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The Reconstitution of
Local Authorities

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THE RECONSTITUTION OF LOCAL AUTHORITIES

GENERAL

In paragraph 11 of the report of the Kenya Constitution Conference, 1960, it was stated that the aim of Her Majesty's Government was—

- (a) to build a nation based on parliamentary institutions; and
- (b) to achieve a general acceptance by all of the rights of each community to remain in Kenya and play a part in public life.

2. In the light of this statement the Minister for Local Government decided that the constitutions of local authorities should be reviewed. This review entailed an examination of the franchise as applied to local government elections, the composition of and representation on local government bodies and the powers and duties of the permanent staff of local authorities. All local authorities, including African District Councils, were consulted in order to obtain their views on the major points mentioned above.

3. The Government has taken fully into consideration the views expressed by local authorities of all categories and now proposes the amendments on the lines described in the following paragraphs. In putting forward these proposals the Government has been guided by the principle that only those who have made a contribution directly or who have made a sustained contribution indirectly to the cost of local government services in a local authority area should have a say in its management.

MUNICIPALITIES

Constitutions

4. All constitutions of the different municipal councils or boards should in future be made by Order of the Governor in Council of Ministers. This would standardize the procedure which at present varies.

Franchise

5. There should be one electoral roll with qualifications as follows:—

- (a) To have attained the age of 21 years on the qualifying day; and
- (b) either—

- (i) (the ratepayer) is, on the qualifying day, named in the valuation roll of the municipality then in force as the rateable owner of a rateable property included in such roll or, if there is no such roll, he is on that day a rateable owner of rateable property within the municipality; or
- (ii) (the householder) has, on the qualifying day, resided within the municipality for 12 months out of the preceding 18 months and is, on the qualifying day, the owner or occupier of residential premises:

Provided that, for the purpose of this paragraph, "owner" means the owner of a freehold interest or a lessee from the Crown or the Trust Land Board, or a sublessee from either of the foregoing, of the whole premises;

"occupier" means a person who, for valuable consideration, is entitled under a separate lease or tenancy agreement to exclusive occupation of such premises; or

- (iii) (the person who is entitled to free housing of the same standard as the householder) has on the qualifying day, resided within the municipality for 12 months out of the preceding 18 months, has received an income of not less than £75 per annum, and is, on the qualifying day, provided with residential accommodation which if it were not accommodation provided by the employer, would be capable of being let for valuable consideration under a separate tenancy of exclusive occupation; or
- (iv) (the business, professional man or trader) is, on the qualifying day, and has been for 12 out of the preceding 18 months, the proprietor of a licensed business or trade or of a registered or licensed professional practice which is conducted or carried on at premises which are within the municipality; or
- (v) (the spouse) has, on the qualifying day, resided within the municipality for 12 out of the preceding 18 months and is the spouse of a person qualifying under (i), (ii), (iii) or (iv) above.

(c) (The partnership or company vote). A partnership, or company registered under the Companies Ordinance, shall be entitled to be enrolled once in every ward in which such partnership or company qualifies under

(b) (i) or (iv) above, provided that no person shall qualify for a vote under subparagraph (b) (iv) above and this subparagraph.

Areas and Boundaries

6. (a) The area of a municipality to be defined by Order of the Governor in Council of Ministers.

(b) The boundaries of the wards to be defined by Order as in (a) above, due regard being paid to the area, rateable value and proper representation of the population and to the distribution and pursuits of the population.

(c) In accordance with the present law areas may be defined by proclamation as areas under the jurisdiction of a parish council to be known in future as a ward council to be defined by Order as in (a) above within the area of a municipality. The members of such ward councils to be elected on the same local government electoral roll.

Qualifications of Candidates: Aldermen, Councillors and Members of Ward Councils

7. (a) No change is proposed from the present law regarding qualifications of candidates, except that any racial element is omitted.

(b) The number of aldermen to be provided for by Order of the Governor in Council of Ministers and should not be more than one-third of the total number of councillors.

