

**LANCASTER CONSTITUTIONAL NEGOTIATION PROCESS
AND ITS IMPACT ON FOREIGN RELATIONS
OF POST-COLONIAL KENYA, 1960-1970**

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DECLARATION

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DEDICATION

To my beloved family,
for their unreserved understanding

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ABSTRACT

Kenya's independence constitution of 1963 was a negotiated document that was expected to provide a framework capable of embodying the interests of all groups in a sustainable manner. These groups had emerged on racial lines and were involved in racial tensions pitting on the one hand Africans who had been forcibly dispossessed of their lands and displaced, and on the other the white settlers who had a mission of turning Kenya into a "white man's country". Between them were the Asian immigrants who dominated the fields of commerce and professional services, and who sought racial parity in governance. The tensions intensified when the British government declared its intention to grant independence under majority rule. Independence implied that a new constitutional dispensation had to be negotiated between the British government, the declining settler-based colonial order, and the African nationalists. Negotiations took place in a series of conferences that were held in Lancaster House, London, and at Government House, Nairobi, in 1960, 1962 and 1963. At the end of the negotiation process, a constitution was promulgated that was expected to provide an effective instrument of governance in the new independent nation. However, the constitutional document immediately became a subject of amendments whereby eleven amendments were enacted between 1963 and 1969. This study sets out to investigate why, despite being negotiated, Kenya's independence constitution was subjected to so many amendments within such a short time, and the implications of the negotiation process on governance and foreign relations. The study has three objectives. First is to examine and analyse the background and nature of the 1963 Kenya constitutional negotiation process and the resultant agreement. Second is to demonstrate how the dynamics of the negotiation process influenced the outcome and shaped the foreign policy direction and governance of a newly independent state. Thirdly is to evaluate the correlation between the composition of the actors and their divergent interests and its impact on subsequent constitutional amendments,

foreign relations and nature of governance. The Theories of Political Realism, Dependency and Classical Pluralism are used to explain the connection between power and interests, and to account how power was applied in the negotiation process. The assumptions of the study are that the process and outcome of negotiations is determined by the context, typology of actors and nature of the divergent interests being negotiated, the amendments to the constitution after independence were the result of the failure of the negotiations process to address and secure the interests of the recipients of the constitution, and preservation and sustainability of a constitution largely depends on the perceptions, interpretation and the shifting hegemonic interests of the power wielders at any given time. The study's thesis is that the negotiation process had implications on governance and foreign policy direction in Kenya, and that the British government, which occupied a position of power as the coloniser, played a paternalistic role in the pursuit of its long-term interests in a power-based negotiation process. Qualitative data was collected through documentary analysis and key informant approaches and was subjected to content analysis. The data revealed that Britain used its relative power to control the negotiation process resulting in a fundamentally flawed process and a constitution that was not sustainable. Moreover, the negotiation process drew Kenya into the Western side of the ideological divide amid the dynamics of the Cold War.

ABBREVIATIONS

AAMK	-	African Anti-colonial Movement of Kenya
AEMO	-	African Elected Members Organisation
CEMO	-	Constituency Elected Members Organisation
CHRI	-	Commonwealth Human Rights Initiative
HMG	-	Her Majesty's Government
HMSO	-	Her Majesty's Stationery Office
KADU	-	Kenya African Democratic Union
KANU	-	Kenya African National Union
KAU	-	Kenya African Union
KC	-	Kenya Conference
KCA	-	Kikuyu Central Association
KCC	-	Kenya Constitutional Conference
KFL	-	Kenya Federation of Labour
KIC	-	Kenya Independence Conference
KIM	-	Kenya Independence Movement
KNA	-	Kenya National Archives
KNP	-	Kenya National Party
KTA	-	Kavirondo Taxpayers Association
LNCs	-	Local Native Councils
MLCs	-	Members Legislative Council
NFD	-	Northern Frontier District
NKG	-	New Kenya Group
UP	-	United Party
YKA	-	Young Kikuyu Association

CHAPTER ONE

INTRODUCTION

1.1 Introduction

At independence in December 1963, Kenya received a constitution that was the result of a negotiation process involving various interest groups. These groups had emerged soon after England declared the area to be British East Africa Protectorate in 1895 and then a Colony in 1920. It enticed two groups of immigrants. First were Indian railway builders that were brought in as cheap labour. Second were white settlers from Britain, South Africa, Canada, New Zealand and Australia, with a mission to turn Kenya into a white man's country. In this process, Africans were forcibly dispossessed and displaced from their lands to give way to the settlers, and were reduced to an army of providing cheap labour.

When politically conscious Africans started to form associations as early as 1921 to challenge colonial policies, it became apparent that there was competition among the racial groups. The Devonshire White Paper of 1923 declared Africans' interests to be paramount, but it did not resolve prevailing racial conflicts. The conflicts persisted and were settled in independence constitutional conference negotiations amid the geopolitics of the Cold War, which had implications on the post-colonial foreign policy direction.

The negotiation process brought together interest groups in three decisive conferences at Lancaster House, London, in January 1960, February 1962, and September 1963. The first conference made it clear that Africans would take over political power and that settler rule was over. It also laid ground for the January 1961 elections, which ended up with a coalition government. The second conference produced a tight *majimbo* constitution that was formulated by another coalition government. This constitution called for regional governments, and was actualised by the elections of May 1963. The leader of the Kenya

African National Union (KANU), Jomo Kenyatta, won the election and set out to dismantle the *majimbo* constitution. This was done in the third Lancaster House conference that increased the powers of the national government. Within the first year of independence, fundamental amendments to the constitution were enacted without any conference being convened.

Upon attaining independence, Kenya joined such multilateral bodies as the Commonwealth, the Organisation of African Unity (OAU), the Non-Aligned Movement (NAM) and the United Nations. The treaties and protocols that set up the Commonwealth and the United Nations and its agencies as well as those that established international territorial boundaries had been entered to by Britain. Many other international instruments, such as the Nile Treaty and the General Agreement on Trade and Tariff (GATT) continued to bind the new nation despite being relics of the colonial era. These instruments were not renegotiated after independence yet they had implications on foreign relations casting doubt whether they were discussed during the Lancaster negotiation process.

1.2 The Statement of the Problem

Kenya attained independence with one negotiated constitutional document, which was expected to provide a framework capable of embodying the interests of all community groups in a sustainable manner. However, the document was not endorsed by all groups and the resulting constitution was amended several times within five years bringing into question the credibility of the negotiation process. Therefore, the background and nature of the process and the reasons behind the amendments need to be investigated. The dynamics of the process also require examination and analysis in order to understand the factors that influence and shape international negotiation as well as the implication of these factors on Kenya's foreign

relations. Finally, the actors and interests in the negotiation process need to be examined and analysed to establish their nexus with outcomes.

1.3 Objectives of the Study

- a) To examine and analyse the background and nature of the 1963 Kenya constitutional negotiation process and the resultant agreement.
- b) To demonstrate how the dynamics of the negotiation process influenced the outcome and shaped the foreign policy direction and governance of a newly independent state.
- c) To evaluate the correlation between the composition of the actors and their divergent interests and its impact on subsequent constitutional amendments, foreign relations and nature of governance.

1.4 Justification of the Study

This study investigates a complex area of political and legal negotiations involving many divergent interests and actors and hence presents a rare opportunity to scholars and policy makers to understand how the political context, the negotiation environment and the power hierarchies and divergent interests of various actors, not only determine the outcome, but also influence the setting the agenda for negotiation. In this regard, it is envisaged that this study should contribute new knowledge to the academic field of international negotiations and diplomacy. It should also add to the understanding of the history and politics of constitutional development, amendments and reform in Kenya, especially in light of the process that led to the current 2010 Kenya Constitution.

Previous studies focusing on negotiation for Kenya's independence delved more on outcome rather than details of the process. Not much attention has been paid to the details of the process. Furthermore, the implications of the negotiation process on Kenya's diplomatic

history in general and the foreign policy direction that the country took after independence have not been studied in any detailed or systematic sense. How these negotiations positioned the British, the colonial power, in post-colonial foreign relations has also not been studied.

This study should also provide invaluable detailed previously unavailable information, on the political dynamics of Kenya's independence negotiation and decolonisation processes and hence make a significant contribution to both academic and policy making knowledge.

1.5 Literature Review

Studies on Kenya's independence constitution have been concerned with the historical aspects of the constitutional negotiation, examined from different perspectives. For example, Macharia Munene's compendium on constitution making in Kenya, *Constitutional Documentary History of Kenya*, documents the chronological development and evolution of the constitution from a historical and legislative standpoint; it specifically takes a documentary journey from 1895 through to 2002 and provides statutory instruments to illustrate the constitutional changes. However, it does not examine the constitution-making process.

Robert Maxon's *Kenya's Independence Constitution* examines the constitution making process in the years 1962 and 1963 and the resulting independence constitution only with emphasis on the 1960s *majimbo* structure, while paying particular attention to the federal ideals put forward from the second half of 1961." While discussing the problems of constitution making in Kenya, he observes that "many significant aspects of the [independence] constitution were decided by the SofS [Secretary of State](sic)" and that the resulting constitution was "imposed by the colonial power". In his "*Constitution-Making in Contemporary Kenya: Lessons from the Twentieth Century*," which analyses the independence constitution in view of the attempt to craft a new constitution for Kenya in the

21st century, he provides a detailed and critical analysis of the making of the first constitution. While isolating the possible reasons as to why it failed, he points to a power factor in the negotiation process, but he does not critically examine this factor, which could have been the principal cause of the failure.

A significant aspect that has been identified in the studies mentioned above is the correlation between constitutional negotiation process and race relations. The latter had its genesis in the influx of European settlers, who Simon Kenyanchui, in his work *European Settler Agriculture*, describes as principally comprising farmers and a minority segment of businessmen, civil servants and workers some of whom had an interest in land. He asserts that the settlers were given official support as they were confident of creating a “White Man’s Country”.

Geologist and explorer John W. Gregory, in his works, *The Great Rift Valley* and *The Foundation of British East Africa*, had influenced European immigration when he extolled Kenya as suitable for European agricultural settlement due to the “fertility of the soil, the healthiness of the highlands, the abundance of the rainfall, and the general excellence of the climate”. He presented the East African territory as “purely an agricultural colony” and assured the British government of its possibility of securing a return for its administrative venture in the new colony, either as an outlet for its surplus population or a new market for its goods. He also encouraged the missionaries, urging them “to brighten the lives and secure the greatest happiness of the greatest number of the downtrodden inhabitants of East Africa”.

