the Standing Orders of the Council, shall be proposed except by the Governor or other presiding Member or with his consent. Questions, &c. for debate.

XXIX. The sessions of the Legislative Council shall be held at such times and places as the Governor shall from time to time by proclamation appoint. There shall be at least one session of the Council in every year, and there shall not be an interval of twelve months between the last sitting in one session and the first sitting in the next session. Sessions of the Council.

XXX. The Governor may at any time, by proclamation, prorogue or dissolve the Legislative Council. Governor may prorogue or dissolve Council

Duration of  
Legislative  
Council.

XXXI. The Governor shall dissolve the Legislative Council at the expiration of three years from the date of the last preceding general election of Elected Members of the said Council, if it shall not have been sooner dissolved.

General  
Elections.

XXXII. A general election shall be held at such time within three months after every dissolution of the Legislative Council, as the Governor shall by proclamation appoint.

Rules under  
which laws  
are to be  
enacted.  
Style of  
Ordinances.

XXXIII. In the making of Ordinances the Governor and the Council shall observe, as far as practicable, the following Rules:—

1. All laws shall be styled "Ordinances", and the enacting words shall be "Enacted by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof".
2. All Ordinances shall be distinguished by titles, and shall be divided into successive clauses or paragraphs, consecutively numbered, and to every such clause there shall be annexed in the margin a short summary of its contents. The Ordinances of each year shall be distinguished by consecutive numbers, commencing in each year with the number one. Except in the case of Bills reserved for the signification of Our pleasure, all Ordinances passed in any one year shall, if assented to by the Governor, be assented to by him in that year, and shall be dated as of the day on which the assent of the Governor is given and shall be numbered as of the year in which they are passed. Bills not so assented to by the Governor, but reserved by him for the signification of Our pleasure, shall be dated as of the day and numbered as of the year on and in which they are brought into operation.
3. Each different matter shall be provided for by a different Ordinance without intermixing in one and the same Ordinance such things as have no proper relation to each other; and no clause is to be inserted in or annexed to an Ordinance which shall be foreign to what the title of such Ordinance imports, and no perpetual clause shall be part of any temporary Ordinance.

Different  
subjects not  
to be mixed  
in the same  
Ordinance.

No clause to  
be intro-  
duced foreign  
to what title  
of Ordinance  
imports.

Temporary  
Ordinances.

Description  
of Bills not  
to be  
assented to,

XXXIV. The Governor shall not (except in the cases hereunder mentioned) assent in Our name to any Bill of any of the following classes, namely:—

1. Any Bill for the divorce of persons joined together in holy matrimony

2. Any Bill whereby any grant of land or money or other donation or gratuity, may be made to himself;
3. Any Bill affecting the currency of the Colony or relating to the issue of Bank Notes;
4. Any Bill establishing any Banking Association, or amending or altering the constitution, powers, or privileges of any Banking Association;
5. Any Bill imposing differential duties;
6. Any Bill the provisions of which shall appear inconsistent with obligations imposed upon Us by Treaty;
7. Any Bill interfering with the discipline or control of Our forces by land, sea or air;
8. Any Bill of an extraordinary nature and importance whereby Our prerogative or the rights and property of Our subjects not residing in the Colony, or the trade and shipping or any part of Our dominions, may be prejudiced;
9. Any Bill whereby persons not of European birth or descent may be subjected or made liable to any disabilities or restrictions to which persons of European birth or descent are not also subjected or made liable;
10. Any Bill containing provisions to which Our assent has been once refused, or which have been disallowed by Us;

unless the Governor shall previously have obtained Our instructions upon such Bill through one of Our Principal Secretaries of State, or unless such Bill shall contain a clause suspending the operation of such Bill until the signification of Our pleasure thereupon, or unless the Governor shall have satisfied himself that an urgent necessity exists requiring that such Bill be brought into immediate operation, in which case he is authorized to assent in Our name to such Bill, unless the same shall be inconsistent with any obligations imposed upon Us by Treaty. But he is to transmit to Us, by the earliest opportunity, the Bill so assented to, together with his reasons for assenting thereto.

Proviso in  
case of  
emergency  
for immediate  
operation  
of a Bill.

XXXV. Every Bill intended to affect or benefit some particular person, association, or corporate body, shall contain a section saving the rights of Us, Our heirs and successors, all bodies politic and corporate, and all others, except such as are mentioned in the Bill and those claiming by, from, or under them. No such Bill, not being a Government measure, shall be introduced into the Legislative Council until due notice has been given by not less than two successive publications of the Bill in the Official Gazette of the Colony; and the Governor shall not assent thereto in Our name unless it has been so published. A certificate under the hand of the Governor signifying that such publication has been made shall be transmitted to Us with the Bill. Private Bills.

Ordinances to be sent home duly written & sealed.

XXXVI. When any Ordinance shall have been passed, or when any Bill shall have been reserved for the signature of Our pleasure, the Governor shall forthwith lay it before Us for approval, disallowance, or other direction thereupon, and shall transmit to Us through one of Our Principal Secretaries of State a full and exact copy in duplicate of the same, together with a general summary thereof, duly authenticated under the Public Seal and by his own signature. Such copy shall be accompanied by such explanatory observations as may be required to exhibit the reasons and occasion for passing such Ordinance or Bill.

Collection of Ordinances to be published every year.

XXXVII. At the earliest practicable period at the commencement of each year, the Governor shall cause a complete collection to be published, for general information, of all Ordinances enacted during the preceding year.

Minutes of proceedings to be kept.

XXXVIII. Minutes shall be regularly kept of all the proceedings of the Legislative Council, and at each meeting of the said Council, the Minutes of the last preceding meeting shall be confirmed or amended, as the case may require, before proceeding to the despatch of any other business.

Minutes to be sent home.

The Governor shall transmit to Us, through one of Our Principal Secretaries of State, as soon as possible after every meeting, a full and exact copy of the Minutes of the said Council.

Appointments to be provisional and during pleasure.

XXXIX. All Commissions to be granted by the Governor to any person or persons for exercising any office or employment shall, unless otherwise provided by law, be granted during pleasure only.

Governor to promote religion and education amongst the Natives.

XL. The Governor is, to the utmost of his power, to promote religion and education among the native inhabitants of the Colony, and he is especially to take care to protect them in their persons and in the free enjoyment of their possessions, and by all lawful means to prevent and restrain all violence and injustice which may in any manner be practised or attempted against them.

Protection of persons and property.

Regulation of power of pardon in capital cases. Judge's report to be laid before Executive Council.

XLI. Whenever any offender shall have been condemned to suffer death by the sentence of any Court in the Colony, the Governor shall call upon the Judge who presided at the trial to make to him a written report of the case of such offender, and shall cause such report to be taken into consideration at the first meeting of the Executive Council which may be conveniently held thereafter, and he may cause the said Judge to be specially summoned to attend at such meeting and to produce his notes thereat. The Governor shall not pardon or reprieve any such offender unless it shall appear to him expedient so to do, upon receiving the advice of the Executive Council thereon; but in all such cases he is to

Governor to consult Executive Council in such cases.

decide either to extend or to withhold a pardon or reprieve, according to his own deliberate judgment, whether the Members of the Executive Council concur therein or otherwise; entering, nevertheless, on the Minutes of the Executive Council a Minute of his reasons at length, in case he should decide any such question in opposition to the judgment of the majority of the Members thereof.

To exercise his own judgment; entering his reasons on Council Minutes if unable to accept the advice of the majority. Blue Book.

XLII. The Governor shall punctually forward to Us from year to year, through one of Our Principal Secretaries of State, the annual book of returns, commonly called the Blue Book, relating to the Revenue and Expenditure, Defence, Public Works, Legislation, Civil Establishments, Pensions, Population, Schools, Course of Exchange, Imports and Exports, Agricultural Produce, Manufactures, and other matters in the said Blue Book more particularly specified, with reference to the state and condition of the Colony.

XLIII. Except in the cases provided for in the above recited Letters Patent of the Eleventh day of September 1920, the Governor shall not upon any pretence whatever quit the Colony without having first obtained leave from Us for so doing, under Our Sign Manual and Signet, or through one of Our Principal Secretaries of State.

Governor's absence.

XLIV. The Instructions under Our Sign Manual and Signet bearing date the Eleventh day of September 1920, and Additional Instructions bearing date respectively the Twenty-eighth day of March 1927, the Seventh day of July 1928 and the Twentieth day of January 1930, are hereby revoked, but without prejudice to anything lawfully done thereunder.

Revokes Instructions of 11th September 1920 and Additional Instructions of 28th March 1927, 7th July 1928 and 20th January 1930.

XLV. In these Our Instructions the term "The Governor" shall, unless inconsistent with the context, include every person for the time being administering the Government of the Colony.

Term "the Governor" explained.

Given at Our Court at Saint James's, this Twenty-ninth day of March 1934, in the Twenty-fourth Year of Our Reign.



## COLONY OF KENYA

**INSTRUCTIONS passed under the Royal Sign Manual and Signet to the Governor and Commander-in-Chief of the Colony of Kenya.**

Dated 29th March 1934.

GEORGE R.I.

**INSTRUCTIONS TO OUR GOVERNOR AND COMMANDER-IN-CHIEF IN AND OVER OUR COLONY OF KENYA, OR OTHER OFFICER FOR THE TIME BEING ADMINISTERING THE GOVERNMENT OF OUR SAID COLONY.**

WHEREAS by Letters Patent under the Great Seal bearing date at Westminster the Eleventh day of September 1920, We did constitute, order, and declare that there should be a Governor and Commander-in-Chief (therein and hereinafter called the Governor) in and over Our Colony of Kenya (therein and hereinafter called the Colony):

Recites  
Letters  
Patent of  
11th  
September,  
1920.

AND WHEREAS We have thereby authorised, empowered and commanded the Governor to do and execute all things that belong to his said office, according to the tenour of Our said Letters Patent and of any Orders in Council relating to the territories formerly known as the East Africa Protectorate, save in so far as any provision of any such Order in Council may be repugnant to any of the provisions of Our said Letters Patent, and of such Commission as may be issued to him under the Royal Sign Manual and Signet, and according to such Instructions as may from time to time be given to him under the Royal Sign Manual and Signet, or by Order in Council or by Us through one of Our Principal Secretaries of State, and to such laws as are now or shall hereafter be in force in the Colony:

AND WHEREAS We did issue to the Governor certain Instructions under Our Sign Manual and Signet bearing date the Eleventh day of September 1920 and have from time to time amended the aforesaid Instructions by Additional Instructions under Our Sign Manual and Signet:

Recites  
Instructions  
of 11th  
September  
1920 and  
Additional  
Instructions.

AND WHEREAS We are minded to issue fresh Instructions under Our Sign Manual and Signet for the guidance of the Governor or other Officer administering the Government of the Colony:

**INSTRUCTIONS to the  
Governor and Commander-in-Chief,  
Colony of KENYA.**

Substitutes fresh Instructions for Instructions of 11th September 1920 as amended by Additional Instructions Governor to administer Oaths.

NOW THEREFORE We do by these Our Instructions under Our Sign Manual and Signet, direct and enjoin and declare Our will and pleasure that, as from the date hereof, the following Instructions shall be substituted for the Instructions under Our Sign Manual and Signet bearing date the Eleventh day of September 1920, amended as aforesaid :-

Instructions to be observed by Deputies.

I. The Governor may, whenever he thinks fit, require any person in the public service of the Colony to take the Oath of Allegiance, in the form prescribed by the Act mentioned in the above recited Letters Patent bearing date the Eleventh day of September 1920, together with such other Oath or Oaths as may from time to time be prescribed by any laws in force in the Colony. The Governor is to administer such Oaths, or to cause them to be administered by some Public Officer of the Colony.

Deputies may correspond direct with Secretary of State in urgent cases.

II. During the temporary absence of the Governor from the seat of Government or from the Colony these Instructions, so far as they apply to any matter or thing to be done, or any power or authority to be exercised, by a Deputy acting for the Governor, shall be deemed to be addressed to and shall be observed by such Deputy.

Constitution of Executive Council.

III. If in any emergency arising in the Colony during the temporary absence of the Governor for a short period from the seat of Government or from the Colony it is necessary that instructions should be obtained from Us without delay, the Deputy (if any) acting for the Governor may apply to Us, through one of Our Principal Secretaries of State, for instructions in the matter; but every such Deputy shall forthwith transmit to the Governor a copy of every despatch or communication which he has so addressed to Us.

IV. The Executive Council of the Colony shall consist of the persons for the time being lawfully discharging the functions of Colonial Secretary, of Attorney-General, of Treasurer, of Chief Native Commissioner, of Commissioner for Local Government, Lands and Settlement, of Director of Medical Services, of Director of Agriculture and of Director of Education, who shall be styled *ex officio* Members of the Executive Council, and such other persons holding office in the Public Service of the Colony as the Governor in pursuance of Instructions from Us through one of Our Principal Secretaries of State, may from time to time appoint by an Instrument under the Public Seal, who shall be styled Official Members of the Executive Council, and further of such persons (if any) not holding office in the Public Service of the Colony as the Governor, in pursuance of Instructions from Us through one of Our Principal Secretaries of State, may, from time to time, appoint by an Instrument under the Public Seal, who shall be styled Unofficial Members of the Executive Council.

Provided that if any Official Member of the Council shall cease to hold office in the Public Service of the Colony his seat in the Council shall thereupon become vacant.

Extraordinary Members.

Whenever upon any special occasion the Governor desires to obtain the advice of any person within the Colony or the Protectorate of Kenya relating to affairs in the Colony, he may, by an Instrument under the Public Seal, summon for such special occasion any such person as an Extraordinary Member of the Executive Council.

Provisional Appointments.

V. Whenever any Member, other than an *ex officio* Member, of the said Executive Council shall, by writing under his hand, resign his seat in the said Executive Council, or shall die, or whenever the seat of any such Member shall otherwise become vacant, or whenever any such Member shall be suspended from the exercise of his functions as a Member of the Executive Council, or be declared by the Governor by an Instrument under the Public Seal to be incapable of exercising his functions as a Member of the Council, or be absent from the Colony and from the Protectorate of Kenya, or shall be acting in an office the holder of which is an *ex officio* Member of the Council, the Governor may, by an Instrument under the Public Seal, provisionally appoint some person to be temporarily a Member of the Council in the place of the Member so resigning or dying, or whose seat has otherwise become vacant, or who has been suspended or declared incapable, or who is absent, or sitting as an *ex officio* Member.

Such person shall forthwith cease to be a Member of the said Council if his appointment is disallowed by Us, or revoked by the Governor, or superseded by the definitive appointment of a Member of the Council, or if the Member in whose place he was appointed shall be released from suspension, or, as the case may be, shall be declared by the Governor capable of again discharging his functions in the Council, or shall return to the Colony or the Protectorate of Kenya, or shall cease to sit in the Council as an *ex officio* Member.