(c) The number of councillors of a municipal council or board to be defined by Order as in (b) above and the area which has been defined as a ward council either to be represented by councillors elected by the ward council as a whole to the municipal council or board, or by direct election or combination of both.

(d) Provision to be made for the continuation of nominated members to represent specific interests, especially that of the Government or para-statal organizations such as the Railways, etc.

(e) Provision to be maintained for the appointment of liaison members with other local authorities.

(f) Terms of office for councillors and members of ward councils should be three years, one-third of whom should retire each year; and six years for aldermen, one-half of whom should retire every three years.

In areas which are not susceptible of division into wards, the Governor in Council would in exceptional circumstances be empowered to order that councillors be elected to represent such religious and racial interests as he may decide on the basis of reserved seats elected by the electorate as a whole.

COUNTY COUNCILS

8. The Government sees no reason to vary the provisions for franchise and representation, etc., for counties from those suggested for municipalities. It must be recognized, however, that because of the large areas which the counties cover and the diversity of interests and population within those areas, it may be necessary to allow three-tier authorities. Provision should be made, therefore, for establishment of one or more ward councils within county district council areas. Such councils to be elected on the same franchise and to have representation on county district councils as suggested in the section devoted to municipalities. The powers of such ward councils would be defined by Order of the Governor in Council of Ministers. It is also proposed to provide for aldermen, to a maximum number being one-third of the total number of elected councillors, and for nominated and liaison councillors as in the case of municipalities. Constitutions will in future be laid down by Order of the Governor in Council of Ministers.

TOWNSHIPS

9. The Government has already accepted a proposal that a new form of township with an elected township board should be provided for. This means that in such cases the District Commissioner would no longer be the township authority. The members on such township boards would be elected on the same franchise as suggested for municipalities and, depending on the size of the townships, might be elected according to wards to be delineated by order, or by the whole board being elected to represent the total township area. These townships could be incorporated into African District Councils in the same manner as locational councils are now so incorporated. They could also be incorporated into county councils as county districts or remain as independent local authorities.

AFRICAN DISTRICT COUNCILS

10. Constitution and membership of African District Councils are at present laid down by Provincial Commissioners after consultation with the council concerned. There is such a great variety of African District Councils at the moment that it would not be desirable to lay down any standard form of constitution. It is proposed, therefore, that Provincial Commissioners should continue to consult with African District Councils at present.

11. Provision should be made for aldermen for African District Councils up to a number of not more than one-third of the total council.

12. It is not proposed to alter the franchise for voters in African District Council areas although the objective is to bring them into line with voters in municipalities and county councils as and when individual titles are issued and rating on individual properties can take place. It is not intended however that full registration shall necessarily have to precede an elevation to county status, reference to which is made in paragraph 15 below.

13. It is proposed that enabling provisions should be made in the Ordinance under which the Minister can incorporate a township or trading centre which at the moment lies within the geographical area of an African District Council within that council's jurisdiction, subject to the provision of town committees or elected urban councils as may be appropriate, and to representatives of these councils being elected to the African District Councils. Such urban areas should be able to be granted the same powers as a township and would indeed be the second-tier urban local authorities in such areas. The process of incorporation would be a gradual one.

LEGISLATION TO ESTABLISH LOCAL AUTHORITIES AND TO DEFINE THEIR POWERS AND DUTIES

14. It is also Government's view that it is desirable to have only one local government Ordinance for the Colony and for all powers, functions and duties to be clearly specified in the Orders constituting each local authority. Such Orders would refer to any enabling legislation as well as powers within the Ordinance itself. Provision would be made for a local authority to change its status in accordance with its development whether from urban district to municipal or African District Council to county council status.