J.S. Mangat, in *A History of the Asians in East Africa, c.1886 to 1945*, notes that the Asians had been in East Africa years before the arrival of Europeans where they had distinguished themselves for their aptitude for business ultimately winning the confidence of the Imams as financiers and customs collectors. Mangat also notes that the relationship between the Europeans and Indians had begun earlier where successive British Indian consuls

in Zanzibar had sought to strengthen the link that had been forged between the British Indian subjects and the sultanate. This proved to be useful later when emphasis shifted to the mainland and Britain was carrying out “effective occupation”; the available human resources of the empire in India gave Britain an initial advantage in Kenya and Uganda such as Germany lacked in Tanganyika. Moreover, with the British Indian pattern, being applied in Zanzibar, the precedents were easily adopted on the mainland. The entry of Europeans, especially in the mainland, was quickly followed by large-scale influx of Asians consisting of Indian labourers for the Uganda Railway and troops for the colonial government. The officially sponsored immigration of Indians resulted in unrestricted influx, which created a sizeable Asian population by 1920 who now demanded a role in the developing political life. As Mangat observes, the rise of some of the Indians to positions of affluence and eminence exposed them to increasing scrutiny by the Europeans. The consequent racial hostilities drew the attention of the native African population. He also mentions the importance of the Asian population with the British authorities observing that driving away the Indians would shut down the East African Protectorate.

Writing about the history of inter communal hostilities, Thomas Melady, in his *Profiles of African Leaders*, observes that the British government’s guarantee to the settlers’ continued political dominance over Africans and Asians gave rise to racial frictions. He has also argued that these frictions operated at multiple levels; on the one hand were European hostilities towards the Asians due to the latter’s longer historical settlement in Kenya and economic prosperity making them independent of settlers’ control, as well as their demands for political representation in the Legislative Council, end of racial segregation, opening of White Highlands to racial groups, and easing of restrictions on the Indian immigration. On the other hand, Africans’ status was viewed as already settled to subordination where the Africans were either a source of labour or else a problem.

Donald Rothchild, in *Citizenship and National Integration: The Non-African Crisis in Kenya*, observes that at the time East Africa Protectorate was declared a colony in 1920, there was a three-tier social and economic structure drawn on racial lines. The Europeans held most of the prominent places in the public and private sectors of the economy. The Asians predominated in the middle-level positions as artisans, clerks, professionals, merchants and tradesmen. Africans occupied the lowest level and formed an unskilled labour pool on the farms, homes and factories. Subsequently, racial tension intensified, as Africans expressed their unwillingness to “permit other races to maintain their privileged status; they wanted some of the gains and prestige that accompanied economic and political power”. He further observes the fears of the immigrant communities upon the British government’s declaration of the intention to grant independence and notes that the declaration created more tension, as it meant loss of dominance by Europeans and Asians and gain by Africans of racial as well as national sovereignty. He observes the irony in the British government’s policy of all races living together in an environment of harmony and mutual respect yet the colonial policies formed no basis for integration of all population elements into one unified society.

In her examination of the colonial government’s attempt to respond to the inter-communal hostility right from the publication of the Devonshire White Paper of 1923, Elizabeth Hopkins, in *Racial Minorities in British East Africa*, observes that it was the privileging of African interests in the Paper that led to the formation of the East African Commission whose report was published in 1925 and which not only watered down the paramountcy of the Africans’ interests, but also construed British trusteeship as a tripartite responsibility, which comprised furthering the development of natives and immigrant communities. As Hopkins notes, a subsequent White Paper of 1927 “extended more control to the colonists, for it gave European immigrants a share as well as exercise of the colonial mandate.

In his analysis contained in *British Policy in Changing Africa*, Sir Andrew Cohen identifies two principles upon which colonial policy was based namely, a parliamentary government by local immigrant settler communities and British government trusteeship for Africans. He notes that after World War II, the Colonial Office began to play a more active role in policy making, especially in making the policy of indirect rule more up-to-date.

In *Kenyatta and the Politics of Kenya*, Guy Arnold traces the growth of modern African nationalism to the colonial policies from as early as the 1920s when the Africans formed associations to agitate for their interests culminating in the rise of militancy in the 1950s. Africans' interests included the return of their lands, abolition of taxes, and independence. He attributes the rise of militancy in African nationalism to the outcome of the colonisers' perception that it was driven by indeterminate collective malcontents with no constitution, no representative authority and no constructive programme. He also attributes the resulting Mau Mau violence to the failure by the Colonial Secretary to address and give immediate attention to the land claims as presented in the KAU memorandum during his visit in May 1951. He observes that, of essence, there emerged two nationalist arms; one comprising the orthodox nationalists who tackled the colonial authorities by constitutional means, and the other made up of radical nationalists capable of putting pressure on the authorities to quicken the pace of reform. Hence, by 1950, African nationalism had found militant expression in the Mau Mau movement, which could no longer be ignored by the British government. Regarding the negotiations, Arnold observes Britain's preconceived attitude, especially in view of the fact that Sir Andrew Cohen and Harold Macmillan had expressed the principle upon which Britain would work based on the assumption that if the nationalists did not turn to Britain after independence they would turn to the Communists. They had stressed that it was important to ensure that the nationalists turned to Britain. Arnold also observes that after independence, Kenyatta had a healing job to do; he had to reassure the white and Asian

communities as to their future standing in the country, to make the non-Gikuyu tribes put the Kenyan nation first, and most of all, to reconcile the Mau Mau and the 'loyalist' Gikuyu with each other. The latter gave genesis to the 'Forget the Past' paradigm.

Carl Rosberg and John Nottingham, in *The Myth of 'Mau Mau': Nationalism in Kenya*, observe that the first expression of African demands was based on 'assimilation' and took the form of agitation for civil liberties such as end to racial discrimination and equal representation. Post-World War II political developments however saw the emergence of African mass movements that sought to replace colonial rule with majority African rule. The Africans were now determined to establish political and social structures that would be legitimised by administrative apparatus to produce a sovereign state recognised under international law. They argue that the transformation of the radical arm into Mau Mau, and hence the outbreak of open violence, was primarily due to the European failure to recognise the need for significant social and political reform. It was also due to the frustration experienced by the Africans in redressing their grievances within the framework of the settler-oriented colonial state. They add that Mau Mau represented total rejection by the Africans of the subordinate status and the assertion of a distinct African personality. They also explore the concept of 'multiracialism' as a policy adopted by the British government to contain African nationalism and European extremism. They opine that the policy was based on racial equality, partnership, equal rights "of all civilised men", and the Protestant ethic, and required that all liberals of all races work under white leadership to create the economic and racial conditions of a non-racial society. Being superficially similar to African nationalism, it did not enjoy a wide appeal, especially from extremists.

Martin Meredith, in his work *The State of Africa*, concurs largely with Arnold and further attributes the emergence and rise of Mau Mau to anger and resentment at the mass expulsion of Gikuyu peasants from the White Highlands in the post-war years coupled with

the influx of immigrant white ex-servicemen. Accordingly, Meredith observes that Mau Mau was important because it exposed to the British government the futility of maintaining its empire through force and repression, and the need to initiate reforms aimed at realising a multiracial partnership. It was also important because the ensuing over-reaction to it had profound effect on the colonial thinking towards Kenya.

A similar thought is shared by Robert Edgerton in *Mau Mau: An African Crucible* who observes that Mau Mau brought about a vital change in Kenya; it proved to the white settlers that their political dominion was over, and that the future of Kenya would be decided by Britain. He notes that the surprise and horror that resulted from the declaration by the British government to end settler rule was viewed as an act of betrayal enough to make them feel “ashamed to be British”.

Gary Wasserman’s *Politics of Decolonization: Kenya Europeans and the Land Issue, 1960-1965* foregrounds the Land Question as the crucial issue in Kenya’s decolonisation process; petitions, delegations, uprisings and organisations had been centred on the European control of the “lost lands”. He states that the issues of independence and African domination were a foregone conclusion after the First Lancaster House Conference, but observes that the issue of land that would have delayed independence, as the fate of the White Highlands remained an obstacle to “orderly transition” given that they embodied the European farmers’ future. Thus, he further observes that, after the First Lancaster House conference the Europeans’ main concern was guarantee of land titles and land values. He identifies the tactics used by European groupings in securing their interests in the negotiations and observes that they were adopted depending on the strategies and the goals that they set out to achieve. Such tactics included trading constitutional advance for economic concessions, penetrating and dividing African opinion, privatising conflict, and using administrative positions to control political initiatives.

In his analysis of the in *Britain and Africa*, Kenneth Kirkwood provides other factors in the decolonisation process. He explains that the process was a response to changed global thinking and states that it was based on the fear that communism would provide a readily available ideology to colonised people. The colonial powers were henceforth advised to rethink of an honourable way out of colonialism.

Allan Wood, in *“Independence Movements in Africa and Asia Following World War II”*, adds that the end of World War II left European powers divided and exhausted to the point where they were not in a position to assert control over their own countries let alone their colonies; hence, they were experiencing a declining domination of the world.

James Franks, in *Scram from Kenya*, observes that imperialism had become ever more unacceptable in the Western world; hence, the empire became an embarrassing political liability rather than an economic asset. On the aftermath of the negotiation process, he concludes that the transition of power from the colonial government to independence meant “business as usual” as the independence government retained the colonial structures. He also observes the irony of nationalists upon decolonisation; while Tom Mboya had told colonial nations to “scram from Africa”, he did not tell European settlers to “scram from Kenya” when time came. Instead, Kenyatta’s message was to encourage them to stay implying they would be welcome to be part of the independent nation.

In their study, *Public Law and Political Change in Kenya*, Yash Ghai and Patrick McAuslan observe that in a situation involving racial and ethnic differences, prospects of independence is a an obvious source of potential conflict as the groups compete for political power. As minority groups become aware of how remotely they are from power, especially in a unitary system as proposed by KANU, they begin to agitate for safeguards, which range from outright secession to Bills of Rights and the insulation of aspects of administration from political control. The coloniser uses the claims made by the minorities to play the power

game, which often results in a complicated constitution that is not sustainable once the imperial power exits. Ghai and McAuslan also observe that constitutional changes after independence aimed at increasing the power of the Executive, decreasing in the power or status of those institutions whose function was to control the Executive, and whittling away legal safeguards on the exercise of power by the Executive. This helps to explain the position of the respective interest groups in the negotiation process for Kenya's independence.