Provided that when any person shall be lawfully discharging the functions of more than one of the offices the holders of which are *ex officio* Members of the said Council, the Governor may, by an Instrument under the Public Seal, appoint any fit person to be provisionally a Member of the Council so long as the functions of the said offices shall continue to be discharged by one person as aforesaid.

Provisional appointments to be immediately reported.

VI. The Governor shall, without delay, report to Us for Our confirmation or disallowance, through one of Our Principal Secretaries of State, every provisional appointment of any person as a Member of the said Executive Council. Every such person shall hold his place in the Council during Our pleasure, and the Governor may, by an Instrument under the Public Seal, revoke any such appointment.

Substitutes  
fresh  
Instructions  
for Instruc-  
tions of 11th  
September  
1920 as  
amended by  
Additional  
Instructions  
Governor to  
administer  
Oaths.

NOW THEREFORE We do by these Our Instructions under Our Sign Manual and Signet, direct and enjoin and declare Our will and pleasure that, as from the date hereof, the following Instructions shall be substituted for the Instructions under Our Sign Manual and Signet bearing date the Eleventh day of September 1920, amended as aforesaid:—

I. The Governor may, whenever he thinks fit, require any person in the public service of the Colony to take the Oath of Allegiance, in the form prescribed by the Act mentioned in the above recited Letters Patent bearing date the Eleventh day of September 1920, together with such other Oath or Oaths as may from time to time be prescribed by any laws in force in the Colony. The Governor is to administer such Oaths, or to cause them to be administered by some Public Officer of the Colony.

Instructions  
to be obser-  
ved by  
Deputies.

II. During the temporary absence of the Governor from the seat of Government or from the Colony these Instructions, so far as they apply to any matter or thing to be done, or any power or authority to be exercised, by a Deputy acting for the Governor, shall be deemed to be addressed to and shall be observed by such Deputy.

Deputies  
may cor-  
respond direct  
with Secre-  
tary of State  
in urgent  
cases.

III. If in any emergency arising in the Colony during the temporary absence of the Governor for a short period from the seat of Government or from the Colony it is necessary that instructions should be obtained from Us without delay, the Deputy (if any) acting for the Governor may apply to Us, through one of Our Principal Secretaries of State, for instructions in the matter; but every such Deputy shall forthwith transmit to the Governor a copy of every despatch or communication which he has so addressed to Us.

Constitution  
of Executive  
Council.

IV. The Executive Council of the Colony shall consist of the persons for the time being lawfully discharging the functions of Colonial Secretary, of Attorney-General, of Treasurer, of Chief Native Commissioner, of Commissioner for Local Government, Lands and Settlement, of Director of Medical Services, of Director of Agriculture and of Director of Education, who shall be styled *ex officio* Members of the Executive Council, and such other persons holding office in the Public Service of the Colony as the Governor in pursuance of Instructions from Us through one of Our Principal Secretaries of State, may from time to time appoint by an Instrument under the Public Seal, who shall be styled Official Members of the Executive Council, and further of such persons (if any) not holding office in the Public Service of the Colony as the Governor, in pursuance of Instructions from Us through one of Our Principal Secretaries of State, may, from time to time, appoint by an Instrument under the Public Seal, who shall be styled Unofficial Members of the Executive Council.

Provided that if any Official Member of the Council shall cease to hold office in the Public Service of the Colony his seat in the Council shall thereupon become vacant.

Whenever upon any special occasion the Governor desires to obtain the advice of any person within the Colony or the Protectorate of Kenya relating to affairs in the Colony, he may, by an Instrument under the Public Seal, summon for such special occasion any such person as an Extraordinary Member of the Executive Council.

Extra-  
ordinary  
Members.

V. Whenever any Member, other than an *ex officio* Member, of the said Executive Council shall, by writing under his hand, resign his seat in the said Executive Council, or shall die, or whenever the seat of any such Member shall otherwise become vacant, or whenever any such Member shall be suspended from the exercise of his functions as a Member of the Executive Council, or be declared by the Governor by an Instrument under the Public Seal to be incapable of exercising his functions as a Member of the Council, or be absent from the Colony and from the Protectorate of Kenya, or shall be acting in an office the holder of which is an *ex officio* Member of the Council, the Governor may, by an Instrument under the Public Seal, provisionally appoint some person to be temporarily a Member of the Council in the place of the Member so resigning or dying, or whose seat has otherwise become vacant, or who has been suspended or declared incapable, or who is absent, or sitting as an *ex officio* Member.

Provisional  
Appoint-  
ments.

Such person shall forthwith cease to be a Member of the said Council if his appointment is disallowed by Us, or revoked by the Governor, or superseded by the definitive appointment of a Member of the Council, or if the Member in whose place he was appointed shall be released from suspension, or, as the case may be, shall be declared by the Governor capable of again discharging his functions in the Council, or shall return to the Colony or the Protectorate of Kenya, or shall cease to sit in the Council as an *ex officio* Member.

Provided that when any person shall be lawfully discharging the functions of more than one of the offices the holders of which are *ex officio* Members of the said Council, the Governor may, by an Instrument under the Public Seal, appoint any fit person to be provisionally a Member of the Council so long as the functions of the said offices shall continue to be discharged by one person as aforesaid.

VI. The Governor shall, without delay, report to Us, for Our confirmation or disallowance, through one of Our Principal Secretaries of State, every provisional appointment of any person as a Member of the said Executive Council. Every such person shall hold his place in the Council during Our pleasure, and the Governor may, by an Instrument under the Public Seal, revoke any such appointment.

Provisional  
appoint-  
ments to be  
immediately  
reported.

## COLONY OF KENYA.

ADDITIONAL INSTRUCTIONS passed under the Royal Sign Manual and Signet to the Governor and Commander-in-Chief of the Colony of Kenya in regard to the duration of the Legislative Council thereof.

Dated 20th June 1935.

GEORGE R.I.

ADDITIONAL INSTRUCTIONS to Our Governor and Commander-in-Chief in and over Our Colony of Kenya, or other Officer for the time being administering the Government of Our said Colony.

WHEREAS by Letters Patent under the Great Seal bearing date the Eleventh day of September 1920, We did constitute, order and declare that there should be a Governor and Commander-in-Chief (therein and hereinafter called the Governor) in and over Our Colony of Kenya (therein and hereinafter called the Colony):

Recites Letters Patent of 11th September, 1920.

And whereas We did thereby authorise, empower and command the Governor to do and execute all things that belong to his said office, according to the tenour of Our said Letters Patent and of any Orders in Council relating to the territories formerly known as the East Africa Protectorate, save in so far as any provision of any such Order in Council might be repugnant to any of the provisions of Our said Letters Patent, and of such Commission as might be issued to him under the Royal Sign Manual and Signet, and according to such Instructions as might from time to time be given to him under the Royal Sign Manual and Signet, or by Order in Council or by Us through one of Our Principal Secretaries of State, and to such laws as were then or should thereafter be in force in the Colony:

And whereas We did issue to the Governor certain Instructions under Our Sign Manual and Signet bearing date the Twenty-ninth day of March 1934, providing amongst other things for the constitution of the Legislative Council of the Colony:

Recites Instructions of 29th March, 1934.

And whereas by the Thirty-first Clause of Our aforesaid Instructions of the Twenty-ninth day of March 1934, it was directed that the Governor should dissolve the Legislative Council at the expiration of three years from the date of the last preceding general election if it should not have been sooner dissolved:

And whereas it is expedient that other provision should be made in regard to the duration of the Legislative Council:

Now Therefore We do by these Our Additional Instructions under Our Sign Manual and Signet declare Our Will and pleasure that, as from the date hereof, the Thirty-first Clause of Our said Instructions of the Twenty-ninth day of March 1934, shall be amended by the substitution therein of the word "four" for the word "three."

Amendment of Clause XXXI of Instructions of 29th March, 1934.

Given at Our Court at Saint James's, this Twentieth day of June 1935, in the Twenty-sixth year of Our Reign.

ADDITIONAL INSTRUCTIONS to the GOVERNOR AND COMMANDER-IN-CHIEF, Colony of Kenya.

Precedence of Members.

VII. The Members of the Executive Council shall have seniority and precedence as We may specially assign, and, in default thereof, first the *ex officio* Members, in the order in which their offices are above-mentioned, then the Official Members, according to the priority of their respective appointments, or, if appointed by the same Instrument, according to the order in which they are named therein, then the Unofficial Members (if any) according to the like priority and finally Extraordinary Members with like priority.

Governor to communicate Instructions to Executive Council.

VIII. The Governor shall forthwith communicate these Our Instructions to the Executive Council, and likewise all such others, from time to time, as We may direct or as he shall find convenient for Our service to impart to them.

Executive Council not to proceed to business unless summoned by Governor's authority Quorum.

IX. The Executive Council shall not proceed to the despatch of business unless duly summoned by authority of the Governor, nor unless two Members at the least (exclusive of himself or of the Member presiding) be present and assisting throughout the whole of the meetings at which any such business shall be despatched.

Who to preside.

X. The Governor shall attend and preside at all meetings of the Executive Council, unless prevented by illness or other grave cause, and in his absence such Member as the Governor may appoint, or in the absence of such Member the senior Member of the Council actually present shall preside.

Minutes of Executive Council to be kept.

XI. Minutes shall be regularly kept of all the proceedings of the Executive Council; and at each meeting of the Council the Minutes of the last preceding meeting shall be confirmed or amended, as the case may require, before proceeding to the despatch of any other business.

Minutes to be sent home twice a year.

Twice in each year a full and exact copy of all Minutes for the preceding half-year shall be transmitted to Us through one of Our Principal Secretaries of State.

Governor to consult Executive Council Private Urgent cases.

XII. In the execution of the powers and authorities granted to the Governor by Our above recited Letters Patent or otherwise he shall in all cases consult with the Executive Council, excepting only in cases which may be of such a nature that, in his judgment, Our service would sustain material prejudice by consulting the Council thereupon, or when the matters to be decided shall be too unimportant to require their advice, or too urgent to admit of their advice being given by the time within which it may be necessary for him to act in respect of any such matters. In all such urgent cases he shall, at the earliest practicable period, communicate to the Executive Council the measures which he may so have adopted, with the reasons thereof.

Governor alone entitled to submit questions.

XIII. The Governor alone shall be entitled to submit questions to the Executive Council for their advice or decision; but if the Governor decline to submit any question to the Council when



RECEIVED  
27 SEP 1957  
GOVERNMENT HOUSE  
REGISTRY  
NAIROBI  
KENYA

KENYA.

No. 131

CONFIDENTIAL.

14th September, 1957.

Sir,

I have the honour to refer to your letter, Confidential (3) of the 27th July, 1957, on the subject of the future composition of the Executive Council, and I have noted with satisfaction that you are yourself substantially in agreement with the views expressed in my Confidential despatch of the 12th June.

2. I have given careful consideration to the views expressed in your letter regarding the position of the Official Member of the Executive Council, but I remain of the opinion that it is desirable that this should be a member of the Legislative Council. I do not wish that any decision on this point should be taken at this stage unless necessary. Provided that the person as yet unnamed who is to be selected to be the Official Member of the Executive Council, I should prefer that no provision should be made in the Order in Council for his nomination to the Legislative Council or for his appointment as adviser on native aspects of the Executive Council, in the event of his not already being a member of the Legislative Council. Provision would of course have to be included for the addition of one Official Member to the Legislative Council in such an event.

I have the honour to be,  
Sir,  
Your most obedient, humble servant,

R. Brecken-Popham  
SECRETARY GENERAL

Copy regd. on 21004/37 Puzno

17.

Can wait till  
disp has been  
10/9

LORD CHAMBERLAIN'S OFFICE.  
ST JAMES'S PALACE, S.W.1.

38077/37.

8th September 1937.

RECEIVED  
- 9 SEP 1937  
C. O. DECY

Sir.

10.

I have the honour to acknowledge your letter of the 3rd inst., and to acquaint you, in reply, for the information of the Secretary of State for the Colonies, that the Lord Chamberlain has obtained permission for the holders of the appointments you mention, who were formerly ex-officio members of the Executive Council of Kenya, to continue to wear the Civil Uniform of the second class during the period of their individual service in Kenya.

I am, Sir,

Your obedient servant.

*H. D. G. G. G.*  
Secretary.

The Under Secretary of State  
Colonial Office.

C. O.

C. D.  
R 24 SEP  
D 27

- Mr. Grossmitt
- Mr. Paskin 9/9  
*Hand 16/9*
- Mr. Sir G. Bunde 23/9
- Mr. C. Parkinson.

Downing Street,

30. September, 1937.

Sir G. Tomlinson.

X Sir C. Bottomley 23.9

Sir J. Shuckburgh.

Parlm. U.S. of S.

Parly. U.S. of S.

Secretary of State. *W 24.9.37*

Sir,

I have the honour to

(13)

acknowledge the receipt of your Confidential despatch No. 114 of the 18th of August, in which you informed me of the statements which you made in the Legislative Council regarding the reorganisation of the Executive Council.

2. I observe from a report in

the "Times" newspaper of the 14th of August that some of your hearers

gained the impression that the composition of the Executive Council

would be based on the principle of racial representation, but I note that

the possibility of such a misunderstanding was removed by your subsequent

explanation

DRAFT.

KENYA.

CONFIDENTIAL.

GOVERNOR.

FURTHER ACTION.

explanation that the choice of Unofficial Members was entirely at the discretion of the Governor. I have already indicated to you my views in regard to the choice of such members, on general grounds, and I hasten to assure you that it is not my intention to recommend to His Majesty that any change should be made in the Royal Instructions which would limit or restrict in any way the discretion of the Governor in regard to the persons whom he may recommend to the Secretary of State for submission to His Majesty for appointment as Unofficial Members.

See No. 6 paragraphs 6 - 10.

3. With regard to the question of the period of appointment of unofficial members, there are objections on grounds of legal principle to its being definitely laid down in the Royal Instructions that Unofficial Members are appointed for any set period, or ~~even~~ for such term as the Governor may think fit. Under Article IV of the Royal Instructions Unofficial Members are appointed

by

C. O.

- Mr.
- Mr.
- Mr.
- Sir H. Moore.
- Sir G. Tomlinson.
- Sir C. Bottomley.
- Sir J. Shuckburgh.
- Permt. U.S. of S.
- Parly. U.S. of S.
- Secretary of State.

DRAFT.

FURTHER ACTION.

by the Governor in pursuance of instructions from His Majesty through the Secretary of State, and, in my opinion, it ~~would~~ <sup>will</sup> be easier and better to achieve the object in view by seeking His Majesty's instructions <sup>(in each case)</sup> as to the period for which each appointment is made. I agree that normally the period of appointment should be limited approximately to the life of a Legislative Council, and I should be prepared to advise His Majesty to give instructions accordingly <sup>as</sup> ~~in~~ <sup>name</sup> each ~~case~~ <sup>case</sup> ~~is submitted~~ for approval. The procedure then would be that you, <sup>as Governor,</sup> would recommend the appointment of each member ~~for a fixed period~~ for whatever period might seem proper having regard to the date of the next elections and that His Majesty would be advised to give directions accordingly.