15. As subjects from a legal point of view tend to become more complicated it is inevitable that it will not be possible to continue the present system by which comprehensive powers and duties are included in a local authority Ordinance. For example, the recent amendments to the Agriculture Ordinance lay down that local authorities may make by-laws on specific agricultural subjects with the consent of the Ministry of Agriculture. Similar proposals are under consideration with regard to the Traffic Ordinance and in a new Roads Bill. Equally a local authority's powers and duties in respect of public health are at the moment partly in the Public Health Ordinance and partly in the Local Government Ordinances. It would be proposed that such subjects would generally be dealt with by an Ordinance which would contain certain clear enabling powers to show exactly what the powers and duties of the local authority are in respect of that subject. This further proposal is not one that can be undertaken swiftly and full consultation would be necessary with local authorities. It does, however, appear a logical extension of Government's present policy of development of local authorities and one which will ensure that—

- (a) there are no doubts as to the power of a local authority;
- (b) local authorities can progress from a limited type of authority to a more elaborate one; and
- (c) any question of racial discrimination can and will be removed.

LOCAL GOVERNMENT SERVICE COMMISSION

16. Government has also under consideration the creation of a Local Government Service Commission. The reasons for this proposal are:—

- (a) It is very desirable in the long-term future to unify local authorities as much as possible, bearing in mind that the with the variation in pace of development in the country, separate circumstances will still require separate solutions.
- (b) In the same way as there is a strong move towards localization of Central Government staff, so too there must be an equally firm movement towards localization of local government staffs. As this comes about tribal loyalties must give way to efficiency and a unified local government service is desirable.

(c) An officer joining local government must have security if local government is to secure the best type of candidates. If the staff is to be deployed properly, it must be able to serve those councils where they are most needed. This can only be done efficiently under a unified local government service.

(d) It is essential to avoid competition between local authorities for staff as any form of competition would only result in inflated salaries.

17. The duties of such a Local Government Service Commission might be as follows:—

(a) To devise salary scales compulsory on all local authorities.

(b) To prescribe conditions of service, leave, pensions, method of recruitment, etc.

(c) To keep watch over the careers of all types of local government officers of the administrative, professional or technical grades.

(d) To advertise vacancies and send forward lists of possible candidates to local authorities who would make the final selection.

(e) To act as an appeal court in cases of dismissal.

(f) To arrange for training, including courses.

LOCAL GOVERNMENT CONVENTIONS

18. In the development of local government in Kenya the Government has naturally tended to follow U.K. practice. However, it is well known that there are many conventions which have been evolved in the U.K. over a long period of time which have never received legislative sanction. These conventions apply to many aspects of local government and not least in the conduct and standing of a local authority's officers. It is interesting to note that the State of Israel set up a special committee to produce a code to assist the civil servant in establishing guide lines for his own conduct. The reason for it was because there was no long-standing Civil Service tradition in Israel and they therefore considered codes in other parts of the world and finally produced a code designed for their own needs. Further in the U.K. the courts have from time to time established categorical rulings on the correct conduct of a local authority and its servants. They have, for example, laid down quite clearly that a treasurer has a fiduciary capacity so far as the spending of public funds is concerned. They have further laid down that a council may only spend its revenues in a reasonable manner. A council may not act arbitrarily nor try to stretch its powers to cover purposes which were never contemplated. For example, it may not raise the general level of wages, introduce a principle of equal pay, give free travel to old people, nor subsidize rents abnormally. These are all in effect new social services. A decision to operate such services must be taken by the national Government and specific powers in that respect granted to the local authority before it itself can undertake such social services.

19. With this in mind, it is the intention to introduce into the legislation certain features of U.K. local government conventions which have stood the test of time and which are considered suitable to the conditions and needs of the Colony. These will include the rights and duties of chairmen, councillors and officers and the relationship between them. It will also regulate the composition, function and responsibilities of committees and their relationship with

the council as a whole. New audit and surcharge provisions will be included and provision made for model standing orders within limits to meet local needs which will be applied by law. Finally, it is proposed to include in the Ordinance a right of appeal to the Minister if any councillor or officer feels that the law is not being observed in the above instances. The Minister might appoint an inspector to assist him in making a decision on such an appeal or alternatively it might be desirable to refer the case in issue to the courts.

CONCLUSION

20. It must be appreciated that before these proposals can be put into effect, legislation will need to be drafted and all local authorities will therefore have ample time for considering them in detail when the legislation is published.