Tom Mboya, in *Freedom and After*, identifies the problem of confidence as one of concern during this period before independence where the investors, mainly Europeans and Asians, talked of the need for security, while expatriate civil servant wanted assurances. He observed that more than any other country undergoing decolonisation, Kenya had to face this issue. On the post-independence orientation of the new nations, he states that if the West explicitly forced the nationalists to commit themselves to their camp, they might as well have turned to the East in protest sentiment; hence, it was crucial the urging had to be done tacitly.

In, *A Love Affair with the Sun: A Memoir of Seventy Years in Kenya*, Michael Blundell observed that European settlers received the British government's proposals from the first Lancaster House conference with various degrees of acceptance: moderate Europeans accepted the proposals for various reasons; professionals and businessmen accepted them because it was the best course; others because the government had made up its mind and it was no use resisting it; and, others because they wanted to move on to the concept of 'One Nation' and abandon the racial tension of the past. He further observes that, owing to the confidence problem, many of the European settlers who had come after the 1939-45 war left and moved on to other countries, but many of the older families who had come to Kenya to make their home stayed on.

Robert Gregory, in *Quest for Equality: Asian Politics in East Africa, 1900-1967*, notes that the intentions of the British government awakened the Asians politically into considering

how Kenya would move into self-government under majority African rule. He notes that the issue split the community into two: one group clung steadfastly to the principle of African paramountcy, while the other, alarmed by the increase in the emphasis of African interests and the Mau Mau violence, revised their fundamental political goals towards delaying independence and creating constitutional safeguards for their future.

In *The Kenyatta Election: 1960-1961*, George Bennett and Carl Rosberg identify the key actors who emerged after the declaration of British government's intentions for Kenya citing KANU and Jomo Kenyatta as taking a dominant role. They argue that the inclusion of KADU into government after the 1961 election and subsequent relegation of KANU leaders to the opposition created grave uncertainty among all the racial communities about the future. They observe that Kenyatta was viewed by the Africans as not only their paramount leader, but also the symbol and embodiment of their nationalism, and hence the only person who would provide the cohesion necessary for concerted action in the country's future.

Jeremy Murray-Brown's *Kenyatta* takes an in-depth profile of Jomo Kenyatta that includes his position at the genesis of African dissent. He states that the perception the white settlers had of him was the personification of the sinister forces conjured up by the words 'Mau Mau'. On Kenyatta personality, Murray-Brown observes that, throughout his life, he remained detached from other men's passions, an attribute he demonstrated in the ideological differences of the Cold War, the ideological differences of the Christian churches, and the loyalists and freedom fighters of the Emergency, but he came down heavily on any signs of communist infiltration. Further, Murray-Brown notes that when it came to the demands of the extremist freedom fighters, Kenyatta was confident they presented no danger to security as all they wanted to see was a Kenya flag flying over their country. He also notes the role played by Governor Malcolm MacDonald in the negotiation process as significant given that he mixed easily with members of all races and had brought to Kenya an open mind and an

optimism in the future, which portrayed him as the antithesis of the settler type governors. He states that, if it was largely to Governor Eliot “that the colonial enterprise was launched in Kenya, it was largely thanks to MacDonald that it was laid to rest with such a lack of rancour”.

David Goldsworthy, in *Tom Mboya: The Man Kenya Wanted to Forget*, stresses the role played by Mboya in shaping the ideological orientation of the key actors having emerged clearly as a leader of KANU’s moderate wing on questions of economic policy. Of significance is his role as Kenyatta’s factotum and being the architect of KANU’s manifesto, the in-charge of the new nation’s constitution, and the ideologue of the national development strategy.

Bethwell Ogot, while contributing to the historical analysis of Kenya’s independence negotiations in “*The Decisive Years*”, appreciates the power game during the decolonisation process. He claims that the independence negotiation was essentially “a bargaining *process* between Africans and the two racial minorities, Europeans and Asians, with the British Colonial Secretary playing the role of umpire”. While this confirms the presence of the power factor in the negotiation process, it does not offer a detailed examination of its significance and how it was deployed by the respective parties.

Macharia Munene, in what appears as an effort to provide tools to facilitate the re-drafting of Kenya’s constitution, produced a compendium, *Constitutional Documentary History of Kenya*, which documents the chronological development and evolution of the constitution from a historical and legislative standpoint. The compendium contains the relevant documents along the historical journey against which an analysis of the key phases is provided. Although the individual documents bring out the power element, this is more in the outcome than in the process, which makes the examination of the process essential to find out how power was deployed.

Makumi Mwagiru's *Conflict in Africa: Theory Processes and Institutions of Management*¹ regards negotiation as the best method of political management as it provides an opportunity for the parties in conflict to map out the future of their relationships by themselves. Due to its non-coercive and voluntary nature, he regards it as an element for making the agreements reached sustainable. This helps to explain the British Government's decision to convene a constitutional conference for Kenya in 1960.

R.P. Barston in *Modern Diplomacy*² views negotiation as exploring and reconciling conflicting positions in order to reach an acceptable outcome, subsequently providing remedies with which parties involved are willing to live. Barston's views are important as they recognise the role of normalisation of relationships and redistribution of values, which follow the bargaining process, hence the need for a balancing act during negotiations to avoid prioritising on one aspect at the expense of others. However, the discussions do not consider the power factor in the negotiation process, which might result in a "false settlement" and hence an unsustainable outcome.

In her work on peace and security in Africa, *The Burundi Peace Negotiations: An African Experience of Peace-Making* Patricia Daley³ observes that a political negotiation process is full of political struggles due to the prevalence of a multitude of supporting actors seeking to promote vested interests. The resulting agreement is not necessarily consensual or reflective of a compromise, but a temporary stalemate in the power play between international, regional and local actors and their competing interests.

¹ Makumi Mwagiru, *Conflict in Africa: Theory Processes and Institutions of Management* (Nairobi: CCR, 2006), p. 113; see also Mwagiru (2004), pp. 61-69.

² R. P. Barston, *Modern Diplomacy* (Essex: Longman Publishers, 1988), p. 76.

³ Patricia Daley, "The Burundi Peace Negotiations: An African Experience of Peace-Making", *Review of African Political Economy*, Vol. 34, No. 112 (June 2007), pp. 333-352.

In *Fights, Games, and Debates*, Anatol Rapoport⁴ explains that bargaining consists of debate and game, where the former involves parties directing their arguments at each other with the objective of convincing the opponent to see things as they are with each party taking into account the potentialities and evaluation of alternative outcomes with an objective of outwitting the opponent. Each party to the negotiating table represents a certain interest group, each with a certain level of power. Normally, the party with more power adopts directive strategies with the goal of coercing the other to make concessions on interests it values without fundamentally altering its position. This way the powerful party is capable of maximising on its own interests and achieving an outcome favourable to them.

The element of power in the bargaining process also comes out in Stephen Stedman's *Peacemaking in Civil War: International Mediation in Zimbabwe 1974-1980*⁵ in which he observes that an actor's ability to influence the choices of others can be enhanced through the application of leverage, especially in a situation of interdependence. In interdependence relationships, alternatives are power based and are pegged on two variables: a party's ability to change another's alternative, and the attractiveness of one's own competing alternatives. British tradition of influencing negotiations is brought out where he records Lord Carrington, the British Foreign Secretary and lead negotiator asserting that he had a responsibility of 'overseeing' the negotiation conference; ultimately it managed to control the process. Wherever there was a disagreement, the British acted more as an arbitrator than a negotiator, listening to the parties involved and later drafting proposals which they forced the other parties to accept. In all of these cases, a post-negotiation conflict took place, usually in an armed format. In Kenya's case, there was no armed conflict, but amendments to the constitution were enacted. This study will examine the British government's approach

⁴ Anatol Rapoport, *Fights, Games, and Debates* (Ann Arbor, MI: University of Michigan Press, 1974), p. 57.

⁵ Stephen Stedman, *Peacemaking in Civil War: International Mediation in Zimbabwe 1974-1980* (Boulder: Lynne Rienner, 1991), pp. 169-172.

towards negotiation, especially given that the Zimbabwe experience came almost twenty years later.

In his sociological work, *A Simple Model of Negotiations*, Otomar Bartos⁶ views negotiators as rational actors with dual and conflicting motivations. The individual (competitive) desire to maximise their own utility and the collective (cooperative) desire to what is fair is determined by the extent to which actors feel that they can get away with unfairness. If actors have the power to influence other actors' options, they can afford to push for an outcome that is unfair to the weaker actors. However, Bartos' assumption of rationality does not fully explain the logic of action by the actors. For example, it does not explain why the British government did not consider KANU's political strength and instead insisted on treating its demands on equal footing with the KADU despite the latter's weaker position.

Daniel Druckman, in his *Negotiations: Social Psychological Perspectives*, argues that apart from analysing the negotiation process in its social, political and economic setting, there is a need to focus on the socio-psychological aspects of the negotiators and how they impact on the negotiations. The negotiator is an intermediary with multiple relationships and that central relationships are between the negotiator and the respective constituency, and with negotiating party. Hence, a bargainer is involved in many relationships and the negotiator must be able to strike a balance among all these relationships. However, the argument does not take into account multilateral negotiations. Relationships of the negotiators do not bring on board the negotiations that take place between parties with common interests on some issues in various phases of the negotiations. In the case of the Kenya's independence negotiation conferences, this calls for focus on the negotiations, first between KANU and KADU, and then between KANU and the British government, plus other negotiations that took place before and on the side lines of the conferences.

⁶ Otomar J. Bartos, "A Simple Model of Negotiations: Sociological Point of View," in I.W. Zartman (ed.), *The Negotiation Process: Theories and Publications* (London: Sage Publications, 1978).

In their introductory text on negotiation strategies, tactics and skills, *Negotiation*, Roy Lewicki, David Saunders and Bruce Barry, explore the major concepts and theories of the psychology of bargaining and negotiation. They also explore the dynamics of interpersonal and intergroup conflict and resolution. While the work is more relevant to management studies, it also offers insight that is useful in the understanding of negotiation strategies, tactics and skills that were applied in the independence negotiation process.