I have, etc.

(Signed) W. ORMSBY GORE.



C.D. 208

38077137 Ken.

C. O.

- Mr. Grossmith *879*
- Mr. *Parkin 9/9*
- Mr. *Flood*
- Sir C. Parkinson.
- Sir G. Tomlinson.
- Sir C. Bottomley.
- Sir J. Shuckburgh.
- Presd. U.S. of S.
- Parly. U.S. of S.
- Secretary of State.

*Fair dist please.*

C. D.  
 17 SEP  
 1937  
 147  
 Sir,

Sept. 1937.

I have etc. to acknowledge the

(13) receipt of your Confidential despatch No. 114 of the 18th of August, in which you informed me of the statements which you made in the Legislative Council regarding the reorganisation of the Executive Council.

**DRAFT.**

KENYA

CONF.

GOV.

2. I have observed from a report in

the "Times" newspaper of the 14th of August

that ~~certain~~ <sup>some</sup> of your ~~auditors~~ <sup>members</sup> gained the

impression that the composition of the Executive

Council would be based on the principle of

racial representation, <sup>but</sup> I ~~was~~ <sup>am</sup> glad to note

however that the possibility of such a mis-

understanding ~~of the facts~~ was removed by your

*Subsequent explanation*

statement that the choice of ~~unofficial~~ <sup>unofficial</sup> Mem-

bers was entirely at the discretion of the

**FURTHER ACTION.**

Governor. I have already indicated to you my views in regard to the <sup>choice</sup> selection of such members, on general grounds, and I hasten to assure you that it is not my

Lee No 6  
p. 6-10

intention to recommend to H.M. that any change should be made in the ~~R.I.~~ <sup>Royal Instructions which would</sup> to limit or restrict in

any way the discretion of the Governor in <sup>regard to</sup> the choice <sup>the persons whom he may recommend to the S. of S.</sup> of ~~unofficial members~~ for admission to H.M. for <sup>appointment as Unofficial Members</sup>

3. With regard to the question of the period

of appointment of unofficial members, <sup>there are objections on grounds of</sup> I ~~do not consider~~ <sup>legal principle</sup> ~~that it would be possible to~~ <sup>to its being definitely desirable</sup> ~~be laid down in the R.I. that~~

~~Unofficial Members are appointed for any set period,~~

<sup>even</sup> or for such term as the Governor may think fit. Under

Article IV of the R.I. ~~Unofficial Members are appointed~~

by the Governor in pursuance of instructions from H.M.

through the S. of S., and in my <sup>opinion</sup> view, it would be <sup>earlier & better</sup> ~~prefer-~~ <sup>to achieve the object in view by</sup> ~~able that H.M.'s instructions should also be sought in~~

<sup>as to</sup> ~~respect of the period of~~ <sup>for which</sup> ~~each appointment~~ <sup>is made.</sup> I agree that

normally the period of ~~the~~ appointment should be limited-

~~to a period corresponding approximately to the life of a~~

Leg. C'cil., and I should be prepared to advise H.M. to

give instructions accordingly in each case. <sup>The procedure then</sup>

<sup>involves, etc.</sup> ~~would be that you would recommend the appt. of each member~~

to the date of making the next election & that H.M. would be advised to give directions accordingly.

DRAFT

38077/57.

57

Mr. Asquith 248  
Mr. Macdonald 267  
Mr. Parkin 9/9 p.

For Sir L. Bottomley's sig.

Downing Street,

193

30 SEP 1937

My Lord

I have the honour to transmit to your Lordship the draft of ~~Additional Instructions~~ <sup>Additional Instructions</sup> to be passed under the Royal Sign Manual and Signet to the High Commissioner-in-Chief of the Colony of Kenya in regard to the ~~formation~~ <sup>formation</sup> of a Council there.

I have to request that your Lordship will submit this Draft for the approval of the King in Council, and that 2 sealed copies and 6 plain copies of the Order in Council ~~may~~ <sup>approving the Additional Instructions</sup> be supplied for the use of the Colonial Office.

*Copy sent to Mr. Parkin (RGA work supply)*

I have the honour to be,

My Lord,

Your Lordship's most obedient, humble servant,

(Signed) W. C. BOTTOMLEY.

The Lord President  
of the Council.

(For the Secretary of State.)

*(Orders were to be sent to the Council)*

*Copy for RGA.*

*W. C. Bottomley*

## COLONY OF KENYA

Additional Instructions passed under the Royal Sign Manual and Signet to the Governor and Commander-in-Chief of the Colony of Kenya in regard to the Executive Council thereof.

ADDITIONAL INSTRUCTIONS to Our Governor and Commander-in-Chief in and over Our Colony of Kenya, or other Officer for the time being administering the Government of Our said Colony.

Whereas by certain Instructions under the Royal Sign Manual and Signet to the Governor and ~~Commander~~ (therein and hereinafter called the Governor) in and over Our Colony of Kenya (therein and hereinafter called the Colony) bearing date the Twentieth day of March, 1934, as amended by Additional Instructions bearing date the Twentieth day of June, 1935, provision is made amongst other things for the constitution of the Executive Council of the Colony:

Recites Instructions of 29th March, 1934, and Additional Instructions of 20th June, 1935.

And whereas We are minded to make other provision in regard to the constitution of the said Executive Council:

Now, therefore, We do, by these Our Additional Instructions under Our Sign Manual and Signet, as from a date to be fixed by the Governor by notification in the Official Gazette of the Colony, revoke, without prejudice to any appointment lawfully made, or to anything lawfully done, thereunder, the Fourth Clause of the said Instructions of the Twentieth day of March, 1934, and We do hereby direct and enjoin and declare Our will and pleasure that from the date so fixed, the said Instructions shall be construed as if the following Clause had been inserted therein instead of the Fourth Clause thereof:—

Replaces Clause IV of Instructions of 29th March, 1934.

“ IV. The Executive Council of the Colony shall consist of the persons for the time being lawfully discharging the functions of Colonial Secretary, of Attorney-General, of Treasurer, and of Chief Native Commissioner, who shall be styled *ex officio* Members of the Executive Council, such other persons (if any) holding office in the Public Service of the Colony as the Governor in pursuance of Instructions from Us through one of Our Principal Secretaries of State, may from time to time appoint by an Instrument under the Public Seal, who shall be styled Official Members of the Executive Council, and such persons (if any) not holding office in the Public Service of the Colony as the Governor, in pursuance of Instructions from Us through one of Our Principal Secretaries of State, may from time to time appoint by an Instrument under the Public Seal, who shall be styled Unofficial Members of the Executive Council:

“ Constitution of Executive Council.”

Commander-in-Chief

Copy to file

Provided that if any Official Member of the Council shall cease to hold office in the Public Service of the Colony his seat in the Council shall thereupon become vacant.

Extra-ordinary Members.

Whenever upon any special occasion the Governor desires to obtain the advice of any person within the Colony or the Protectorate of Kenya relating to affairs in the Colony, he may, by an Instrument under the Public Seal, summon for such special occasion any such person as an Extraordinary Member of the Executive Council.

Given at Our Court at Saint James's, this                    day  
of                    1937, in the ~~Five~~ year of Our Reign.

Printed by HIS MAJESTY'S STATIONERY OFFICE PRESS,  
Pocock Street, S.E. 1.

(1937-7) W.L. —Price 6 8/32 P. St. G. 215

W. B. ...  
m - ...  
R297

T. ...

1.1.57

# CHANGE IN KENYA EXECUTIVE

## FEWER OFFICIAL MEMBERS

### GOVERNOR'S STATEMENT

FROM OUR CORRESPONDENT  
NAIROBI, A.S.

The Governor, Air Chief Marshal Sir Robert Brooke-Popham, made important statements in the Legislature yesterday and to-day on the re-constitution of the Executive Council which was promised by the Secretary of State at the time of the income-tax settlement. The aim of the re-constitution is more convenient working and closer association of the unofficial community with the work of the Government.

The Governor, in his first statement, said that the Secretary of State approved in principle his proposal that the present eight official members be reduced to five—namely, the Colonial Secretary, the Attorney-General, the Treasurer, and the Chief Native Commissioner. Unofficial members would number four as now. The Governor said that no member of the Executive must be regarded as representing any particular section or interest. However, a misunderstanding arose from his subsequent announcement that the unofficial members of the new Executive would comprise two selected, normally from among the elected members of the Legislature, as specially qualified to regard problems from the point of view of Europeans, another similarly qualified as to the Indian point of view, and a fourth selected for his knowledge of native matters.

It was thought that the Governor was proposing that the principle of racial representation should be the future fixed basis of the Executive. Today he cleared up the point by stating that the proposed composition was the result of the exercise of his personal discretion and freedom of choice as provided by the Constitution.

The unofficial membership of the Executive therefore remains composed as at present, the only major change arising from the reduction in numbers being that the period of membership is fixed at four years as in the Legislature.

60  
13



C. O. REGY  
GOVERNMENT HOUSE  
NAIROBI,  
KENYA.

KENYA.  
NO. 114  
CONFIDENTIAL.

18th August, 1937.

Sir,

6.

With reference to your despatch Confidential (4) of the 29th July, 1937, in accordance with the last sentence of your paragraph 12, I made a statement in Legislative Council regarding the reorganisation of the Executive Council: further, in order to avoid possible misunderstanding of one paragraph of my statement, I amplified this the next day in order to emphasise that the choice of the Unofficial Members was entirely at the discretion of the Governor, and added that to the best of my knowledge and belief no alteration was going to be made to the relevant portion of Section IV of the Royal Instructions of the 29th March, 1934. This relevant portion reads:-

....."and further of such persons (if any) not holding office in the Public Service of the Colony as the Governor, in pursuance of Instructions from us through one of our Principal Secretaries of State may, from time to time, appoint....."

except in so far as an addition might be made referring to the time limit for which these Members would be appointed.

2. I consider that I was correct in making this statement in view of the recommendations in paragraph 16 of my Confidential despatch No. 91 of the 26th June, and your statement at the beginning of paragraph 10 of your

/despatch.....

THE RIGHT HONOURABLE W. ORMSBY-GORE, P.C., M.P.,  
SECRETARY OF STATE FOR THE COLONIES,  
DOWNING STREET, S.W.1.

*James (16)*

6  
 despatch of the 29th July above referred to. I should be glad, however, if you would confirm that I am correct, and further, <sup>I request that,</sup> if any other alteration is proposed, ~~fully~~ as regards limiting the discretion of the Governor, ~~is~~ I may be given an opportunity of expressing my further views before any necessary Instruction is submitted for His Majesty's approval.

I have the honour to be,

Sir,

Your most obedient, humble servant,

R Brooke-Popham

AIR CHIEF MARSHAL.  
 GOVERNOR.



C 11.

Mr. Flood. 18.8.-

Mr.

Mr.

Sir H. Moore.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh

X Permt. U.S. of S. 18.8.37

Parly. U.S. of S.

X Secretary of State. W. 20.8.37  
C. H. M.

For the Secretary of State's signature.

Downing Street.

20th August, 1937.

**DRAFT.**

*An Chief Marshal*

SIR ROBERT BROOKE-POPHAM, G.C.V.O.,  
K.C.B., C.M.G., D.S.O.

Dear Brooke-Popham,

Thank you for your letter of

the 3rd August, No.O.G.6., about the Executive Council and the question whether the Estimates should be submitted to it before they are introduced in Legislative Council. The new Royal Instructions to alter the Executive Council are being drafted and will soon be in print. They then have to go to the King for approval, before they can be promulgated.

As regards the point raised in your letter, I can say at once that I am in complete agreement with

your

FURTHER ACTION.

your view. It is impossible not to see the force of Grigg's contentions, but I cannot help concluding that he over-emphasised the difficulties.

The Estimates really form an important, perhaps the most important, feature of the whole activity of Government, and it seems unreasonable to deprive the Governor of the advice of his Executive Council in the primary stages of preparing his financial policy for the ensuing year. Indeed, I should have thought that it was while the Estimates were still in draft and could be re-cast without very much trouble, that the advice of unofficials would be specially useful to you. I therefore agree with you that it would be best to allow the Executive Council to comment upon the Estimates at every stage until they are introduced in Legislative Council, by which time the Executive's task in connection with them would be nearly finished.

There is only one thing, and that is that you will have to be careful not to seem to do anything which could be represented as going back on any pledge

or

C. C.

Mr.

Mr.

Mr.

Sir H. Moore.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Parlt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

**DRAFT.**

**FURTHER ACTION.**

or undertaking that may have been given in respect of the functions of the Standing Finance Committee. There have been various undertakings given from time to time, I know, and the Committee might be liable to think that its functions were being curtailed, so it is necessary to proceed with some degree of caution.

Yours sincerely,

*W. Crawley Gore*

O.G.S.

S. J. S. ...

3807713C

P1 64

GOVERNMENT HOUSE  
- NAIROBI,  
KENYA.

seen  
C/S 10/8

3rd August, 1937.

Dear Cransby-Gore,

C

I have been considering the work of the Executive Council when reorganised, and one of the questions is the preparation of the Estimates. At the present time these are prepared entirely by Government - <sup>mainly</sup> ~~at present~~ the Colonial Secretary - <sup>had before</sup> ~~presented to the House~~, and are then discussed by the Standing Finance Committee. Royal Instructions lay down that the Governor shall in all cases consult with the Executive Council unless "our service would sustain material prejudice" or if the matter is too unimportant or too urgent. Edward Grigg ruled that the Estimates should not be submitted to Executive Council, and you will find this referred to on pages 75 onwards in his despatch on the subject of Closer Union proposals dated September, 1930.

2. When the Executive Council is reorganised I should like to let them have a chance of commenting on the Estimates perhaps even when they are in the preparatory stage, and I should have thought that in spite of the ruling of Edward Grigg, this was the constitutional thing to do. I have spoken on the subject to Wade, but to no one else yet, and no suggestion has been.....

(2) ...  
(68) ...  
26/9/37

GOVERNMENT HOUSE  
NAIROBI,  
KENYA.

been made by the Unofficial Members that the old system of referring the Estimates to Executive Council should be resumed. I realise <sup>some</sup> ~~the~~ force <sup>of</sup> ~~of~~ Edward Grigg's opinion that unless the Executive Council could work like a Cabinet it would be wrong to refer the Estimates to it, but on the other hand the more chance one gives it of functioning as a Cabinet, the more value one will get out of it, and the more likely one is to have harmonious working in Legislative Council.

3. Another point is that the Standing Finance Committee, the composition of which is practically the same as that of the Executive Council, is tending, to my mind at any rate, to deal with matters outside its intended province and somewhat invading what is properly the Executive Council's sphere of duty. This would right itself if the Executive Council were consulted over the Estimates.

4. I shall be very grateful for your views as to whether there is any serious objection that has not struck me.

Yr. sincerely  
W. Brooks-Popham

THE RIGHT HONOURABLE W. ORLSBY-GORE, P.C., M.P.,  
COLONIAL OFFICE,  
DOWNING STREET, S.W.1.