While analysing Uganda's independence constitution in *Constitutional Law and Government of Uganda*, George Kanyeihamba⁷ observes that the constitution was devised by the British and reluctantly agreed by Ugandans. He further observes that it was essentially a "foreign constitution, it emphasised division rather than unity, and prioritised regional above national interests".

On the Nigerian constitution, Kalu Ezera, in *Constitutional Developments in Nigeria*,⁸ notes that it was unacceptable to Nigerians yet it was the constitution that was adopted at independence in 1960 in the form of an "Order-in-Council" (personal decree of alien monarch for the governance of her subject). It was not reflective of local interests and its Greco-Roman origins made it devoid of input of African heritage.

Mutiti Mudimuranwa's examination of the Rhodesian constitution in *Rhodesia: Constitutions and Policies in a Dispute for National Independence*,⁹ observes that "in a colonial situation [the constitution] reflects the interest of the colonialist and their local supporters, for permanent interests demand a need to influence constitution outcome in favour of departing masters". While these analyses infer a power element in the outcomes, they do not bring out a clear nexus between power and the negotiation process.

⁷ George W. Kanyeihamba, *Constitutional Law and Government of Uganda* (Nairobi: East Africa Literature Bureau, 1975), p. 46.

⁸ Kalu Ezera, *Constitutional Developments in Nigeria: An Analytical Study of Nigeria's Constitution-Making Developments and the Historical and Political Factors that Affected Constitutional Change, 2nd Edition* (Cambridge: Cambridge University Press, 1964), p 287.

⁹ A.B. Mudimuranwa Mutiti, *Rhodesia: Constitutions and Policies in a Dispute for National Independence* (Nairobi: Kenya Literature Bureau, 1979), p. 16.

Mudimuranwa's observations are however useful in the critical examination of the Kenya's independence constitution case, especially in the analysis of whether the constitution reflected the nationalists' or colonialists' interests.

Richard Spitz and Matthew Chaskalson, in their study, *The Politics of Transition*,¹⁰ observe that the South African negotiations in constitution making were most democratic and the outcome was sustainable. As the country was not under a colonial power, it does not provide a suitable comparison of a power game in independence negotiations. However, it would help in comparing the identities of parties involved in the negotiation process, and whether their identities would have an impact on the outcome and sustainability of the constitution. Such an examination would further explain whether the absence of constitutionalism in a given state is attributable to the parties' perception that they did not own the negotiation process, and hence that the outcome was a betrayal of their goals and aspirations.

Constitutionalism as an outcome of the constitution making process has been explored by scholars. In his critique of the influence of the colonial powers in constitution making in African countries, Benjamin Nwabueze, in *Constitutionalism in Emergent States*,¹¹ argues that a constitution must have moral authority and legitimacy, which confers it with ability to command loyalty, obedience and confidence of the people. In order to have legitimacy the constitution making formula should involve people; hence, the constitution making process should be popular, and its form and contents should be subject to public decisions.

This argument is similar to the one proposed by the Commonwealth Human Rights Initiative (CHRI) in form of practical ways through which the citizens can endow the constitution with legitimacy without being coerced. In its set of recommendations, it

¹⁰ Richard Spitz and Matthew Chaskalson, *The Politics of Transition: A Hidden History of South Africa's Negotiated Settlement* (Johannesburg: Witwatersrand University Press, 2001), p. 67.

¹¹ Benjamin O. Nwabueze, *Constitutionalism in Emergent States* (Colorado: Dickson University Press, 1973), p. 23.

advocates a process of constitution making that should be regarded as important as the substantive content of the constitution itself and that the process should be inclusive. Hence, it should draw heavily on public participation, and its administration and management should be credible and respected. These arguments, however, do not examine a situation of “false” consensus arising out of power-based negotiation process, which might undermine constitutionalism. This study will explore whether constitutionalism is dependent on the convergence of interests of the negotiating parties.

Oginga Odinga, in *Not Yet Uhuru*,¹² further observes that at end of the negotiation process leaders in government retreated from the people and hence the popular demands, and cites the emergence of a small circle of leaders that was vulnerable to influence by forces that were against the national interest. He also observes that KANU, despite its role in advancing the country towards independence, was not associated with policy making at all levels yet no popular policy could be possible without a strong and vigorous party. He notes that the merger of KADU with KANU diluted the latter’s policy from within and injected settler and colonial forces, which compromised on real Kenyan independence. He further states that Kenya became largely part of Western sphere of interest and investment.

In his study, *Constitutional Amendments and the Constitutional Amendment Process in Kenya*, which investigates the history of constitution making in Kenya and examines the constitutional amendments from 1964 to 1997, Githu Muigai focuses principally on the legal and judicial aspect of the amendments, but he also examines their implications on governance. He observes that although the amendments were intended to facilitate effective governance and to indigenise the constitution more, they radically altered the institutional structure and fundamentally re-designed the structure of the post-independence state. The overall effect of the amendments was consolidation of personal rule over institutional rule

¹² Oginga Odinga, *Not Yet Uhuru* (Nairobi: East African Educational Publishers, 1967), p. 176-7.

and compromising of adherence to the rule of law. He also points to the amendment process as a reflection of the attempt by the power elite to manipulate the levers of power so as to exclude or at least minimise the competitiveness of politics.

Daniel Branch, in *Kenya: Between Hope and Despair, 1963-2011*, discusses the frustrations that followed the attainment of independence. He states that Kenyatta and Odinga represented two opposing ends of the African aspirations with each having a different vision of what development meant. While Kenyatta considered development to be a matter of individual endeavour and hard work, Odinga thought that it involved immediate redistribution of resources for the benefit of the poorest in society and particularly urged the government to redistribute European-owned land to landless peasant.

While taking cognizance of the previous works on the Kenya's independence and constitution negotiation process, this study will focus on the actual process from which the dynamics underlying the subsequent constitutional amendments will be derived. Examination of the events, actors and general environment during the negotiation period will provide insight on what actually happened and help to determine whether the post-independence amendments to the constitution as well as Kenya's relations with Britain were informed by the negotiation process.

1.6 Theoretical Framework

Three theories underlie this study, namely political realism or power theory, dependency theory of power, and classical pluralism. Political realism holds that world politics is driven by competitive self-interest. According to Hans Morgenthau, a key proponent of the power theory, the main signpost of political realism is the concept of interest defined in terms of

power.¹³ Power infuses rational order into the subject matter of politics, and thus makes the theoretical understanding of politics possible. Critical to the understanding of politics is the rational actor who embodies the collective will of the state. Morgenthau asserts that those who prevail are those who pursue self-help by increasing their power and deploy power pragmatically well aware that in an international system characterised by anarchy, one must seek to impose their will to safeguard their interests. The aim here is to ensure control of the behaviour of the other.

In pursuing the variable of power ideological, religious and moral constraints are not considered. This power variant of realism provides an explanation of the decolonisation process. It is notable that pressure for independence called for a pragmatic response that would allow Britain to retain its interests while constructing the notion of independence. The challenge was that of using pressure, reward and sanctions to force obstinate actors to fit into the wider scheme of things.

The weakness of the power theory is twofold. First is the level of application. Despite presupposing that Britain and the actors in the colony had “inter-state” engagement the reality is that the states are not equal with the latter being essentially clients of the former. Secondly, the power theory equally presupposes a unified state under the control of a rational actor who is able to balance the subjective and objective interests, which is not always the case. The gaps in this theory invite the dependency theory to provide some explanatory capability.

Samuel Bacharach and Edward Lawler, in their *Dependence Theory of Bargaining Power*,¹⁴ point to the centrality of power in any bargaining and negotiation processes. Three forms of bargaining power are identified, namely absolute power, relative power and total

¹³ Hans Morgenthau, *Politics Among Nations: The Struggle for Power and Peace* (New York: McGraw Hill, 1993), p 3.

¹⁴ Samuel B. Bacharach and Edward J. Lawler, *Bargaining Power, Tactics and Outcomes* (San Francisco, CA: Jossey-Bass Publishers, 1981), p. 42.

power. Absolute power is the power of an individual irrespective of the other party's power. Relative power refers to the dependence of one party compared to the dependence of the other party. Total power is the sum of the parties' dependence upon one another. The assumption of the theory is that power is the essence of bargaining; it is a process of tactical action linking potential power and bargaining outcome. According to them, bargaining power is 'subjective power' based on the prevailing situation and relationship.

In this study, the argument is that the dominant actors, the British, sought to maximise on their hegemony to actually establish a dependency structure as defined by Dos Santos in his work, *The Structure of Dependence* to imply a situation in which economies of certain states are conditioned by the development and expansion of another economy to which the former is subjected.¹⁵ The British had core economic interests rooted in a certain structure of their colonies. The overriding objective was that of ensuring sustenance, critical upon which was the need for setting up political, economic and social structures that would retain Britain's dominance. The process of negotiation became core to ensuring incorporation of the new elite whose interests would sustain the economic and social realms of production.

Mehul Lakhani explains the theory further in his work, *Dependency Theory of Power*,¹⁶ where he states that power consists of the degree to which parties have a stake in the bargaining relationship. It holds that Actor A will have power over Actor B if the latter is dependent on the former. For Actor A to have power, the resources they control must be important, scarce and non-substitutable. In a situation where Actor B is significantly dependent on Actor A, and there is no reciprocal or countervailing power, Actor B would comply with Actor A's wishes. If the dependency relationship is more modest, then Actor B

¹⁵ Theotonio Dos Santo, "The Structure of Dependence", *The American Economic Review*, Vol. 60, No. 2 (1970): 231-6.

¹⁶ Mehul Lakhani, "Dependency Theory of Power", available at <http://www.scribd.com/doc/22314123/Dependency-Theory-of-Power>. Accessed on 12 June 2014.

might try to bargain with Actor A. Where the power distribution is more evenly divided between Actor A and Actor B, the parties may be inclined to cooperate.

It is this process of co-option that changes the dynamics of dependence increasing the variable of actors whose power is less relative to that of the dominant actor. This assumes the notion that, in dependency structures, the dependant actor equally has some inverse power and therefore raises the possibility of interdependence, which the dependant actor can maximise on. This explains the British logic of divide and rule as actors are played against each other in the process increasing the power of the chief negotiator (the British). The argument here is that once actors were called in to negotiate they did so on the terms of the British, disunited and disarmed. Those who were “willing to cooperate” would gain power to the extent that they engendered incorporation.