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R.I.  
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G. O.

G. O.  
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10

Mr. Harman 21/8/37  
Mr. Lloyd 27/8/37  
Mr. Hook 28/8/37  
Sir C. Parkinson  
Sir G. Tomlinson  
Sir C. Bottemley  
Sir J. Shuckburgh  
Parlt. U.S. of S.  
Parly. U.S. of S.  
Secretary of State

(17)  
183

3 SEP 1937

Copy [unclear]

DRAFT. Common

The Secretary  
Lord Chamberlain's  
Office  
St James's Palace.

Dear Sir,  
I am in. to request  
you to inform the Lord  
Chamberlain that  
certain changes which  
have been approved in  
the <sup>at</sup> constitution of Kenya  
involve the cessation  
<sup>of the</sup> membership of the  
Executive Council in  
<sup>view of the</sup>  
the case of the following  
<sup>app.:-</sup>  
~~an officer member~~

Council, for local food,  
roads & settlement,  
Director of Medical Services,  
Director of Agriculture,  
Director of Education.  
2. These officers

FURTHER ACTION.

Copy for  
2100's 16/37  
Parlt. U.S.  
Copy kept on 2100's 16/37  
H.H. [unclear]  
22/10/37

have hitherto enjoyed,  
in virtue of their  
membership, the  
privilege of wearing  
Civil Uniform of the  
2nd class and the  
Governor has requested  
that His permission  
may be sought for  
<sup>the present holder</sup>  
~~them~~ to continue to  
wear that class of the  
uniform during the  
period of their  
individual service in  
Kenya.

3. It is hereby fore  
recommended that, if  
the Lord Chamberlain  
has no objection, the  
desired permission  
may be obtained.

Signed: J. E. W. FLOOD

See 4/28/37

Dept to see

GOVERNMENT HOUSE,  
NAIROBI,  
KENYA.

8.

22nd June 1937

Dear Crmsby-Gore,

4

Thank you for your letter of the 15th June. I have got the final draft of the Executive Council reorganisation proposals in my tray now.

2. I notice that on, I think, June 2nd, Mr. Lunn made some remarks about the alleged neglect of education in Kenya. I have not yet got the "Times" containing the report of the debate, so don't know what the answer was, but it is of interest to note that according to the published figures, Great Britain proposes to spend, in the year 1937-1938, just under seven per cent of her total expenditure on education, and that during the current year the net expenditure on education from public funds in Kenya is 7.25 per cent.

X  
It is really  
near 9 or 10%  
and 10% to 12%  
for the first figure.

3. I notice Mr. Baldwin is making an Empire tour. Is he going to include East Africa in this? I hope so.

4. The Governors' Conference has assembled and departed. It was useful, just as much from the private conversations that were carried out as by what was actually accomplished at the meetings. One of the most useful things we did was to accelerate the execution of the recommendations of the Lance Report.

Yours sincerely

A Brooke-Popham

THE RT. HON. W. ORMSBY-GORE, P.C., M.P.,  
COLONIAL OFFICE,  
DOWNING STREET, S.W.1.

See 1937 97

Sept to see at

GOVERNMENT HOUSE,  
NAIROBI,  
KENYA.

17  
8.

22nd June, 1937.

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according to her  
own figures.

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Yours sincerely

A Brooke-Popham

THE RT. HON. W. ORMSBY-GORE, P.C., M.P.,  
COLONIAL OFFICE,  
DOWNING STREET, S.W.1.



E  
Copy 776/1/3 General 68  
7  
Mr. <sup>✓</sup>Gent.

Sir G. Bottomley.

X I attach a draft Note of the Secretary of State's interview with Sir Zafrullah Khan on the 19th June. The Note will, I fear, need a good bit of amplification and amendment in paragraphs 2 and 4.

When the Note is approved the General Department will no doubt arrange for extracts from it, with the appropriate<sup>x</sup> briefs, to be put on Geographical files for consideration of any action required.

(Signed) G. Creasy.

21.6.37.

(Signed) G.E.J.Gent.

22.6.

X I have had only textual alterations to make. Zanzibar action has been taken.

(Intd.) W.C.B.

22.6.

Mr. Boyd.

I think this is all right; but the Secretary of State may perhaps wish to see?

(Intd.) J.E.S.

22.6.37.

Yes. Send copy to India Office for record, and to Governors etc. concerned confidential.

(Intd.) V.O.G.

25.6.37.

action taken on  
776/1/3 General  
sent to India Office  
only

Executive Council. Here it is a case of the Indian crying  
 before he is hurt. All that has happened is that the Governor  
 has been asked to consider reforming the Council so as to  
 make it less unwieldy. He has not made any suggestions yet  
 and it is not likely that he will advise the removal of  
 the Indian member.

J. S. G. H. D.

Extract.

776/6/37  
leave

NOTE OF AN INTERVIEW  
BETWEEN THE SECRETARY OF STATE AND  
SIR ZAFRULLAH KHAN,  
ON VARIOUS QUESTIONS CONNECTED WITH  
INDIANS IN THE COLONIES  
19th June, 1937.

The Secretary of State saw Sir Zafrullah Khan who was accompanied by Sir G.S. Bajpai, on Saturday, the 19th June, at 10.30 a.m. Sir John Shackburgh, Sir Cecil Bottomley, Mr. Gent, and Mr. Creasy were also present.

X

X

X

Sir Zafrullah Khan then turned to Kenya and urged that there should be no exclusion of the Indian element from the Executive Council in that Colony. Mr. Ormsby Gore referred to an announcement he had recently made regarding the reconstitution of the Executive Council of Kenya, and it was explained to Sir Zafrullah Khan that the Indian representation would remain as before.

X

X

X

6

C. O.

38077/37

Mr. Flood. 23.7

Mr.

Mr.

Sir H. Moore.

Sir G. Tomlinson.

4 Sir C. Bottomley 23.7.

Sir J. Shuckburgh

4 Permt. U.S. of S. 23.7.37

Party. U.S. of S.

Secretary of State. 23.7.37

See (18)

DOWNING STREET.

29 July, 1937.

Sir,

DRAFT. For conson.

KENYA

CONFIDENTIAL (4)

GOVERNOR

I have etc. to acknowledge the receipt of your confidential despatch No. 91 of the 26th of June, in which you set out in full your views as to the future composition of the Executive Council of the Colony and Protectorate of Kenya, with a view to making it a more convenient body for working and associating unofficial opinion more closely with Government.

2. In the first place I am much obliged to you and to your advisers for the care and frankness with which you have expressed your views, and for the thorough consideration which has been given to this most important question. In Parliament on the 2nd

FURTHER ACTION.

Revision of Instruments

then

then held, which were to the effect that the Executive Council in Kenya ought to consist of the Governor as President, with four official and four unofficial members. That view was, of course, purely provisional, and it gives me no little gratification to find that on consideration your opinion agrees with mine.

3. The present Council, as you point out, consists of eight ex-officio members and you propose to reduce these ex-officio members to four, by omitting the four members who may be described as heads of technical services, namely the Commissioner ~~and Settlement~~, for Local Government, the Director of Medical Services, the Director of Agriculture, and the Director of Education, leaving the Chief Executive and Advisory Officers, namely, the Colonial Secretary, the Attorney General, the Treasurer, and the Chief Native Commissioner.

4. It will, I think, be clear that the four last mentioned officers <sup>must</sup> ~~ought to be~~ members of Executive Council. The position in

this

C. O.

Mr.

Mr.

Mr.

Sir H. Moore.

Sir G. Tomlinson.

Sir C. Dawsonley.

Sir J. Shackburgh.

Parnt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

DRAFT.

**FURTHER ACTION.**

this regard is slightly complicated by the reorganisation of the Secretariat which has been proposed by Sir Alan Pim. That organisation contemplates the replacement of the Treasurer by a Financial Secretary, and the replacement of the Chief Native Commissioner by a Secretary for Native Affairs. It would follow that under this organisation the members of Executive Council would be the Colonial Secretary, the Financial Secretary, the Secretary for Native Affairs, and the Attorney General. Proposals for the creation of the Financial Secretary's post have, as you know, already been approved, and the adoption of Sir Alan Pim's other recommendations will probably be carried out in the near future. It may therefore seem inexpedient to revise the Royal Instructions providing for constitution of the Executive Council until the reorganisation has been carried

carried

Executive  
continue to wear the uniform of /Councillors, while they  
remain in Kenya, and to retain precedence as if they were  
Executive  
still members of the / Council.

6. I now come to your proposals as regards the  
unofficial representation on Executive Council. I agree  
with your view that the ideal to aim at is that the Council  
should be regarded, not as a collection of different and  
possibly conflicting interests, but rather as something  
approaching to a cabinet considering only the interest of the  
Colony and people of Kenya as a whole, and that the test of  
fitness for selection should be <sup>individual</sup> character and ability. You  
do not suggest any numerical alteration in the present  
unofficial members of Executive Council, and you propose  
to maintain the existing ratio between the various  
components of the group. At present there are two  
members chosen from the elected members of the  
Legislative Council, one member representing  
Indian views, and one selected as having a  
knowledge of native problems. It will, I think,  
always

C. O.

Mr.  
Mr.  
Mr.  
Sir H. Moore.  
Sir G. Tomlinson.  
Sir C. Bottomley.  
Sir J. Shuckburgh.  
Perm. U.S. of S.  
Periy. U.S. of S.  
Secretary of State.

DRAFT.

FURTHER ACTION.

74  
always be necessary that one of the  
European members should be chosen from  
among the elected members of Council,  
and it will usually be found that the  
most fit and proper person for the  
purpose will be that member who is  
regarded by the European unofficials  
as their leader. Also, it will  
normally be the case that the second  
European unofficial will be selected  
<sup>usually chosen</sup>  
from among the elected members, but  
I do not think that that should be  
regarded as an invariable rule, and  
the Governor should be free to choose  
the individual European unofficial  
who, in his opinion, is best qualified  
to give sound advice as regards the  
Colony as a whole.

7. With regard to the  
representation of the Indian  
community, you very properly point  
out that the member so selected would  
normally

normally be an Indian by race, but you suggest that a time might come when there was in Kenya someone not of Indian race but yet with long experience of India and commanding the trust and confidence of the Indian community. In such a case the selection of such a gentleman for membership of Executive Council might ~~properly~~ be considered, but I think it will be found that for many years to come the <sup>member</sup> representative ~~chosen to represent Indian views~~ <sup>(if I may so call him)</sup> of the Indian community on the Executive Council will be an Indian by race, and indeed, to select any non-Indian might be held to be a departure from the principles laid down in 1923. ~~though it must be recognized that the only test of fitness for membership is the ability, not race.~~

8. As regards the fourth member representing native interests, I agree with your view that it would be wrong to lay down that he must ~~be a~~ be a missionary. I fully agree with your view that the object to be aimed at is that you should be in a position to nominate, for

His

C. O.

- Mr.
- Mr.
- Mr.
- Sir H. Moore.
- Sir G. Tomlinson.
- Sir C. Bottomley.
- Sir J. Shuckburgh.
- Perm. U.S. of S.
- Parly. U.S. of S.
- Secretary of State.

DRAFT.

His Majesty's approval, the individual who is best qualified to advise you from the aspect of the natives of Kenya, and that the field of selection should be as wide as possible.

9. You suggest that if the <sup>President</sup> unofficial member of Council nominated to represent native interests is not already a member of Legislative Council <sup>(to that body)</sup> he should be added as a nominated unofficial member, an additional official <sup>Reserve the</sup> member being nominated to balance <sup>of members</sup> him.

I appreciate the arguments in favour of this course, but I do not think it

is necessary. In normal circumstances the unofficial Executive Councillor will probably be one of the persons representing native interest in the Legislative Council, but if he is not, there is no real reason why he should be added to the Legislative Council, though there are, of course, some

advantages

FURTHER ACTION.

advantages in favour of such an addition.

I think, however, that the Legislative Council is already sufficiently large without the addition of further nominated members.

10. If then I am prepared to accept your proposals for the modification of the Executive Council subject to the comments contained in the foregoing paragraphs.

I trust that the Council, as reconstituted, will prove a more efficient instrument of <sup>Government</sup> ~~administration~~ <sup>operation</sup> than the present one.

It must be borne in mind always, as I have no doubt it is, that the responsibility of each Executive Councillor is individual and is strictly confidential.

An Executive Councillor is bound to give the Governor his advice fully, freely, and frankly on any question which may be brought before him.

That advice should be given in the interests, not of any section, but of the Colony as a whole, and the giving of it carries a serious responsibility.

At the same time it must be realised also that the Governor is not bound by majority <sup>views</sup> ~~decisions~~ <sup>decisions</sup>

in

G. O.

Mr.

Mr.

Mr.

Sir H. Meers.

Sir G. Tomlinson.

Sir C. Downey.

Sir J. Shackburgh.

Parad. U.S. of S.

Party. U.S. of S.

Secretary of State.

DRAFT.

Is it safe to say  
this? The report  
may be published.  
I am told. Will my  
letter be unofficial  
& officials might be  
concerned etc.

substitute -  
But in all the  
circumstances I agree  
that the experiment  
is called for.

FURTHER ACTION

and

in Executive Council, and he is at full liberty to reject the advice of his Council if, after consideration, he so decides.

11. I regard the <sup>constitution</sup> ~~organisation~~ of the new Council as somewhat in the nature of an experiment. There is no exact parallel for such an Executive Council in any other part of the Empire.

[and my approval of this organisation in Kenya may be regarded as an indication that I recognise the special and peculiar circumstances of Kenya which render its government a matter calling more than in any other part of the Empire for mutual knowledge, understanding, and co-operation between the official body and all sections of the unofficial community.] I shall

watch, with interest, the work of the Council and as I have said, I trust that it will prove of advantage to the good government



government of Kenya.

12. It will be necessary to prepare revised Instruments ~~of Government~~, which will have to be submitted to His Majesty in Council for approval. Some time must therefore elapse before the new Council can come into being in its revised form, but I have no objection to your announcing my ~~decision~~ <sup>views</sup> on your proposals and saying that I ~~propose~~ <sup>shall</sup> to take the first opportunity of recommending the changes for His Majesty's consideration. ) have etc.

~~13. I cannot close this despatch without further reference to those gentlemen who are new members of Executive Council, but will cease to be so under the new organisation. I readily acknowledge the services which they have rendered and, as you recommended, I will approach His Majesty with a view to obtaining his permission for them to continue to wear the uniform of Executive Councillors and to enjoy, while they remain in Kenya, the precedence which now attaches to them as <sup>honorary</sup> ~~special~~ to themselves.~~

(Signed) W. CRMSBY GORE.

government of Kenya.

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*[Signature]*  
(Signed) W. CRMSBY GORE.