The critique of the dependency theory is the tendency to assume determinism, yet the reality is that had the African leadership fought in unity to resolve the national question they would have harvested a better bargain. The problem was in leadership, especially as it seemed to be driven by fear and self-interest. This weakness is explained better in the classical pluralism perspective.

Classical pluralism holds that politics and decision-making are located mostly in the framework of government, but that many non-governmental groups use their resources to exert influence. The theory is supported by Robert Dahl in his work, *Who Governs?*¹⁷ The three major tenets of the pluralist school are (a) that resources, and hence potential power, are widely scattered throughout society, (b) that at least some resources are available to nearly everyone, and (c) that at any time the amount of potential power exceeds the amount of actual power. According to the theory, nothing categorical about power can be assumed in any community, and the pluralists are concerned with not just who runs a community, but if any

¹⁷ Robert Dahl, *Who Governs?* (New Haven, CN: Yale University Press, 1961).

group in fact does. In the theory, groups of individuals try to maximise their interests, and lines of conflict are multiple and shifting as power is a continuous bargaining process between the competing groups. Inequalities tend to be distributed and evened out throughout a population by the various forms of resources. As groups have different interests, they may act as “veto groups” to destroy that which they do not agree with. The central question in this theory is how power and influence is distributed in a political process. Classical pluralist position argues that power is diffuse rather than concentrated; that, in society, a large number of groups represent all the significant and different interests of the population; that groups compete with each other for influence over government; that all groups accept the legitimacy of the decision-making process and of its outcome; that competition between groups ensures that no one group dominates; and, that the government is a neutral arbiter between interests. If the broad objective had been state consolidation, then the subsequent amendments would have sought to resolve this national question.

Immediate post-independence amendments and the fight for a new constitution find their explanation in that various factions in the power variant or realism acquired power by outwitting each other and seeking compromises with the British. In the process, they hived more influence for themselves as a result of promised rewards. This accounts for the sustained dependency structure and permanent bargaining in form of coalitions. Britain’s influence on the post-colonial foreign policy explains a state’s tendency for self-interest and the principle of national survival. The above framework is the perspective that is adopted in this study.

1.7 Hypotheses

The study tests the following four key hypotheses:

- a) The process and outcome of negotiations is determined by the context, typology of actors and nature of the divergent interests being negotiated.
- b) There is nexus between the Lancaster negotiation process and Kenya's post-colonial foreign relations.
- c) The amendments to the constitution after independence were the result of the failure of the Lancaster House negotiations process to address and secure the interests of the recipients of the constitution.
- d) The preservation and sustainability of a constitution largely depends on the perceptions, interpretation and the shifting hegemonic interests of the power wielders at any given time.

1.8 Research Methodology

The study is primarily qualitative, supplemented by some quantitative data, derived from interviews with key informants. The study has adopted two research methods, namely: documentary analysis and key informant approach. Documentary analysis involved systematic reading and analysis of archival and non-archival texts and articles with the aim of obtaining explicit and implicit information. Since the study primarily focuses on political and diplomatic history of Kenya, archival and library research approaches were found to be most useful and relevant.

Most of the archival materials involved in this study consist of data sets that have already been collected by someone else. Thus, the data reflects indirect observation rather than direct observation. Archival sources are particularly significant because they help to

study people and events from earlier times in history as well as to study behaviour and attitudes across long time spans. This was the most appropriate method as the study involved investigating events that took place over five decades earlier. The Kenya National Archives and Documentation Centre and the British National Archives were a key source of material. The materials involved in the negotiation process were created by top-level offices in the Kenya and British governments. Hence, the records could only be readily available in these repositories.

Besides the materials from the archival centres, other forms of records included parliamentary debates from both the Kenya Legislative Council and the British Parliament (the House of Commons and House of Lords). Memoirs, biographies, autobiographies and diaries were accessed. Published sources, including books and contemporary periodicals, were also used.

At the time of research during the first decade of the 21st century, archival materials that were previously inaccessible had been released into the public domain (after the expiry of 30-year restriction imposed by the British government). Although no permission was required anymore to use the formerly classified data or to interrogate the Lancaster house negotiators, most of the latter were by then deceased and some key documents had also been destroyed. Nevertheless, this study has endeavoured to fully utilise the now accessible negotiating documents, supplemented by interview information from the few negotiators who are still alive.

Analysing archival documents required careful handling keeping in mind that they may be unrepresentative, selective, be of unknown validity, and possibly be deliberately deceptive, and may also lack objectivity. One shortcoming is that the material may contain data that has been collected for other reasons entirely. For example, the study relied on records of meetings that were held during the various sessions of the Lancaster House

conferences, which were structured according to the objectives of the meetings. Most of the information that did not meet the stated objectives (such as anecdotes or sideshows) was not included in the records. This implies that it would be difficult to infer the personality of the participants with greater accuracy. It would also be difficult to infer the level of coercion and persuasion that were applied in the meeting, especially in instances where only key points and conclusions were recorded. In effect, notes of informal meetings and discussions were not available and could only be inferred from such sources as memoirs. Parliamentary debates were, however, more detailed as they contained verbatim proceedings on the floors of the houses. The study was aware of these weaknesses and eliminated non-responsive data.

Completeness of the material also posed considerable difficulty as not all the information pertaining to a certain event had been collected, and hence the material was unavailable. For example, not all sets of minutes, official records and parliamentary papers were available. Nevertheless, the available information helped to provide adequate data for analysis. In order to avoid subjectivity, especially considering that the agitation for and process leading to independence was a highly emotive issue, the research paid attention to elements of language used.

The study also used a key informant technique. This was an interview method, which involved targeting individual(s) with knowledge about the independence negotiation process. This method was particularly important because of its flexibility as it allowed for clarification and for the adapting of questions and language to a level understandable by the interviewee. In addition, the face-to-face encounter enabled the researcher to ask for sensitive information while allowing rapport building. Interview schedules were used for the interviews instead of structured questionnaires.

A pilot interview was carried out in 2007 to test the effectiveness of the method; it also helped to avoid the pitfalls of interviewee and interviewer biases. Three sets of schedules

were prepared; one for those who actually attended the negotiations, a second one for those who facilitated the process, and a third for experts in Kenya's constitution making process. However, after the pilot interview was carried out, it was decided that only those who had attended the conferences would be interviewed. Data from the interview was complemented by the information gathered through document analysis.

In sampling for the informant method, the non-random approach was used owing to the absence of a sampling frame. Specifically, purposive sampling was used, which involved selecting individuals who were participants at any of the Lancaster House conferences. To eliminate researcher's bias, informants were sourced from names obtained from document analysis, especially the records of meetings held and the report of the conferences.

The interviewing process was however hindered by paucity of key informants and the fact that some of them were advanced in age and unable to recollect all the facts of the negotiating process that took place between 1958 and 1963. For example, at the start of the study there were twelve (12) participants from Kenya who had attended the conferences out of which three (3) had attended the first conference in 1960. At the time the interviews commenced in 2010, only nine (9) were alive and only five (5) were available for interviewing (and most of these five were suffering from one form of indisposition or the other).

Aware of the weaknesses of the respondents, the study aimed to collect only the data that was relevant to the research questions. After the pilot interview, it was noted that it was important to tape-record the interviews for post-interview analysis and clarifications. There was a tendency among the respondent to veer off the interview schedule. Language also posed a problem as most of them adopted a mixture of Kiswahili and English as well as corrupted forms of each language as used in the political field. The interviews were later

transcribed and the transcript analysed. Data generated from the interviews was cross-examined against the data obtained from document analysis.

Primary and secondary data generated from both the key informant interview and document analysis was analysed qualitatively using the content analysis method. The data was organised by research question, a method that brings together all relevant data. The data was used to test the hypotheses and for detailed analysis and examination of the material gathered.

1.9 Chapter Outline

The study is divided into seven chapters. Chapter One is the introduction to the study; it sets out the research problem and the scope of the study, the review of available literature the theoretical framework, hypotheses and brings to the fore the issues that the study aims to analyse. It also describes the methodology used in the study to collect data and how it was analysed.

Chapter Two provides the background to the constitutional conference of 1960 examining the build-up to the negotiation process. It traces the colonial policies from the declaration of the Protectorate in 1895 and subsequently the colony in 1920, up to the rejection of the Lennox-Boyd constitution in 1958, before examining in detail the constitutional negotiations, through constitutional conferences, held at Lancaster, London. It particularly shows why a constitutional conference was necessary to negotiate Kenya's independence and the key legal instrument of governance—the constitution.

Chapter Three is the first of the three consecutive chapters to address the first study objective of examining and analysing the nature of the negotiation process and the resultant agreement. The study is led by the assumption that there is a strong relationship between the negotiation process and the outcomes. The chapter presents the build-up to the first Lancaster

House conference and covers the period 1958 to February 1961. It examines the preparation and proceedings of the conference in January 1960, and also the policies, agenda for the negotiation and outcomes of the conference, especially the formation of the African nationalist parties and the determination of the main actors in the negotiation process.

Chapter Four examines the nature and process of the second Lancaster House conference covering the period from February 1961 to April 1962. The chapter provides a detailed examination of the actors, the issues, and how each party pushed its interests during the negotiations. It also provides an examination of the meetings that were held on the side of the conference in respect of the questions of Maasai land and the secessionism in the Northern Frontier District and the Coastal Strip. The outcome of the negotiations, which produced the Framework of the Kenya Constitution, is examined and how it affected the subsequent phase(s) of constitutional development.

Chapter Five examines the build-up to the third Lancaster House conference, the nature and process of the conference, and the outcome that culminated in the independence constitution. It covers the period from May 1962 to December 1963. The chapter includes the discussions on the Framework of the Kenya Constitution by the Coalition Council of Ministers, the conference chaired by the Secretary of State in Nairobi in March, 1963, the general election of May 1963, and self-government. The overall outcome of the negotiation process is examined.