# Eccentric Councils

Composition as laid down in  
Royal Instructions

Colony	Ex officio members	Others
Uganda	Chief Secretary Attorney General Treasurer Director of Medical Services Director of Agriculture Director of Education Revenue Commissioner, Uganda	Persons appointed by name (no limit) as official or unofficial members
Tanganyika Territory	Chief Secretary Attorney General Treasurer Director of Medical Services Director of Education Deputy Chief Secretary	Other officials appointed by name (no limit)
Strait Settlements	Senior Military Officer (if not below the rank of Lt. Col.) Colonial Secretary Resident Councilor, Penang Attorney General Resident Councilor, Malacca	Other officials appointed by name (no limit) unofficials (not more than three)
Fiji	Colonial Secretary Attorney General Treasurer	Other persons appointed by name (no limit)

Colony

ex-officio members

Others

Nigeria

Chief Secretary  
 Chief Commissioners, N. Provinces  
 S. -  
 Attorney General  
 Financial Secretary  
 Commandant, Nigeria Regt. (Rw. AFF)  
 Director of Medical Services  
 Director of Transport  
 Director of Education

Other persons  
 appointed by  
 name (no limit)

Trinidad

Colonial Secretary  
 Attorney General  
 Treasurer

Other persons  
 appointed by  
 name (no limit)

British Guiana

Colonial Secretary  
 Attorney General

Nominated Official  
 members - not more  
 than 4.  
 Unofficials, not  
 exceeding 5, must be  
 members of the Legislative  
 Council

Gold Coast

Colonial Secretary  
 Chief Commissioner, Ashanti  
 N. Territories  
 Attorney General  
 Treasurer (being also the  
 Financial Secretary)  
 Director of Medical Services  
 Secretary for Native Affairs

Other persons  
 appointed by  
 name - no  
 limit

AIR MAIL

KENYA

No. 91

CONFIDENTIAL



GOVERNMENT HOUSE  
NAIROBI  
KENYA

579

26 June, 1937.

RECEIVED  
3 - JUL 1937  
C. O. REGY

Sir,

With reference to your confidential despatch No. 3 of the 25th March, I have the honour to inform you that I have now given consideration to the question of the remodelling of the constitution of the Executive Council of this Colony and Protectorate. In compliance with the terms of your telegram No. 313 of the 22nd December, 1936, I have borne in mind the desirability of making that body more convenient in working and more useful as a means for association with unofficial opinion. The views, and the definite proposals arising therefrom, set out in the succeeding paragraphs of this despatch have been formulated after full deliberation with my advisers, opportunity having been taken to consult with them both in their official and private capacities. In this connection, reference is invited to Minutes Nos. 168 and 170 of the Executive Council of the 1st and 7th May respectively, copies of which are attached.

2. As I understand the functions of an/

THE RIGHT HONOURABLE,  
W. ORMSBY GORE, P.C., M.P.,  
SECRETARY OF STATE FOR THE COLONIES,  
DOWNING STREET,  
LONDON, S.W.1.

(6) on 38297/37

(9) on 38008/2/36

Send C.

an Executive Council, each individual member should regard himself as representing the interests of all Kenya and all its peoples. I am of the opinion that it would be quite wrong for any member, official or unofficial, to regard himself as representing any particular section, the interests of which it would be his duty to press. In this respect the deliberations of the Executive Council are entirely different from those of the Legislative Council since the members of the latter are elected by their constituents for the express purpose of representing particular interests and it is a part of their duty to stress those interests in debate. At the same time each individual member of the Executive Council would naturally see the interests of the whole from a somewhat different aspect, and, indeed, if this were not so, the Council would fail in its purpose of affording advice in which every aspect of the situation was visualised. In the succeeding proposals I have endeavoured, both in the interests of convenience in working and of economy of effort and expense, to provide for a body with the minimum membership consonant with the exercise of the above functions.

3. Arguing on these lines, I have arrived at the conclusion that, as regards its official composition, the presence of technical "ex officio" members on such a body as an Executive Council tends, in the first place, to render it somewhat unwieldy and, in the second place, is sometimes

liable/

liable to cause the deliberation of the Council to be concentrated on one particular aspect of a problem to the exclusion of others. It is on the basis of the acceptance of this conclusion that I consider that the reorganisation contemplated in your telegram, to which reference has been made above, can best be effected.

4. In accordance with the provisions of Clause IV of the Royal Instructions of the 29th March, 1934, the present number of "ex officio" members on Council is eight. The occupants of these posts appear to fall into two natural groups of four. On the one hand there are the Chief Executive and Chief Advisory Officers of Government:-

The Colonial Secretary,  
The Attorney General,  
The Treasurer and  
The Chief Native Commissioner,

and on the other:-

The Commissioner for Local Government,  
Lands and Settlement,  
The Director of Medical Services,  
The Director of Agriculture and  
The Director of Education,

whom I have called, for lack of a better word, "Directors of Technical Services". The essence of my proposal is that "ex officio" membership of the Executive Council should be confined to the former group, and that, in the revised Royal Instructions, the latter posts should be omitted.

5. The immediate effect of the reorganisation of this nature, in the Council as at present constituted, would be to reduce the ratio between official





Instructions of the 29th March, 1944, the inviolable composition of the Legislative Council is as follows:-

Governor (President)

<u>Official Members:</u>	<u>Unofficial Members:</u>	
1. Chief Minister	2. 12 (Elected)	11
2. 10 (Elected)	3. 5 (Elected)	5
3. 10 (Elected)	4. 1 (Elected)	1
4. 10 (Elected)	5. 2 (Nominated)	
5. 10 (Elected)	6. 2 (Nominated)	
6. 10 (Elected)	7. 2 (Nominated)	
7. 10 (Elected)	8. 2 (Nominated)	
8. 10 (Elected)	9. 2 (Nominated)	
9. 10 (Elected)	10. 2 (Nominated)	
10. 10 (Elected)	11. 2 (Nominated)	
	12. 2 (Nominated)	2
		<u>19</u>

... element, therefore, excluding the... of the provisions... in common with other... a casting vote, is apparently...

In the... of clause XV, however, it is further...

"If one of the... Official Members is not specially... to represent the interests of the... community there shall... elected Unofficial Member to... interests".

Nominated Official Members... interests... in fact... case... has been... is equal... 20 votes... on one of the... Unofficial... Government.

a. It is manifestly the intention of the... 'oyal'

liable to cause the deliberation of the Council to be concentrated on one particular aspect of a problem to the exclusion of others. It is on the basis of the acceptance of this conclusion that I consider that the reorganisation contemplated in your telegram, to which reference has been made above, can best be effected.

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The Director of Medical Services,  
The Director of Agriculture and  
The Director of Education,

whom I have called, for lack of a better word, "Directors of Technical Services". The essence of my proposal is that "ex officio" membership of the Executive Council should be confined to the former group, and that, in the revised Royal Instructions, the latter posts should be omitted.

5. The immediate effect of a reorganisation of this nature, in the Council as at present constituted, would be to reduce the ratio between  
official/

official and unofficial representation from two is to one, to equality. An official majority could, indeed, be maintained if the unofficial membership were reduced from four to three by the elimination of one of the members representing European views, but since equal representation appears to afford the simplest and most acceptable means of bringing about a closer association and sympathy between official and unofficial opinion, I would retain all the four unofficial members as at present. These consist of the two members appointed to represent European views, who would normally be selected from among the European Elected Members of the Legislative Council; the third member representing Indian views on the problems of Kenya, also normally a member of the Legislative Council, and the fourth selected as having a wide knowledge of native problems.

6. With regard to this fourth member, I consider it would be desirable for him to be a member of Legislative Council but not essential. He might be found amongst the Elected Members or he might be one of the two members nominated to represent the interests of the African community. But if he were not already a member ~~in the~~ ~~Legislative~~ Council, I consider that an opportunity should be provided specially to nominate him. If, however, he were not prepared to accept such nomination I do not feel that, on that ground only, he should be forced to refuse to accept appointment to the Executive Council. The acceptance of this proposal might involve an increase in the present unofficial membership of the Legislative Council and would thus upset the existing balance between the official and unofficial members.

7. Under Clause XV of the Royal

Instructions/

Instructions of the 29th March, 1934, the invariable composition of the Legislative Council is as follows:-

Governor (President)

Official Members:

Ex officio 11  
Nominated 9

Unofficial Members:

European (Elected) 11  
Indian (Elected) 5  
Arab (Elected) 1  
Nominated Members  
to represent the  
interests of the  
African community. 2

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The official element, therefore, excluding the Governor, who, by virtue of the provisions of Clause XXVI, has an original vote in common with other members of the Council and also a casting vote, is apparently in a majority of one.

In the fourth paragraph of Clause XV, however, it is further provided that:

"If one of the Nominated Official Members is not specially appointed to represent the interests of the Arab community there shall be a Nominated Unofficial Member to represent such interests".

No Nominated Official Member to represent such interests has, in fact, been appointed and, in consequence, an Arab Unofficial, Sir Ali bin Salim, has been added. Thus, representation at the moment is equally balanced, both sides of the Council holding 20 votes, and the Government majority depends upon one of the votes of the President if, as might happen, all unofficials were present and all voted in opposition to Government.

8. It is manifestly the intention of the

Royal/

Royal Instructions that, in no circumstances, should the official members be in a minority, and this is confirmed in paragraph 96 of the Report of the Joint Select Committee on Closer Union in East Africa. This position would, however, arise were provision to be made in the Royal Instructions for the appointment of the fourth unofficial member on Executive Council as an extraordinary unofficial member of the Legislative Council, whilst retaining the present additional Arab unofficial member. To my mind, although the possibility of a solid vote against the Government would be remote, the existence at any time of an apparent unofficial numerical majority would be impolitic and afford a dangerous precedent. It is true that if, by virtue of Clause XXVI, the Governor were to exercise both of his votes, a Government voting majority could, in fact, be maintained. But the damaging effect on the prestige of the Governor, as President, if such a procedure were followed is too obvious to require comment. If, therefore, provision is to be made for the nomination to Legislative Council of an additional unofficial member, and if the Government majority is to be maintained in a satisfactory manner, then it would seem necessary to provide also for the simultaneous appointment of an additional nominated official member.

9. I am aware that the proposal to make a 50% reduction in the number of official members of the Executive Council is open to criticism and has certain obvious drawbacks, but it is my considered opinion that on the balance the advantage lies in favour of the reduction. It will be remembered that

that the original composition of the Executive Council, under the Royal Instructions of the 9th November, 1906, comprised four "ex officio" members only, namely

The Governor,  
The Senior Commissioner,  
The Treasurer and  
The Crown Advocate.

*car/han/has*  
The number of official members was later increased, but I find that on the 9th October, 1925, the then Governor of Kenya is recorded to have expressed the view, in referring to the proposal to add the Director of Agriculture and the Director of Education to Council, that:

"Owing to the pressure of departmental work he considered that these two members need not be summoned to meetings unless the Agenda contained items with which their activities were concerned".

*Gov. /50443/25*  
In a confidential despatch No. 108 of the 13th October, 1925, the Governor stated that he had agreed to the appointment of these two officials to Executive Council with some reluctance:

"due to my feeling that heads of important technical departments should be required to devote their whole attention to the work of their departments and were generally more useful as witnesses before Executive Council when matters affecting their Departments were discussed than as advisers to Government in the many and varied matters which come before Executive Council."

A similar view was expressed in the letters in which these two officials were informed of their appointments to Council and with this view I concur.

10. From the record of the discussions in Executive Council, to which I have invited reference in paragraph 1 of this despatch, it will be apparent that the heads of the Technical Departments are unanimously opposed to the suggested reduction. I think it is natural that they should be. They realize that in the past they have given valuable service in Council and do not understand why such service should be any less valuable in the future. I have of course given earnest consideration to their views. I see the force of their arguments and I do not think that I have undervalued them. I am nevertheless still of the opinion, as I stated in Council, that the balance of advantage rests with the proposed reorganisation. The fact that these four officials will no longer be members of the Executive Council will not prevent them from being called upon to express their views and to answer questions on subjects of which they have special knowledge; and their advice will be no less valuable when given by them as witnesses and as Technical heads of Departments than in the past when given by them as Members of Council.

11. Another objection to the reduction in the number of official members is that circumstances may arise in which some of the official members - especially in the case of the Treasurer and the Attorney General - would have but slight acquaintance with the local conditions of this Territory, in which case the experience of unofficial members of such local conditions would outweigh that of the official members. Even should this occur I have no reason to believe that/

that difficulties would necessarily arise, but, to meet this possibility, it would appear desirable to retain in the new Royal Instructions, the existing provision for the appointment of "official", as opposed to "ex officio" members, in accordance with that portion of Clause IV of the Royal Instructions of the 29th March, 1932, which reads:

"and such other persons holding office in the Public Service of the Colony as the Governor, in pursuance of Instructions from Us through one of Our Principal Secretaries of State, may from time to time appoint by an Instrument under the Public Seal, who shall be styled official members of the Executive Council."

12. In my opinion, however, the real solution will be found along rather different lines. In the past, the unofficial members have been regarded rather as the natural representatives of opposition to the Government. I hope and believe that this attitude of mind will gradually disappear and that the Executive Council, whilst not strictly a cabinet, will approach a cabinet in its method of operation.

13. In the fifth paragraph of this despatch I have already invited attention to the advisability of making no numerical alteration in the present unofficial composition of the Executive Council, neither do I propose to upset the existing ratio between the various units of which this group is composed. It does, however, appear desirable that, in the event of my proposals being approved, some general principles should be laid down regarding the method of individual selection; although acceptance of such general

principles/



principles would not, of course, limit the final choice of the Governor, since I regard it as of great importance that in this matter his powers should remain free and unfettered.

14. In this connection, the position of the two members representing the views of the European community calls for little comment, except that I do not wish one to be regarded as representing Nairobi and the other the rural areas. Over a period of years, it has been found desirable for one of these two to be living either in or near Nairobi, so as to be available at short notice, and it would be convenient that this practice should continue. It should be made clear, however, that this would be based solely on grounds of greater accessibility, and that both would represent the whole of Kenya and not part of it.

15. Certain special considerations enter into the selection of the Indian representative and, although he would normally be an Indian, I do not wish to lay down that this must necessarily be so; neither, although opportunity would be taken to seek the views of the leaders of that community and their elected representatives, do I consider that any undue weight should be attached to their nominations. If, for instance, a prominent member of the Indian Civil Service were to settle in Kenya, he might be in a position to represent the views of the Indian community as a whole better than an Indian who would usually be tinged with the opinions of his own particular section.

This/

(2) on 3024/33

This principle has already been enunciated by Sir Philip Cunliffe-Lister (now Lord Swinton) in his confidential despatch of the 7th March, 1935, on the subject of the appointment of Mr. Abdul Wahid to the Executive Council.

16. The fourth unofficial member has up to the present generally been a missionary. I think it would be wrong to lay down that this must be the case or even, as is indicated in paragraph 5 of Part II of Command Paper 1922 of 23rd July, 1923, that it should normally be so. This opinion is in no sense intended as a criticism of the missionary effort, as I am deeply conscious of the debt that Kenya owes to missionary organisation in advancing the physical, educational and spiritual welfare of the people. The proposal is merely actuated by the desire to have a free hand in selecting the individual best qualified to represent matters from the aspect of the African native, and I feel that the best value would be obtained from some one who, whilst having an acquaintance with the social problems of Kenya, also had experience of native problems in other parts of the British Empire. He might be found amongst the missionaries, either Protestant or Roman Catholic, but the wider the field of selection the greater the probability of finding a really suitable man.

17. As is shewn in the fifth paragraph of this despatch, there already exists a close connection between the unofficial personnel of the Executive and Legislative Councils owing to the accepted practice of making at least three out of the four unofficial

appointments/

appointments to the former from sitting members of the latter body. If, as I have suggested, a quasi "Cabinet responsibility" is evolved, the inter-relationship of the two bodies will become even more marked. On these, as well as on other more obvious grounds, therefore, I am averse from appointing unofficial members for an indefinite period, and recommend that this should rest in the discretion of the Governor, but normally be limited to a period corresponding approximately to the life of a Legislative Council under Clause XXXI of the Royal Instructions of the 29th March, 1934, as amended by the Additional Instructions of the 20th June, 1935. As it will be necessary to ensure continuity of the composition of the Executive Council over the period intervening between the dissolution of one Legislative Council and the reassembly of its successor, the exact coincidence of the dates of appointment will not be practicable. This, however, is a matter of detail and does not appear to call for further comment at the present stage.

18. The modifications to the Royal Instructions of the 29th March, 1934, which will be necessary in the event of approval being accorded to the proposals contained in the preceding paragraphs of this despatch, will be as follows:-

- (i) An amendment to Clause IV to provide for the omission from the Executive Council of the following four "ex officio" members:-

- The Commissioner for Local Government, Lands and Settlement,
- The Director of Medical Services,
- The Director of Agriculture,
- The Director of Education.

(ii)...

- (ii) A further amendment to the same clause limiting the appointment of the unofficial members to such period as the Governor may think fit.
- (iii) An amendment to Clause XV to provide for the possible nomination of the fourth unofficial member of the Executive Council as an extraordinary unofficial member of the Legislative Council, subject to the simultaneous appointment of an additional extraordinary nominated official member.

19. In conclusion I consider it only fair that those officers who serve at present on the Executive Council by virtue of their office but, under the proposed constitution, would no longer continue to do so, should, during the period of their individual service in hence, the status which they now enjoy as members of that Council. I recommend therefore that these four individuals should retain, as personal to themselves, their place in the order of precedence as if they were still members of the Executive Council, and that His Majesty's permission should be sought for them to continue to wear the distinctive uniform which that position entitles them to.

I have the honour to be,

Sir,

Your most obedient, humble servant,

*RB Brooke-Pollard*

AIR C. JEFFARSON,  
GOVERNOR

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EXTRACT FROM

MINUTES OF A MEETING OF EXECUTIVE COUNCIL HELD AT GOVERNMENT HOUSE, NAIROBI, AT 10 A.M. ON SATURDAY THE 1ST MAY, 1937

Minute No.168.

REORGANISATION  
OF EXECUTIVE  
COUNCIL.

EX.CO.17.

His Excellency informed Council that he had recently been giving attention to the reorganisation of the Executive Council. It was not his intention to seek immediate advice, but he wished to take this opportunity of placing before Council certain conclusions he had reached personally in order that members might consider them with a view to their discussion at an Extraordinary Meeting of Council to be held on Friday the 7th May.

He felt - and he believed that there was general agreement with this view - that, as at present constituted, the Executive Council was too large. In his view a Council of eight members, consisting of an equal number of officials and unofficials, would be desirable. The reduction could be effected by the withdrawal of those whom - for lack of a better word - he would call "Directors of Technical Services": that is the Commissioner for Local Government, Lands and Settlement, the Director of Medical Services, the Director of Agriculture and the Director of Education. This proposal should not be taken as an indication that he undervalued the advice which these members had given in the past, still less that he regarded the work of their Departments as unimportant. It was his intention that, if Executive Council were reorganised on the lines he suggested, their counsel should continue to be sought in the future on all matters within the ambit of their activities. He considered however that the basis of the composition of Council should not be the representation of any sectional interests whether technical, political or social, but the representation, by each member, of the interests of Kenya as a whole seen from different angles. He was strengthened in this view by the fact that the original personnel of

Minute No. 168.

(Continued)

Executive Council did not provide for these Directors of Technical Services, and at the time of their inclusion grave doubts had been expressed as to the desirability of calling in officers, whose time was fully occupied with departmental duties, to sacrifice the greater part of a day each fortnight. These doubts he shared.

Another factor which had influenced him was that ultimately a reorganisation of the Secretariat would require to be made, possibly on the basis of Sir Alan Pim's proposals, but in any circumstances comprehending officers carrying out the functions of the Colonial Secretary, the Treasurer and the Chief Native Commissioner. These officers would form the nucleus of official representation in Executive Council and it would be necessary to add to them the Legal Adviser to Government. His Excellency intimated, in this connexion, that it was his wish to see retained, during the period of their individual service in Kenya, the personal privileges consequent on membership of Executive Council now enjoyed by those officers who, he suggested, should withdraw from Council.

He proposed that there should still be four unofficial members. In regard to three of them the only comment he had to make was that the individuals must be regarded as representing the whole of Kenya from different points of view and not as furthering different interests.

The fourth unofficial member had in the past been appointed to represent Native interests, he had normally been a missionary and had normally been on the Legislative Council. His Excellency considered that the representation of native interests should be and had always been accepted as the duty and responsibility of every member of Executive Council. He considered that the limitation of the appointment to a missionary was undesirable, since it precluded the choice of a layman who, in addition to representing the point of view of Kenya as a whole, might have specialised knowledge of the native life either of Kenya or of some external territory. This type of adviser His Excellency felt would be most valuable. The suggestion however raised certain questions. Should the fourth member necessarily be selected from amongst the members of the Legislative Council? If not, should he be nominated to an extra seat on the Legislative Council? If he were unable or unprepared to sacrifice the time, would difficulties arise if the fourth member did not have a seat on Legislative Council?

His Excellency stated that he had had an opportunity of discussing this latter question with Archdeacon Burns and he paid a tribute to the generous and broadminded manner in which the latter had received this suggestion.

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Minute No. 168.

(Continued).

The last suggestion His Excellency had to make was that the four unofficial members should be appointed for a limited period; possibly for four years, that is the normal life of the Legislative Council.

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MINUTES OF AN EXTRAORDINARY MEETING OF EXECUTIVE COUNCIL HELD AT  
GOVERNMENT HOUSE, NAIROBI, AT 10 A.M. ON FRIDAY THE 7TH MAY, 1937

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PRESENT: HIS EXCELLENCY THE GOVERNOR (PRESIDING).  
THE COLONIAL SECRETARY.  
THE ACTING ATTORNEY GENERAL.  
THE ACTING TREASURER.  
THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT.  
THE DIRECTOR OF MEDICAL SERVICES.  
THE ACTING DIRECTOR OF AGRICULTURE.  
THE DIRECTOR OF EDUCATION.  
MAJOR THE HON. F.W. CAVENDISH-BENTINCK.  
HON: CONWAY HARVEY.  
VEN: ARCHDEACON THE HON: G. BURNS, O.B.E.  
HON: DR. S.D. KARVE.

ABSENT: THE CHIEF NATIVE COMMISSIONER.

CONFIRMATION OF THE MINUTES:

The Minutes of the Meeting of the 1st May, 1937,  
were confirmed.

MINUTES:

Minute No. 170.

REORGANISATION  
OF EXECUTIVE  
COUNCIL.

EX. CO. 17.

His Excellency intimated that he wished to be furnished with the individual views of members on the proposals recorded in Minute No. 168 of the 1st May.

THE DIRECTOR OF MEDICAL SERVICES stated that he was opposed to a reorganisation of Executive Council on the lines suggested, since he regarded it as a retrograde step. He invited attention to the increasing importance now attached in the British Isles to the main social services vis-a-vis the well-being of the people as a whole, and sketched the growth of the conception of the social services such as Medicine, sanitation, education, agriculture, town planning, etc., as one unit of constructive policy. He was apprehensive of any action which might tend to disintegrate this unit of policy into entities with confused aims and interests.

He suggested that the official composition envisaged by His Excellency would result in the view-point of the mass of people in Kenya being lost sight of and feared that the real welfare of the country would be subjugated to political expediency.

The Director of Medical Services, the Director of Education and the Director of Agriculture were in closer touch with the people than it was possible for the Colonial Secretary, Treasurer and Attorney General to be and their presence in Executive Council ensured that due consideration might be accorded to the real needs of the people. At the meetings of Executive Council personal contacts were made with Heads of Departments engaged on work similar to his own, action could be synchronised, a single aim could be formulated and economy of effort effected.

He sketched the original functions of Crown Colony Government as based on :-



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(continued)

- (i) the keeping of the King's peace.
- (ii) the abolition of a grant-in-aid.
- (iii) the elimination of as many of the defects existing in the administration of "justice" as could conveniently be effected.

These functions had been carried out by the Executive Council as originally constituted. The introduction of the Directors of Technical Services had encouraged the growth of a conception of a further function as the chief purpose of government:-

- (iv) the promotion of the development of the people themselves in health and in efficiency;

and in this connection he was of opinion that the Commissioner for Local Government, Lands and Settlement properly held a seat in Council, since the disposal and use of land was an important part of the Framework of social development. He feared that the withdrawal of the officers representing these services would result in a loss of co-ordination, and retard the development of a progressive policy.

Turning to the practical side of the reduction in numbers he stated that he was unable to agree that Executive Council was over large. He did not think that the transaction of business was hampered by the size of Executive Council, but, if anything, the reverse was the case. The formulation of policy was effected round a table, whereas otherwise it could only be carried out, if at all, through tedious channels. In this connection it was for consideration that it was not mandatory on His Excellency to accept the advice of Council and therefore the more advice available to him the better it was. The position would be otherwise if acceptance of advice were mandatory, but Executive Council was not a cabinet and His Excellency was not in the position of a Prime Minister, who must carry a majority with him. At the same time he was sure that the Heads of Technical Departments were not accustomed to advance the interests of their own Departments at the expense of the welfare of the Country or each to argue only a "departmental" case. If that were so he would agree that they had no right to a position on Executive Council, he would go further, he would say that they had no correct appreciation of the functions of their offices as advisors as to how the well being of the people could be advanced.

THE COLONIAL SECRETARY suggested that most of Doctor Paterson's points would be met by the practice of summoning Heads of Departments to give their views to Executive Council as expert witnesses, their technical advice would be no less available than if they continued to be members of the Council.

MAJOR CAVENDISH-BENTINCK expressed himself as in agreement with His Excellency's proposals. At this stage he wished to limit his remarks to the main question of the proposed reduction in numbers of the suggested reorganised Council and not to deal with the other questions of detail referred to in Minute No.168.

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(continued)

(i) The reduction in numbers would be an improvement on the present practice since it would make for the speedier transaction of business.

(ii) In his opinion the present Council might be said to be somewhat cumbersome, in that too many purely technical officers were included solely by virtue of the office which they filled, whereas the proper function of such officers should be that of advisers on technical matters. Good technical officers were bound to be idealists and as such were apt to look on all questions from the point of view of their own Departments, and were not necessarily "ex officio" qualified for taking an executive part in the government of the country, framing general policy, etc. The duty of Executive Council was to select and co-ordinate views, and to advance the evolution of well proportioned plans of progress and development. He felt that, with its existing personnel, the personality of a persuasive or dominating Technical Officer might, and indeed had in the past, tended to throw the whole "policy-machine" of Government out of gear. Real progress could only be achieved if all Departments marched in step towards a common aim, and Executive Council should set the pace.

(iii) He hoped that under a new scheme such as was envisaged, it would be possible for individual members to raise matters for discussion. At present deliberations were too closely restricted to a cut-and-dried agenda. Occasions arose, not infrequently, when he would like to feel empowered to bring certain important matters to the notice of Executive Council. In his experience it was the most likely agent for reaching not only a definite decision, but an amicable decision on questions which, owing to the existence of conflicting interests or points of view, if ventilated through ordinary channels, would be very difficult of solution, and for that reason were under present conditions often left in abeyance.

(iv) While admitting that Executive Council was not in fact a cabinet, he preferred to visualise it as carrying out the functions of a cabinet, that is, formulating a co-ordinated policy for the welfare of the country.

THE DIRECTOR OF EDUCATION stated that, in the main, he concurred with the views put forward by the Director of Medical Services. He added that:-

(i) Even in matters in which they were not directly concerned the advice of the Heads of Technical Services would, in his view, be of value since Executive decisions would then reflect a more general viewpoint.

(ii) Though he imputed no unworthy motives to the two European Elected Members - who would form 25% of the proposed Council - it did not appear humanly possible for them to offer His Excellency unbiassed advice. They were not free agents since they were responsible to their colleagues and constituencies. In fact 25% of His Excellency's advisers would represent a population of 18,000

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vis-a-vis the native population of 3,000,000.

(continued)

(iii) He foresaw certain difficulties in the meagre official representation in Council. It was not impossible that, in consequence of promotions from overseas, or absences on long leave or owing to sickness, occasions would arise when the officers occupying the ex officio seats might be men with slight experience of Kenya's problems, or of a junior status. Unofficial representation would then be dominant by virtue of experience and prestige and His Excellency would be placed in a most difficult position.

From time to time, as had happened in the past, there would arise questions on which there would be a conflict between the unofficial and official communities. In such cases His Excellency would be faced with either having to decide against unofficial opinion or be driven to go against the advice of his senior officials. This must eventually force His Excellency into the political arena. He considered the responsibility was greater than a Governor should be called upon to bear.

THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT said that he had two points to make. Dealing first with the less important, he pointed out that he was not a technical officer and was not the head of a technical service. His post was a super-post in the Colonial Administrative Service and his functions were part and parcel of the Administration. It had been part of the Secretariat from its creation in 1927 until 1954 when the present Department was formed: he had always made it clear that he regarded that action as a mistake. He considered that the officer performing the duties of this post should be a member of Executive Council as he had to supervise and control local authorities in the name of Government and exercised the functions of the Central Government in relation to them. Under the Pim proposals his duties would be divided between two of the three Secretaries and would then be represented in Executive Council, but until this re-organisation took effect he felt that the position both of Government and of local authorities would be weakened if his post were removed from Executive Council.

As regards the second and major point, viz: the proportion of official and unofficial advisers, the Executive Council had important executive duties to perform and considerable responsibilities and was, in fact, the Executive Government. It must, therefore, not only command public confidence but also be in a position to govern. He doubted whether a Council reduced as proposed would command the confidence of all sections of the community and the task of Government would be seriously hampered if the Governor were frequently placed in the position of choosing between the advice of his official and that of his unofficial Counsellors. There had been sharp divisions of opinion in the past and these would no doubt also occur in the future. The Executive Council was not a Cabinet if only because the unofficial members had no responsibility and, whilst he entirely agreed that the present proportion

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(continued)

of unofficial to official members should be increased, he had serious misgivings that the present proposals swung the balance too far in favour of the unofficials.