Chapter Six is based on the second study objective and examines the developments after full independence was granted on 12 December 1963 up to 1969 when Presidential power was consolidated in the independence constitution. This chapter specifically examines the three main aspects of the new nation beginning with the challenges of the Dominion status of between 12 December 1963 and 12 December 1964, the establishment of the Republican status, and the amendment to the independence constitution. It analyses the implementation

of the independence constitution and shows why the negotiation outcomes were not sustainable, especially against the backdrop of the British government's aspiration to secure its national strategic interests in respect of its relations with the emergent state. It examines how the interests of the majority Africans were suppressed by the departing colonial government and how the constitutional amendments did not redress these interests. It also examines the impact of the negotiation process on the emergent foreign policy process and mode of governance of the then new independent regime as well as its relations with Britain, focusing on the prevailing interests.

Chapter Seven is the conclusion and provides a summary of the major findings, showing the nexus between the negotiation process and the outcome. The overall conclusion is given showing why the constitutional amendments were informed by the actors and their interests that shaped and influenced the negotiation process and outcomes.

CHAPTER TWO

WHITE MAN’S COUNTRY, 1895-1958: BACKGROUND TO THE CONSTITUTIONAL DEVELOPMENT OF KENYA

2.1 Introduction

This chapter seeks to provide the historical background to the issues that dominated the constitutional negotiations that occurred in the late 1950s to 1963 and the role of the colonial state during the three overlapping phases. The first phase, there was the conquest and establishment of the colonial state, 1895 to 1920. The constitutional interest and players concerned Europeans and how they were to govern the territory as a “white man’s country”. The second phase was the period between 1920 and 1940 as the territory transformed into a “Crown Colony”. The concern then was how much to accommodate Indians, preserving white dominance, and the place of African interests and who decided those interests. The Legislative Council was the scene of competing demands for power between the Europeans and Indians, whilst the African population became the subjects of trusteeship. The third phase consisted of World War II and the Mau Mau war. The two wars transformed constitutional discourse between 1940 and 1958.

The scholarly purpose of this background chapter then is to indicate the main tasks and issues that were key to the opening of the first Lancaster House constitutional conference as discussed in the next chapter. As shall be seen, the main problems of the entire study are highlighted concerning the tentative view of the entire resulting constitution, which was accordingly subjected to so many amendments within five years. The methodological approach or organisational framework demonstrates how the dynamics of the negotiation process influenced the outcome and informed subsequent constitutional amendments.

2.2 Establishment of the Colonial State, 1895-1920

In the later part of the 19th century, the Europeans partitioned Africa among themselves establishing colonies to serve the interests of imperial powers.¹ The British, the Germans and the Italians shared eastern Africa with Britain taking what became Kenya. The territory comprised the Sultan of Zanzibar's coastal territory with a ten-mile strip of mainland and a hinterland that stretched to Lake Victoria. The establishment of the colonial state featured the pacification of Africans, establishment of British rule, the entrenchment of white settler interests, and the struggle of Asians for equality.

2.2.1 Pacification of Africans

To bring the tribal groups under British rule and to pacify their agitation, the colonial administration used force. Acting Commissioner Sir Arthur Hardinge had advocated use of force as “the only way [to contain the natives who] must learn submission by the bullet.”² This coercive approach had been applied as early as 1892 by IBEAC officials when they clashed with the Gikuyu at the Fort Smith outstation. In a punitive expedition that was led by the company's Sub-Commissioner for Akamba Province, John Ainsworth, the inhabitants around the Fort were severely punished and their leader, Waiyaki wa Hinga, was deported to Kibwezi, a mission station en route to Mombasa, and eventually killed in September 1892. Soon after the declaration of the Protectorate in 1895, coastal people staged a revolt led by Mbarak bin Rashid of Takaungu. The revolt was promptly crushed with the help of troops from India. The Abukusu resisted between 1895 and 1899. In 1895, the Nandi staged their first war of resistance, a war that persisted for ten years. During the construction of the railway line, they carried out raids in which they harassed British positions and vandalised

¹ Guy Arnold, *Kenyatta and the Politics of Kenya* (Nairobi: Transafrica Publishers, 1975), pp 53-60; Adu Boahen (ed), *UNESCO General History of Africa VII: Africa Under Colonial Domination, 1880-1935* (Paris: UNESCO, 1990), p. 22.

² E. Trebinski's Kenya Pioneers, quoted in James Frank, *Scram From Kenya: From Colony to Republic, 1946-1963* (Sussex: Pomegranate Press, 2004), p. 5.

the railway stores. Punitive expeditions sent against them were frustrated until a Kings African Rifles (KAR) party led by Captain Richard Meinertzhagen assassinated the *orkoiyot* (the supreme chief and spiritual leader of the Nandi) Laibon Koitalel Samoei and his advisers in 1905 at Ket Parak Hill. While stationed at Fort Hall, Meinertzhagen had ruthlessly brought down revolts among the Gikuyu, Embu and Gichugu between 1902 and 1904 at the end of which he remarked that,

The Kikuyu... are the most intelligent of the African tribes I have met; therefore, they will be the most progressive under European guidance and will be more susceptible to subversion activities. They will be one of the first tribes to demand freedom from European influence and in the end cause a lot of trouble.”³

These observations were ‘prophetic’ as the Gikuyu people started to organise politically immediately after World War I. For instance, the agitation of Joseph Kang’ethe and Jesse Kariuki, both of whom had been demobilised after their service in World War I Carrier Corps and in which Kang’ethe was a sergeant, culminated in the formation of an all-African party the form of Kikuyu Central Association in 1924.⁴

After the assassination of the *orkoiyot* the Nandi were forced by the British into reserves in 1906.⁵ By 1910, the Kisii, who held the most-fierce resistance in South Nyanza, had been put under British administration after their resistance that had begun in 1907 was crushed in a punitive expedition led by Sergeant J.H. Milton.⁶

All the tribal resistance and revolts were crushed expeditiously and with ruthlessness. Thereafter, Africans were recipients of brutal and vicious ‘patrols’ that resulted in ruthless loss of lives and extermination of their stock. KAR’s confiscation of livestock during the

³ Richard Meinertzhagen, *Kenya Diary 1902–1906* (London: Oliver & Boyd, 1957), 152.

⁴ Bruce Berman, *Control and Crisis in Colonial Kenya: The Dialectic of Domination* (London: James Currey, 1990), p. 241.

⁵ “History of Kenya” at World History at KIMLA, <http://www.zum.de/whkmla/region/eastafrica/kenya18861918.html>, accessed on 17 August 2010; Alfred Claud Hollis, *The Nandi: Their Language and Folklore* (Oxford: Clarendon Press, 1909).

⁶ Okoth, *A History of Africa, Vol. I*, p. 208.

punitive expeditions turned its troops into “accomplished cattle-rustlers.”⁷ The assassination of the Nandi *orkoiyot* called into question the reputation of the British government for fair dealing and honesty”,⁸ and subsequently led to the recall of Captain Meinertzhagen. This underscores the intensity of force that was used against African tribes, and which British administrators feared could create “negative symbols” and undermine pacification.⁹ The use of force and sometimes treachery left the Africans a passive segment of the population in the colonial set-up. Moreover, the subduing of the Africans left their lands open for alienation and subsequent settlement by the Europeans.

European settlement on massive pieces of land necessitated search for cheap labour. The government responded to settler demand by enacting the Hut Tax Regulations of 1901, which introduced the hut tax in 1902 paid in cash. The requirement forced Africans to sell their labour in order to meet the tax obligations. The Poll Tax Ordinance was enacted to loop in those who circumvented the hut tax; it required all African males 25 years and older to pay poll tax. Women living in their own huts were also covered by the Hut Tax Regulations from 1910.¹⁰ The implication of these taxes was to move large native populations from the reserves to work in the European farms. Moreover, it disrupted social set-up in these native reserves and ignited political consciousness, which informed subsequent protest against colonial policies.

Settlers further demanded greater control on native labour for which the colonial government enacted the Master and Servant Ordinances of 1908 and 1910, which provided for penal sanctions on African labour offences such as desertion. These ordinances, together

⁷ Brian Garfield, *The Meinertzhagen Mystery: The Life and Legend of a Colossal Fraud* (Washington, D.C.: Potomac Books Inc., 2007), p. 59.

⁸ H. Moyse-Bartlett, *The King's African Rifles - Volume I: A Study in the Military History of East and Central Africa, 1890-1945* (Uckfield, East Sussex: Naval and Military Press, 2012), Note 1, p. 105.

⁹ Garfield, *The Meinertzhagen Mystery*, p. 69.

¹⁰ Maina Kiarie, “British East Africa Protectorate”, *Journey into Kenya's Past*, available at: <http://www.enzimuseum.org/after-the-stone-age/british-east-africa-protectorate>. Accessed on 28 July 2014.

with the Native Authority Ordinance of 1912 served not only to force Africans to comply with the requirements of the colonial authorities, but also to make them accept that they occupied an inferior position in respect of the European settlers.¹¹ A subsequent Native Registration Ordinance of 1915 aimed to supervise and control the recruitment of male Africans into colonial labour by introducing a record of service document, the *kipande*. The enactment of the Resident Native Ordinance of 1918 requiring squatter payments to be made in terms of labour services other than in kind or cash further enhanced native labour supply in the settler farms and institutionalised forced labour.¹² Other than controlling labour supply, the *kipande* also curtailed freedom of Africans and exposed them to constant harassment by the colonial authorities; it was perceived as a badge of slavery.¹³ Consequently, it became a key grievance immediately after its implementation in 1920. Thus, the combined factors of alienation of land, control of labour supply, institution of taxes and control of agricultural production, all of which forced the Africans to provide labour in the settler farms, aroused them to agitate for reforms.

The early confrontation between the African communities and the British imperialists left Africans a passive group among the other races. Dispossessed and impoverished they were relegated to the bottom rung and lacked any bargaining power in the search for a position in the political set-up.

2.2.2 Establishment of British rule

Initially, Britain entrusted its East African claims to a chartered company, the Imperial British East African Company (IBEAC), set up in 1888 with the aim of opening up the East

¹¹ Dickson A. Mungazi, *The Last British Liberals in Africa: Michael Blundell and Garfield Todd* (Westport, CON.: Greenwood Publishing Group, 1999), p. 36.

¹² Tiyambe Zeleza, "The Colonial Labour System in Kenya", in *An Economic History of Kenya*, edited by William Robert Ochieng' and Robert M. Maxon (Nairobi: East African Educational Publishers, 1992), p.177.

¹³ *Ibid.*, p. 181.