DOCTOR KARVE stated that he was in favour of the present constitution. He felt that representation on the basis of the Pim Report, namely, by three Secretaries and the Attorney General, would narrow the viewpoint of Council. He considered that the presence of the technical heads gave a desirable breadth of vision. He suggested, however, that the difficulties might be overcome by the appointment of a Secretary to represent the Medical, Education and Agricultural Departments.

THE COLONIAL SECRETARY expressed the view that this suggestion was impracticable. Under the Pim, or parallel proposals departments would be represented by one or other of the proposed Secretaries. He pointed out that there was no general precedent for the appointment of technical heads to Executive Council. Out of a representative group of Crown Colony Executive Councils numbering twenty-one, the Director of Medical Services appeared only on about seven, and the other technical officers on even less. The only group was the only one in which was general. In his opinion, the natural corollary to the acceptance of the Pim proposals for three Secretaries.

HIS EXCELLENCY pointed out that, if the argument that technical departments must be represented was reasonable, then Executive Council should be augmented by the appointment of the General Manager of the Kenya and Uganda Railways and Harbours, which played a major part in the development and prosperity of the country. Similarly the Department of Defence had an equal, if not greater, claim to representation than that of those at present represented. In his view the argument was thereby invalidated.

MR CONWAY HARVEY did not feel that a smaller Council would command less respect. He did not see any objection to Council possessing a political bias. His definition of politics would be "the business of the country", thus Executive Council should be to some extent "political". The representatives of European Elected Members never had regarded themselves, when advising as Executive Councillors, as unduly influenced by the views of their colleagues and constituencies. Members often entered the room with sharp divergencies of opinion but by assimilating the viewpoints of others their divergencies were often brought into line. During intermittent membership of Executive Council over a long period, he could recall no occasion on which there had been an official versus unofficial split on a point of policy or principle. He had the greatest respect and admiration for the Kenya heads of technical departments, and he appreciated the value of their advice on all matters germane to their departmental activities. He felt, however, that their connection with Executive Council should be confined within these limits, in order

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(continued)

that they might be freed to deal with the more important administrative duties internal to their departments. He supported His Excellency's proposals.

ARCHDEACON BURNS stated that he held no strong views though in his opinion a reduction in the size of Executive Council might be unwise. The country was composed of units and it seemed desirable that these units should be represented. In this connection he did not feel that the size of Executive Council really hampered its deliberations. In seven years he had seen members seat themselves at the table with bitterly divided views and yet unanimous agreement was invariably reached.

He paid a tribute to the idealistic outlook of the Medical, Education and Agricultural Departments and their work during the years he had lived in Kenya. His only desire was that native welfare should not suffer from lack of representation. In this connection he asked whether, as a result of their withdrawal from Executive Council and their consequential exclusion from participation in the formulation of Government policy, the heads of technical departments would be granted a free vote in the Legislative Council.

THE COLONIAL SECRETARY at His Excellency's request, intervened and stated that such a proposal was obviously impossible of acceptance. Government policy would be formulated in Executive Council and heads of technical departments would be afforded an opportunity of submitting their views. Subsequently it would be their duty, as in the past, to share with other members of Government in the duty of making the accepted policy effective.

MAJOR CAVENDISH-BENTINCK asked if he might be allowed to offer some further observations in the light of what had been said.

(1) The Director of Education had suggested that it would not be possible for unofficial members, notably if Elected members, to offer His Excellency unbiased advice, in that they would not be free agents, but would be responsible to their colleagues and constituencies. The Commissioner for Local Government, Lands and Settlement had said on the contrary that there were members of Executive Council who owed no responsibility and that an increase in the ratio of such members to the remainder would tend to damage its stability. He had suggested that at the moment the present Executive Council commanded the confidence of the public by virtue of its composition, and that any reorganisation might weaken such confidence.

Major Cavendish-Bentinck stated that he could not agree with either point of view. In point of fact, the unofficial members would have certain responsibilities towards their constituencies and their colleagues but their length of experience and general knowledge, their interest in the welfare of the whole country and their duties as impartial advisers to His Excellency would, in his opinion, constitute other equally binding responsibilities which would render the advice of such persons very valuable.

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(continued)

(ii) Nomination to Executive Council should not be made on a communal, racial or sectarian basis. No member should be nominated as specifically representing any community, but on Executive Council all members should regard themselves as representing all communities, races, creeds, etc. and should proffer advice on the lines which in their opinion would be conducive to the greatest good to the Colony as a whole.

(iii) The less representative and the more advisory in nature and reduced in size Council became the less would be the likelihood, in his opinion, of irreconcilable divisions of opinion.

(iv) Major Cavendish-Bentinck also felt that it should be borne in mind that elected representatives were in a far better position to assist the Governor in carrying out any line of policy agreed upon in Council than were purely non-representative persons, especially on occasions when such policy might be misunderstood or unpopular outside, and that any increase in the proportion or ratio of such members to the remainder would undoubtedly strengthen and not weaken the confidence of the public in any reorganised Executive Council.

THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT thought that Major Cavendish-Bentinck had misunderstood his reference to "responsibility". He desired to explain that his meaning was that whilst the official members of Executive Council were responsible to Government, the unofficial members were not: they could (and often in the past had done so) vote in Legislative Council against measures which had been approved in Executive Council.

HIS EXCELLENCY explained that, in his view, by means of their service on Executive Council, unofficial members were given a clearer insight into the working of the Government machine and a conception of its policy. This should lead to unanimity of thought and purpose.

THE ATTORNEY GENERAL expressed himself in agreement with the Colonial Secretary. The heads of technical departments could always be summoned to express their views, and these views could be sifted and co-ordinated by the administrative councillors. With reference to the remarks of the Director of Education, he saw no difficulty in the presence of officers in Council promoted or transferred from other colonies. In fact, their experience in other colonies would strengthen rather than weaken Council's deliberations.

In his view Council was unwieldy as at present constituted.

THE DIRECTOR OF MEDICAL SERVICES asked if he might submit additional views :-

(i) He could not agree that the absence of the Director of Medical Services from Executive Council in other Crown colonies was an argument for his exclusion from the Kenya Executive Council. Through

Minute No.170.

(continued)

his inclusion - with other technical heads - in Executive Council a policy of social education and progress had been evolved in Kenya which was far ahead of any previously conceived plan. There was no reason why Kenya should retreat because other portions of the Empire did not advance. The only way in which this progress had been achieved was that, by their personal contacts in Executive Council, technical heads were afforded the opportunity of advancing their proposals on all occasions and of indicating where social issues might arise. There were certainly occasions when small committees were advisable: namely, when a single but complicated question had to be discussed and there were available three or four persons well acquainted with it, so well acquainted as to know when to call evidence. But Executive Council dealt with policy covering an enormous field and the issues were often obscure. It might well be that the existence of a social issue would pass unrecognised in the absence of officers whose functions entailed the study of such issues. Exclusion would mean loss of influence and the system of Government would go back in to the wilderness of bureaucracy.

(ii) He did not agree that the Secretaries under the P1a scheme could represent the views of the Departments. In any circumstances, the suggested allocation of departments to Secretaries was anomalous.

(iii) He did not feel that Major Cavendish-Bentick appreciated the outlook of a health department in those days which must regard as within its ambit not only medicine and sanitation and town planning, but almost all that went to the planning of the country side as well.

(iv) His departmental duty during the past five years, he said, had been to reduce medical expenditure by £50,000. He had done this and had not complained on that account. The work so far done in the treatment of disease, the provision of hospitals and so on, was but a bagatelle compared with what was required, but without prosperity more was impossible. Time and time again he had said that, if financial circumstances warranted an additional expenditure of £50,000 or £100,000, he would not ask for it for his own department but for the promotion of agriculture.

The presence of the technical heads on Executive Council did not waste but saved time. It frequently meant that things were done which otherwise would be left undone.

(v) The only occasion on which he would have an opportunity of raising those larger issues, if the reorganisation proposals were accepted, would disappear because when matters had reached the Legislative Council policy had been formulated and nothing more could be said. He believed that as a result of the absence of a Director of Medical Services, the Director of Education and the Director of Agriculture from Executive Council the real business of Government, namely, the development of the people, would tend to be lost sight of.

Minute No.170.

(continued)

THE COLONIAL SECRETARY suggested that there was some misunderstanding as to the real functions of Executive Council.

The functions of Executive Council were not to be confused with those of a board of agriculture or of Economic Development. It was not necessarily the business of Executive Council to initiate schemes; that was the duty of Heads of Departments. Executive Council was a clearing-house for ideas. He therefore felt that there was no risk of initiative being cramped if the heads of technical departments withdrew from its deliberations.

THE ACTING TREASURER concurred fully with the views expressed by the Colonial Secretary.

THE DIRECTOR OF EDUCATION said that it seemed only fair to point out that the charge that Executive Council was cumbersome had only been made since the suggestion of reorganisation to afford greater proportionate unofficial representation had been mooted. Reduction was perhaps, on the face of it, simpler than increase. He had a feeling that the basis of the belief that there would be less disagreement under the proposed composition was the hope of the Elected Members that they would more often get their own way.

HIS EXCELLENCY congratulated members on the manner in which they had expounded their views. He appreciated the arguments in favour of the present constitution of Executive Council, but his feeling was that they were not sufficiently strong to outweigh the advantages of reform.

He fully realised the progress made in social education since Executive Council had been augmented and it was obvious that at one time the essential part played in the constructive development of Kenya by such activities as town planning, education and medicine, had not been generally appreciated. It was equally obvious that this connection was now understood, and he himself preferred to regard the reduction of Executive Council to purely administrative representation on the official side as a further advance in the evolution of Kenya. The directors of technical departments would have more time in which to direct the carrying into effect of that policy and by more extensive travel would achieve a closer contact with the people.

On His Excellency inviting the views of members, it was agreed that no vote should be taken but that a comprehensive minute of the deliberations of Council should be submitted for confirmation at the next succeeding meeting.

Subject to the approval of the Secretary of State being accorded to the proposed reorganisation on general lines, His Excellency sought the views of members as regards the action desirable in respect of the four questions of detail which he had raised at the preceding meeting:-

- (1) Council was in agreement that the fourth member should not necessarily be selected from amongst the members of the Legislative Council.



(68)

Minute No. 170.

(continued)

THE COLONIAL SECRETARY suggested that there was some misunderstanding as to the real functions of Executive Council.

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(i) Council was in agreement that the fourth member should not necessarily be selected from amongst the members of the Legislative Council.

Minute No.170.

(continued)

(ii) Council was in agreement that, as in the past His Excellency's discretion in the choice of members should be completely unfettered. It followed therefore that if the necessity for the nomination of the fourth member to a seat on the Legislative Council interfered with the exercise of that discretion, such nomination should not be made necessary.

In this connection, Major Cavendish-Bentinck and Mr. Conway Harvey, though fully concurring with the above, expressed the hope that either by the provision for him of an extra seat, or by his nomination as a member representing native interests, the fourth member would normally be found in Legislative Council. They felt it desirable that, through this medium, he should keep in touch with public affairs and considered that he would thus be endowed with a sense of responsibility which, in their opinion, he would otherwise lack.

(iii) Council was in agreement that no insuperable difficulties would arise if the fourth member had not a seat in the Legislative Council.

(iv) Council was in agreement that the period of appointment to Executive Council should be limited to one of four years; provided that appointments were made in such a way as to cover the lag between the dissolution of one Legislative Council and the assembling of the succeeding one.

His Excellency intimated that a record of the views of Council would accompany the despatch to the Secretary of State outlining his proposals. Certain remarks made in the course of its deliberations lent colour to the view that the proposed reorganisation of Executive Council was regarded in the light of an experiment. He did not regard it in this light at all and he considered it would be fatal to do so. In his view it was a natural stage in a natural process of development.

Confirmed:

GOVERNOR.

Nairobi,

May, 1937.

38077/37.

f

C. O.

Mr. Flood. 8-6-

Mr.

Mr.

Sir C. Parkinson.

Sir G. Tomkinson.

Sir C. Bottomley. 10-6

Sir J. Shackburgh.

Parly. U.S. of S.

Parly. U.S. of S.

Secretary of State.

*Ans'd. (8)*

AIR MAIL.

*2 Prop*

*1572*

June, 1937.

DRAFT.

*Dear Brooke Popham,*

AIR CHIEF MARSHAL

SIR ROBERT BROOKE-POPHAM,  
G.C.V.O., K.C.B., G.M.G., D.S.O.,  
A.F.C.

I find that I have not acknowledged the receipt of your letter of the 7th of May describing the progress with regard to the re-organization of the Executive Council. I have already, however, dealt with the matter fairly fully in my letter of the 27th of May; and, in speaking in the House of Commons on the Colonial Office Vote on the 2nd of June, I practically gave my blessing to your proposed Model Council. I was careful, however, not to be

**FURTHER ACTION.**

too definite about it, but said that those were the proposals. They seemed to receive general acceptance as far as one can judge from the reception given to the remarks in debate.

I read your remarks about Dr. Paterson with some amusement. He is long-winded and the tendency displays itself in his written productions even more than in his spoken utterances, but among the mountain of chaff there is usually a grain or two of wheat, though it sometimes is hard to get at. He is inclined, I think, to be a visionary and to look rather to the fulfilment of Utopian dreams for the future than to get on with the job at present to hand. For instance, he told De La Warr that he envisaged a huge Medical Service for East Africa employing thousands and thousands of medical men, though he did not

stop

C. O.

- Mr.
- Mr.
- Mr.
- Sir C. Parkinson.
- Sir G. Tomlinson.
- Sir C. Bottomley.
- Sir J. Shuckburgh.
- Perms. U.S. of S.
- Perms. U.S. of S.
- Secretary of State.

DRAFT.

FURTHER ACTION.

stop to think how the funds to pay them were to be provided. That is all right; anyone would agree that a lot of medical men could be usefully employed but coats have to be cut according to cloth. I ought, however, to say that the policy of adding Directors of Medical Services to Executive Councils was a deliberate drive from here. The history of it is rather interesting because it goes back to the time at the beginning of this century when the discovery that malaria and other tropical diseases were carried by insects was beginning to bear fruit. By degrees it was realized at this end that sanitation and anti-mosquito measures were the most powerful weapons in combatting disease among the European population in the Tropics, and especially in West Africa, which then <sup>held</sup> <sup>long</sup> was ~~valued~~ <sup>valued</sup> very much with its reputation of the "white man's grave". It became

became

picture, then he can be brought into  
the Council as a temporary <sup>member</sup> ~~measure~~  
and turned out again when his particular  
business is over. I expect you will  
have to do a good deal of that.

*Yours sincerely,*

*W. Wendell Gore*

AIR MAIL.

See letter 22/4

3/108

2/5  
Sir J. W. Coffey etc.  
to rec. There is no  
urgency or hurry. 7th May, 1937

GOVERNMENT HOUSE,  
KENYA,  
EAST AFRICA.