African hinterland for trade.¹⁴ When the company went bankrupt in 1894 due to expenses incurred in setting up infrastructure, Britain declared the territory a Protectorate (East African Protectorate) in 1895 and was placed formally under the Foreign Office. The Protectorate was directed by the Consul-General in Zanzibar, Sir Arthur Hardinge, a career diplomat, who was bestowed with administrative authority. Sir Hardinge kept most of the IBEAC officials as administrators.¹⁵ This set-up commenced the process of establishing British rule along the Coastal Strip and the hinterland.

The East African Order in Council of 1897 added the title ‘Commissioner’ to the Consul-General with powers to enact laws of local application referred to as “Queen’s Regulations”. Besides defining the jurisdiction of the British monarch over the Protectorate and providing for the establishment of the Office of the Commissioner, the Order in Council also marked the beginning of a legal system in Kenya.¹⁶ By setting up a form of government machinery, it became the first comprehensive constitutional instrument for the Protectorate.¹⁷ It set up a legal system that introduced foreign legislation, notably Indian and British Acts, both of which had little or no application to the native population. In effect, cases between the natives were to be settled in the native courts for which the commissioner gave regulations.¹⁸ This legal system became the basis for racial division in Kenya as it provided that matters affecting the penal status of the non-Islamic natives would be resolved by the law of the respective tribe in so far as it was not repugnant to morality. Islamic law would apply to the Islamic population, while for Christians, English law and common law would apply. Thus, a

¹⁴ Marjorie Ruth Dilley, *British Policy in Kenya Colony* (London: Frank Cass, 1966), p. 14.

¹⁵ Assa Okoth, *A History of Africa, Vol. 1* (Nairobi: East African Educational Publishers, 2006), p. 208; Charles Miller, *Lunatic Express: An Entertainment in Imperialism* (London: Penguin, 1971), p. 282.

¹⁶ “Historical Background of the Judiciary in Kenya”, available at:

http://judiciary.marsgroupkenya.org/index.php?option=com_content&view=article&id=45&Itemid=37.

Accessed on 21 June 2014.

¹⁷ See CKRC, *Report of the Constitution of Kenya Review Commission, Vol. 1* (Nairobi: Constitution of Kenya Review Commission, 2003), p. 18.

¹⁸ Eugene Cotran, “The Development and Reform of the Law in Kenya”, *Journal of African Law*, Vol. 27, No. 1 (Spring, 1983), pp. 42-61.

distinction between the Christian natives, non-Mohammedan natives and Mohammedan natives was made. The status of the natives was confirmed as non-British subjects and that their territory was foreign.¹⁹

A 1902 Order in Council repealed and replaced the East African Order in Council of 1897 empowering the Commissioner to create provinces and districts. It also expanded the Commissioner's legislative powers to make Ordinances, and provided that he no longer carried out consular duties.²⁰ Sir Charles Eliot, the Commissioner at the time, facilitated the enactment of Crown Lands Ordinance of 1902, which stated that all land belonged to the British Imperial government and further provided incentives for European settlement by raising the lease period from 21 to 99 years with an offer of 160 acres of free land.²¹ The Crown Lands Ordinance, a build-up of the earlier 1897 East Africa Land Regulations, enabled the colonial authorities to alienate land for settlers. According to these laws, any land that was "unoccupied" either because it was empty or had been vacated by "a native" was subject to allocation to the Europeans. Similarly, land that was not developed had to be forfeited to the Crown. Of interest was that "the British Crown could obtain radical (or ultimate) title to the land in a British Protectorate if there was no 'settled form of government' present."²² Accordingly, alienation of huge tracts of land in southern Gikuyuland and forceful movement of Maasai in the central rift region were executed to pave way for white settlement.²³ Sir Eliot used the Ordinance to translocate the Maasai and alienate their

¹⁹ Donald Rothchild, *Citizenship and National Integration: The Non-African Crisis in Kenya* (London: Oxford University Press, 1973), p. 5.

²⁰ Miller, *Lunatic Express*, p. 283.

²¹ Simon S.S. Kenyanchui, "European Settler Agriculture", in *An Economic History of Kenya*, edited by William Robert Ochieng' and Robert M. Maxon (Nairobi: East African Educational Publishers, 1992), p. 114.

²² Law Officers to Foreign Office, 13 Dec. 1899, Foreign Office Confidential Print, p. 113, as quoted in Smokin C. Wanjala (ed), *Essays on Land Law* (Nairobi: University of Nairobi, 2000), p. 5.

²³ Paul M. Syagga, "Land Ownership and Use in Kenya: Policy Prescription From an Inequality Perspective." In *Readings on Inequality in Kenya: Sectoral Dynamics and Perspectives* (Nairobi: Society for International Development.2006), p. 295.

land for white settlement culminating in the Maasai Agreement of 1904.²⁴ Nandi land was also annexed for European settlement at the end of their resistance in 1905.²⁵

In this early phase of the settlements, the lands alienated ran along the Uganda railway line, from Kiu in Machakos to Fort Tenan area near Kisumu, with branch lines planned to serve other lands of new settlement.²⁶ However, what the colonial authorities described as unoccupied and empty land was indeed land that was under the jurisdiction of specific communities; the lands had either been depopulated or vacated temporarily as people sought survival elsewhere. Also there were pieces of land that were left unoccupied as they were deemed as common lands for pasture or other communal purposes. Therefore, they did not appear as “developed” and were mistakenly due for alienation.²⁷

In 1905, the responsibility of the Protectorate was transferred from the Foreign Office to the Colonial Office. The Order in Council of 1906 established the positions of Governor and Commander-in-Chief, an Executive Council and a Legislative Council subsequent to which the capital of the Protectorate was shifted from Mombasa to Nairobi.²⁸ Lieutenant Colonel J. Hayes Sadler was appointed the first Governor. Both organs were advisory in nature with the Executive Council forming the machinery for carrying out the policy of the Colonial Office, while the decisions of the Legislative Council were subject to the veto of the Governor.²⁹ Although the Council could make ordinances, they were subject to His Majesty’s assent. The Council was also controlled by the government, as it comprised majority officials, namely the Governor as president, Senior Commissioner, Treasurer, Crown Advocate, Land

²⁴ Kenyanchui, “European Settler Agriculture”, p. 114.

²⁵ Ibid.

²⁶ Edward W. Soja, *The Geography of Modernization in Kenya: A Spatial Analysis of Social, Economic, and Political Change* (New York: Syracuse University Press, 1968), p. 20.

²⁷ Jomo Kenyatta, *Facing Mount Kenya* (London: Martin Secker and Warburg, 1938), pp. 36-37.

²⁸ “Nairobi” in *Encyclopædia Britannica*, available at:

<http://www.britannica.com/EBchecked/topic/401900/Nairobi>. Accessed on 30 July 2014.

²⁹ “President’s Address”, Minutes of the Proceedings of the First Session of the Legislative Council, 1917, *Official Gazette*, Vol. XIX-Supplement No.7, 4 July 30 1917, (Nairobi: Government Printer, 1917), p. 2, .

Commissioner and General Manager of the Uganda Railways. The Governor had the discretion to appoint any other official and unofficial members if only to ensure proper rein.³⁰

The transfer of the responsibility of the Protectorate to the Colonial Office placed Kenya's administration as other British colonies in Africa with an Executive and a colonial legislature.³¹ The governance structure established by the Order in Council defined Kenya's "international relations" during the entire colonial period featuring two levels of subordination. The first is where the Executive, as portrayed by the Governor, was directly under the Colonial Office in London. The second is where the colonial legislature, as represented by the Legislative Council, was answerable to the Executive. The Executive therefore acted as the main instrument of international relations for the colony.

2.2.3 European settlement and the "white man's country"

It was Sir Eliot and Lord Delamere, a pioneering settler, who aggressively promoted the Protectorate as a "white man's country".³² Lord Delamere, the Rt. Hon. Hugh Cholmondeley, 3rd Baron Delamere, was an aristocrat with fundamentalist persuasion and he actively recruited the British landed gentry to take up large estates in Kenya.³³ Through the Crown Lands Ordinance of 1902, the colonial government gave Europeans huge pieces of land to settle, particularly in the highlands, mostly consisting of 640 acres grants for new settlers.³⁴ Lord Delamere applied and was granted 100,000 acres in Naivasha, while Lord Francis Scott, the Earl of Plymouth, purchased 350,000 acres at a nominal price in Rongai, both in the Rift Valley.³⁵ These two settlers were major political figures between the wars. There were Sir Alfred Pease (2nd Baronet) who had more than 6,000 acres in the Athi Plains, Sir William

³⁰ East African Protectorate, East African Order-in-Council of 1905, .

³¹ Martin Wight, *The Development of the Legislative Council, 1606-1945, Vol. 1* (London: Faber & Faber, 1946).

³² Kenyanchui, "European Settler Agriculture", p. 114.

³³ Anthony J. Hughes, *East Africa: Kenya, Tanzania, Uganda* (London: Penguin Books, 1969), p. 90.

³⁴ Soja, *The Geography of Modernization*, p. 17.

³⁵ Walter Rodney, *How Europe Underdeveloped Africa* (Cape Town: Pambazuka Press, 2012), p. 154.

Northrup McMillan with 34,000 acres in Ol Donyo Sabuk, Machakos, and, together with such aristocrats as Gilbert Colville, Lord Errol, Berkeley Cole and Denys Finch Hatton, all large land owners, were in the unique position of having access to political forums in both the Colony and the metropolis. Their closeness to top officials in the Colonial Office and the monarchy earned them favourable consideration.³⁶

In 1903, the British Colonial Secretary, Joseph Chamberlain, suggested a programme for providing land for a Jewish state in Uasin Gishu region, but this was rejected by the Sixth Zionist Congress.³⁷ White settlers arrived in large numbers from Britain, South Africa, Canada, New Zealand and Australia.³⁸ After 1905, many of the European immigrants consisted of retired army officers who “were not always easy to govern and did not hesitate to give their perpetual criticism of authority”³⁹ This marked the beginning of white colonisation in Kenya.

By 1906, over 4,000 square km of land had been leased or sold to the settlers.⁴⁰ The highlight of the initial phase of European settlement was the influx of Boers from South Africa wanted to start life afresh after the Anglo-Boer War of 1902. In 1908, 208 families from Transvaal settled in the Uasin Gishu plateau (around Eldoret), while additional families immigrated in 1912.⁴¹ European settlement was further encouraged by former US President, Theodore Roosevelt, while visiting Kenya in 1909 when he urged the Europeans to build a

³⁶ Berman, *Control and Crisis in Colonial Kenya*, p. 140.