31 MAY 1937  
C. O. P. O. C.

My dear Ormsby-Gore,

I see in the paper that you were asked a question on Wednesday on the subject of the reorganisation of Executive Council here, so you might like to know the stage that we have reached.

2. I discussed the reorganisation individually with practically every member of the present Executive Council, and in particular those who would go off Council under the proposed reorganisation. Last week, May 1st, I outlined my proposals for the reorganisation, to the whole of the Executive Council and asked them to consider them without discussing them at that time. To-day we had another meeting purely to discuss the <sup>proposals which I outlined in my</sup> ~~reorganisation.~~ letter to you of <sup>the 24th.</sup>

3. There was, as I expected, a good deal of opposition to the proposals from <sup>some of</sup> the ex-officio members who will come off. Paterson was the chief speaker, and I must confess that I thought the length and the circumlocution of his statement was a very strong argument in favour of moving the Director of Medical Services off the Executive Council in order.....

order to allow others to get down to solid work. However, out of the mass of material one could dig out a few quite sound arguments for the continued presence of the Director of Medical Services. Morris, who, as one might expect, was blunt and direct, stated that the discussion was academic because it was evident that the reduction of the Executive Council had been decided, but prophesied that the result would be to put more power in the hands of the unofficial members (with which I agree) and hinted that the Governor would find himself in the awkward position of being torn by the wolves in the absence of the support of his Directors. Karve, the India Member, was against the proposal on the whole, and Archdeacon Burns, though <sup>not opposing</sup> ~~expressed~~ my view that he himself should be changed, also thought that the Director of Education and the Director of Medical Services ought to be retained. <sup>Lavender - Bontine & Conway - Harvey</sup> ~~naturally supported the proposed reduction.~~

4. I did not put ~~them~~ <sup>it</sup> the vote ~~as~~ (it would actually have been even) but after I had said that I still considered the arguments in favour of a reduction of members by the elimination.....

GOVERNMENT HOUSE,  
KENYA,  
EAST AFRICA

elimination of the Directors of Services were stronger than the arguments the other way, the Council agreed that no more argument was necessary and <sup>that</sup> the next course would be for me to put up an official letter to you with definite proposals. <sup>Agreed that it should be</sup> But <sup>that</sup> accompanied by a very full precis of today's proceedings of the Executive Council, so that you could see the arguments on the other side. I don't see how I am going to get this letter off until the end of the month, because on the 14th I go touring up North, then straight on to Lombasa, and don't get back from there till the 31st., <sup>but if you send a signal I say the</sup> ~~matter's urgent,~~ <sup>I'll do it somehow</sup>

Yours sincerely,

W. Brooke-Popham

THE RIGHT HONOURABLE ... OLSBY-GONE, P.C., M.P.,  
COLONIAL OFFICE,  
DOWNING STREET, S.W.1.

2

C. O.

Mr. Flood 20-5

Mr. *Clouston*

Mr.

Sir C. Parkinson.

Sir G. Tomlinson.

\* Sir C. Bottomley 25-5

Sir J. Shuckburgh.

+ Permt. U.S. of S. 26-5

Parly. U.S. of S.

Secretary of State. (WD) 26-5-37

For the Secretary of State's Signature.

27<sup>th</sup> May, 1937.

*Sir Brooke Popham,*

**DRAFT.**

AIR CHIEF MARSHAL

SIR ROBERT BROOKE-POPHAM

G.C.V.O., K.C.B., C.I.C., D.S.O.,

A.F.C.

*Copy kept in [unclear]*

I have received your letter of the 24th of April, conveying your first impressions of Kenya, with very real interest. It is always a matter for speculation how a Colony, and especially Kenya with its assorted problems, will strike a new-comer who has not had such experience in Colonial Administration. I am glad to find that your impressions are on the whole favourable to the Government to the people with whom you have to deal. The great majority of the people are, I believe, really good sorts.

Now to take your points in order and to reply to them. I fully recognise what you say about Wade and I was very glad indeed to be able to recommend him for a Knighthood in the Coronation honours List.

**FURTHER ACTION.**



He has indeed rendered great service in pouring oil on very troubled waters.

I do not see what you could have done except ask Lord F. Scott and Schwartz to come back on to Council. In a way, your asking them and their promptly returning might be regarded as a slap at Byrne, but having regard to all the circumstances, nothing else would have met the situation. If you had appointed somebody else they would have felt insulted and would have said it was a breach of the understanding existing with the elected members.

I am glad to think that you are getting on with your reorganisation of the Executive Council, and I do not think that a Council of eight will be too large. I entirely agree with the view which you express that we should try to get away from the idea of having sectional representation on Executive Council, and indeed, I wish the same could be felt and practised in regard to Legislative Council, but I fear that is a dream. It will be necessary, I think, to have an Indian.

G. O.

Mr.

Mr.

Mr.

Sir C. Parkinson.

Sir G. Tomkinson.

Sir G. Bottomley.

Sir J. Shuckburgh.

Perms. U.S. of S.

Peris. U.S. of S.

Secretary of State.

DRAFT.

*The sort of unofficial representation I should think best would be:- one elected member of Leg. Co., one Indian and two nominated from persons of standing such as a non-political farmer and a commercial man.*

FURTHER ACTION.

Indian. After all a definite pledge was given to that effect in the 1923 negotiations and with India in its present temper, there would be a fearful row if the Indian Member were removed. Opposition to the removal of an unofficial specially charged with representing ~~Indian~~ <sup>native</sup> interests is not likely to come so much from your own Missionaries or from Archdeacon Burns as from interested parties at home here who affect to believe that native interests cannot safely be trusted to any official even. I am afraid there may have been some justification for such a view on different occasions in the past, but we have learned by experience and I should certainly agree with you in thinking that native interests are perfectly safe in the hands of the officials and the Governor.

You may have, as you say, some difficulty in persuading certain people that it is to the general good that they should

chase

abase themselves and leave the Executive Council.  
The trouble about that is, of course, the precedence  
and extra dignity of the Executive Council, which  
people value and are loath to give up. But after  
all, there is good precedence<sup>t</sup> for it, in that  
Ministers have from time to time been invited  
to get out of the Cabinet<sup>ing</sup> in order to make it

smaller. *Your Table of precedence details of uniform  
etc may require consequent revision, and the "status"  
of people here tell me that the growth  
of criticism of the elected members among their  
constituents has been noticed for some years past.*

It would be a good thing if the representation in  
Council got out of the hands of *a small body*  
more or less professional politicians, but as things  
are, it would be hard to see how that will be done unless  
the ordinary settler *a more & different in  
takes public affairs* is more politically minded. If  
prosperity, as a rule, increases, then the settlers  
who are prosperous will be less likely to bother  
with politics, but a healthy criticism of their  
representatives in Council is all to the good. A  
lot, of course, depends upon the press and it is a  
pity that the main local paper should be so much a  
mouthpiece

*of heads of  
departments  
preserved in  
some such  
ways.*

G. O.

- Mr.
- Mr.
- Mr.
- Sir C. Parkinson.
- Sir G. Tomlinson.
- Sir C. Bottomley
- Sir J. Shuckburgh.
- Perm. U.S. of S.
- Parly. U.S. of S.
- Secretary of State.

DRAFT.

**FURTHER ACTION.**

mouthpiece of Grogan's. But so it is. What  
you say about feeling against Indians, alas,  
only too well known to me, but I do not  
altogether agree with you that the dislike  
of the settler <sup>for</sup> the Indian is illogical.  
The settler always feels that the Indian is  
an intruder and is trying to squeeze him (the  
white settler) out of his place. The Indian  
is *not always a* ~~an~~ unpleasant neighbour and in the case of  
a good many of them, his habits are beastly  
while his increasing political-mindedness  
and truculence gives no little annoyance.  
Also there <sup>is</sup> the fact that the Indian in Kenya  
is usually *not out of the top drawer* ~~a low class~~ and there are  
quite enough people settled in Kenya ~~with~~ <sup>first-hand</sup> ~~to~~ <sup>to</sup> have experience of India and Indians ~~which~~  
will make them feel great resentment at being  
asked to meet the Kenya Indian on equal  
terms. The same people would have no  
objection to meeting an Indian gentleman <sup>(in India,</sup>  
but they would tell you that there are none  
in Kenya, and if family and breeding are the  
tests

tests, they would be right. However, I am glad to think that you are trying to bring them together, though it will be a difficult task.

With regard to the chilled beef question, I will certainly do what I can to help

Kenya to get a reasonable allowance <sup>for</sup> chilled beef. *I have had a preliminary word with the Minister of Agriculture. My people here had indeed taken it up already, but the difficulty has been that in making vast general agreements <sup>the</sup> ~~the~~ people in charge here have <sup>(had)</sup> to use a lot of give and take on existing circumstances.*

Everybody engaged in the meat trade, Australia, New Zealand, Canada, and Argentina was prepared to put

up a case for having an increased, or at any rate, not decreased quota for imported meat, while the British cattle raiser was demanding more protection

*\* the consumer was tending to take less beef rather than more owing to changes in the public taste.*

and more subsidies, in view of the difficulty of reconciling everybody, it was felt that it would be

difficult to get a ~~reasonable~~ quota for Kenya if the other people raised any serious objection. In view

of everything that has been said both here and in Kenya about the advantage of mixed farming, it is obvious that we must do all we can to secure a

market

C. O.

- Mr.
- Mr.
- Mr.
- Sir C. Parkinson.
- Sir G. Tomlinson.
- Sir C. Bottomley
- Sir J. Shuckburgh.
- Perm. U.S. of S.
- Parly. U.S. of S.
- Secretary of State.

DRAFT.

market for Kenya's exported meat and you can rely on <sup>me</sup> ~~us~~ here to do <sup>my</sup> ~~our~~ best. We <sup>ought</sup> ~~think~~ it advisable to warn Kenya that it might be a very difficult <sup>& complicated</sup> matter, but ~~we~~ shall not be content to leave it at that. You will probably be getting a further official despatch about <sup>it</sup> ~~the~~ ~~subject~~ fairly soon, and certainly the project will not be ruled out without writing for your further remarks.

*Yours sincerely,  
W. H. Murray-Jones*

**FURTHER ACTION.**

*while further difficulty arises because Kenya is not actually in the market as yet and can't be for a year or two.*

COPY

Copy kept in

Geneva

Government House,  
Kenya,  
East Africa.  
24th April, 1937.

Personal

Dear Ormsby-Gore,

You might like to know my first impressions of Kenya.

1. Everybody welcomed us with open arms, so much so that it became almost embarrassing to us, but I do feel that there is a genuine desire on the part of everybody to co-operate and help. Wade has been extraordinarily useful in every way and I should have been quite lost without him at the start. He has obviously had a very difficult time for the last two or three years and whilst being fully loyal to Sir Joseph Byrne, has smoothed over a great many matters that might have boiled up into acute controversy.

2. As you will probably have seen, I have invited the two Elected Members who resigned to come back on to the Executive Council and they have accepted. I have appointed Cavendish-Bentinck and Conway Harvey to act for them in their absence.

3. As regards the reorganization of the Executive Council, that is well on the way to being fixed up - a total of 8 Members, 4 official and 4 unofficial, apart from the Governor, the non-official to be appointed for a limited period, probably four years.

4. The main point that people here have brought up, both officials and non-officials, is that every member of the Executive Council ought to be regarded as representing the interests of Kenya as a whole, and that we should as far as possible get away from the idea that an individual

on

on the Executive Council represents some particular interest to the exclusion of others. I am all in favour of this principle because it does lead up to what one dreams of - all classes, races and religions pulling together with the one object of the constructive development of the country. Most people are agreed that, for the present at any rate, we must have an Indian member on Executive Council, but I feel that it is not necessary to have an individual representing Native interests in particular. We shall have the Chief Native Commissioner, apart from the Colonial Secretary, and I feel that it is wrong to assume that without somebody like Arc-deacon Burns the native interests will not be fully considered. I believe we should get far more value on Executive Council by the inclusion of an official member being somebody selected for his broad views and knowledge of the world as well as of Bengal. I hope this won't lead to an objection from the I.C.C., but if it does I am sure you will support my views, and if it will go to the I.C.C. that is their sole interest in the matter, I might quite well ask a Roman Catholic Bishop to represent the Council to represent native interests.

5. I am going to be a bit difficult in regarding one or two of the official members who are to appear on the benefit that they should no longer be members of Executive Council but they'll come into line soon. I don't have not tackled Arc-deacon Burns who may prove a real difficulty than the others.

6. Apart from the obvious job - such as Native taxation and reorganization of the Secretariat à la fin, I feel the main thing to do here is to get and pull everybody together. Apart from the feeling between

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5. I am having some slight difficulty in persuading one or two of the official members that it is to everybody's benefit that they should no longer be members of Executive Council but they'll come into line soon. So far I have not tackled Archdeacon Burns who may prove more difficult than the others.

6. Apart from the obvious jobs such as Native Taxation and reorganization of the Secretariat & the like, I feel the main thing to do here is to try and pull everybody together. Apart from the feeling between

116

officials and non-officials, I find a good deal of criticism of Elected Members from other settlers, and between those who live in Nairobi and those who don't, and between the different industries. This I feel can be got over, especially as I have found a genuine desire amongst all classes for the betterment of the African natives. But the most difficult problem I feel is that of the Indians. There undoubtedly is amongst most of the settlers an intense hatred of the Indian which, being quite illogical, is very difficult to argue about. I tried an experiment of asking half of the whole of the Legislative Council to luncheon on two successive days so as to include everybody and it was a most dismal failure - in fact, the second day we very nearly had an awkward scene in the drawing-room of Government House; however, that is now past history. It is obvious that I was trying to go a bit too fast in a laudable effort to bring everybody together, but I would sooner make mistakes than make nothing at all.

7. Apart from what I said in paragraph 4 above about the fourth member of Executive Council, I hope you will be able to help over another matter, and that is our quota of chilled beef. You spoke to me about this before I left England but I did not realise what an important matter it was then. Since going into it with the Agricultural authorities, I do feel that fixed farming is of the utmost importance to the welfare of Kenya in order to prevent the ground eventually going out of cultivation. Those best qualified to judge tell me that we shall not get mixed farming unless we can export chilled beef. The Liebig factory does not solve this problem. An official letter was written about this before I arrived here, but to my mind

mind has not put the problem as clearly as I could have wished, and I would ask that if it is proposed to turn down our request for a quota, I be asked to submit further explanations before the negative reply is sent. Apart from the justice of the case I am afraid that a negative reply will cause much bitter resentment.

8. One point I have learnt that might be remembered in the case of future Governors is the importance of a new Governor and his wife arriving here physically fit. It is not enough merely to be passed by a doctor as not ill. One ought to be in really hard hunting condition!

Yours sincerely,  
(Sgd.) R. BROOKE-POPHAM.

THE RT. HON. W. ORMSBY GORE, P.C., M.P.,  
COLONIAL OFFICE,  
DOWNING STREET, S.W.1.