³⁷ Miller, *The Lunatic Express*, p. 518.

³⁸ Arnold, *Kenyatta and the Politics of Kenya*, pp. 53-60; Marjorie R. Dilley, *British Policy in Kenya Colony, Vol. 1* (London: Frank Cass, 1966), p. 16.

³⁹ Moyse-Bartlett, *The King's African Rifles - Volume 1*, p. 204.

⁴⁰ Simeon Hongo Ominde, “Kenya” *Encyclopaedia Britannica*, available at: <http://www.britannica.com/EBchecked/topic/315078/Kenya/38091/The-Uganda-railway-and-European-settlement>. Accessed on 31 July 2014.

⁴¹ Kenyanchui, “European Settler Agriculture”, p. 114.

large, healthy population of true white settlers and regarded it as “adding the last province to the British Empire”.⁴²

The empowerment of the Commissioner with legislative powers through the East Africa Order in Council of 1902 stirred the settler community to establish the Colonists’ Association. The Association had been started in 1901 by Lord Delamere as Farmers’ and Planters’ Association with the aim of furthering his campaign of white settlement and to represent Europeans interests.⁴³ The name changed to Colonists’ Association in 1902 and it immediately petitioned the Foreign Office to appoint an advisory council for the Commissioner in which they hoped to play a role.

Upon establishment of the Legislative Council and the Executive Council, the settlers agitated for representation. Whereas they were represented in the former through unofficials appointed by the Governor, their pleas for representation in the latter were not immediately attended to; instead, the Commissioner and subsequent Governors continued to give the settlers’ association preferential hearing.⁴⁴ In the first Legislative Council constituted by the Governor in 1906 (comprising seven members), two unofficial members were nominated to represent their interests.⁴⁵ When the Council first met in 1907 representation had been revised; of the nine members that now made up the Council, there were three unofficials who represented the settlers – Lord Delamere, J.H. Wilson and J.C. Baillie. Nevertheless, the settlers intimated to the colonial government that in future, the unofficials would be nominated with the settlers’ concurrence and consent, a process that was akin to election.⁴⁶

They also prevailed on the Governor, as Commander-in-Chief, to disband two KAR

⁴² Miller, *The Lunatic Express*, p. 426-9; Theodore Roosevelt, *African Game Trails: An Account of the African Wonderings of an American Hunter-Naturalist* (New York: Charles Scribner’s Sons, 1910), p. 373.

⁴³ Elspeth Huxley, *White Man’s Country: Lord Delamere and the Making of Kenya, Volume 1* (London: Chatto and Windus, 1968), p. 5.

⁴⁴ “Administrative/Biographical History”, Bodleian Library of Commonwealth & African Studies at Rhodes House, available at: <http://www.bodley.ox.ac.uk/dept/scwmss/wmss/online/blcas/convention-assoc.html>. Accessed on 29 July 2014.

⁴⁵ President’s Address, op cit., p. 1-5.

⁴⁶ Ibid.

battalions (5th and 6th) by 1910 ostensibly for economic reasons, but out of concern of a large trained and indigenous armed force.⁴⁷ Consisting mostly of the British aristocracy, the settlers were confident of support from their 'kith and kin' within the colonial authorities.⁴⁸

To further boost their influence, the settlers merged the Colonists' Association with the Pastoralists' Association and other district-based associations to form the Convention of Associations in 1910 (the Pastoralists' Association had been founded by R.A.B. Chamberlain to represent farmers who had originated from South Africa).⁴⁹ The Convention aimed to make the needs and interests of the colonists known to the Colonial Office. They agitated for white autonomy and pushed for the adoption of 'native' policies that confined Africans into perpetual labourers. They also demanded the establishment of a crown colony and possible self-government. By a resolution of the Convention, the settlers formally requested for elective representation in the Legislative Council in 1911 petitioning the Secretary of State who declined.

At the start of World War I in 1914, nearly 5 million acres of land had been alienated and leased out to individuals or groups.⁵⁰ The Land Titles Ordinance was enacted in 1908 for those with claims to title at the Coastal Strip to present them at the consequent Land Registration Court for issuance of ownership certificates otherwise unclaimed land would revert to the Crown.⁵¹ The implication was that separate alienation legislations operated at the Coast and in the mainland.⁵²

The Crown Land Ordinance was revised in 1915 to include, as available for alienation, land that was previously occupied by the natives. The Crown Lands Ordinance of 1915 further raised the leasehold to 999 years. In both instruments, the British assumed full

⁴⁷ Moyse-Bartlett, *The King's African Rifles - Volume 1*, p. 142.

⁴⁸ Zarina Patel, *Alibhai Mulla Jeevanjee* (Nairobi: East African Educational Publishers, 2002), p. 16.

⁴⁹ Huxley, *White Man's Country, Vol. 1*, p. 262.

⁵⁰ Syagga, "Land Ownership", p. 295.

⁵¹ Syagga, "Land Ownership", p. 295.

⁵² *Ibid.*

ownership over all land. A “soldier settler” scheme – the Ex-Soldier Settlement Scheme – introduced after the war resulted in further alienation of African land, which raised the number of European settler to about 2,000 by 1920.⁵³ Laikipia and Trans Nzoia were the key recipients of these settlers.⁵⁴ The continued alienation of land and the constant expropriation of small segments by the government for public works, mission schools and trading centres further eroded the trust that Africans had on the British government as custodians of their progress and welfare.⁵⁵

Increased pressure from the settlers for elected membership to the legislature was rewarded in the enactment of the Legislative Council Ordinance of 1919, which provided for 11 elective constituencies – Nairobi South, Nairobi North, Mombasa, Coast, Lake, Rift Valley, Plateau North, Plateau South, Kenya, Ukamba and Kikuyu – constituencies that represented areas of significant white settlement.⁵⁶ The first elections under the Ordinance (involving whites only) were held in February 1920.

2.2.4 Indians’ struggle for equality

The supremacy of European settlers was challenged by Indian immigrants. While the Europeans campaigned to discourage Indian immigration and to foster white settlement, the Indians sought an end to the emergent racial discrimination and parity in the government organs. The latter protested the transfer of the Protectorate’s seat of government from Mombasa to Nairobi in 1906 maintaining that it favoured European interests as Nairobi was the hub of the settler population.⁵⁷

⁵³ Simeon Hongo Ominde, “Kenya” *Encyclopaedia Britannica*, available at: <http://www.britannica.com/EBchecked/topic/315078/Kenya/38091/The-Uganda-railway-and-European-settlement>. Accessed on 31 July 2014; Kenyanchui, “*European Settler Agriculture*”, p. 115.

⁵⁴ Soja, *The Geography of Modernization*, p. 20.

⁵⁵ Berman, *Control and Crisis in Colonial Kenya*, p. 228.

⁵⁶ Legislative Council Ordinance of 1919, KNA: PC/Coast/2/3/7.

⁵⁷ Patel, *Alibhai Mulla Jeevanjee*, p. 17.

Indian presence in East Africa went back for centuries, as India had been “supplying pioneering merchants along the coast” for generations.⁵⁸ Their longstanding association with the sultanate of Zanzibar formed a basis for direct involvement in ‘opening up’ the interior of East Africa in tandem with the extension of British rule.⁵⁹ Large Indian presence followed the Britain decision to build a railroad linking Mombasa and the lakes with Indian labour being imported for the rail project. The invitation to work in the project, coupled with the ‘officially sponsored participation’ of ‘opening up’ the interior, led to an immense inflow of Indian immigrants of all category – skilled and semi-skilled employees, businessmen and traders.

In 1900 the Indians formed the Mombasa Indian Association to assist new immigrants from India. Alibhai Mulla Jeevanjee, who had emigrated from Karachi into Kenya in 1891 and had prospered as a merchant through contracts from the Uganda Railway, teamed up with a fellow businessman, Alidina Visram, in the Association and they started to agitate for Indian rights.⁶⁰ In 1907, they formed the British East African Indian Association which echoed the new spirit in India that had been manifested in the outburst of nationalist activity, coupled with the emergence of the Indian question in South Africa.⁶¹ They demanded the political equality of all the races in Kenya. They were motivated more by the bid to repulse the stigma of inferiority than to attain the prosperity of the Europeans, and hence a resentment of racial disqualification.⁶²

During his visit to Kenya in 1907, Winston Churchill, the Undersecretary of State for Colonies, advised that an Indian should be appointed to the Legislative Council, describing Indians as a “large and meritorious class”.⁶³ However, it was not until 1910, after a prolonged

⁵⁸ Keith Kyle, *The Politics of the Independence of Kenya* (London: Palgrave Macmillan Limited, 1999), p. 5.

⁵⁹ J.S. Mangat, in *A History of the Asians in East Africa, c.1886 to 1945* (Oxford: Clarendon Press, 1969), pp. 25-28.

⁶⁰ *Ibid.*, p. 16.

⁶¹ Rice, “The Indian Question in Kenya”, *op cit.*

⁶² *Ibid.*

⁶³ *Ibid.*

Indian campaign, and at the insistence of the Colonial office, that Jeevajee was appointed.⁶⁴ At the Legislative Council, Jeevanjee faced racial hostility and his participation was hampered by illiteracy in English language. He gave up the sittings preferring to channel Indian grievances directly to the Colonial Office.⁶⁵ He published *An Appeal on Behalf of Indians in East Africa*, an expression of grievances that were to form the basis of post-war political agitation by Indians in Kenya.⁶⁶ In 1914, the East African Indian National Congress was formed in Mombasa and appealed to His Majesty in Council to recognise the “principle and practice of complete equality of status for the Indians in Eastern Africa”.⁶⁷ When World War I broke out, the Indians supported the war effort, but after the war they were disappointed. They felt that they had nothing to celebrate as the Europeans went ahead with their discriminatory policies.⁶⁸

Constitutional and political developments in India affected the thinking on the future of Indians in Kenya.⁶⁹ After World War I, many educated Indian nationals expressed dissatisfaction with the Indian Councils Act 1909, commonly referred to as Morley-Minto Reforms.⁷⁰ The Act was based on reforms proposed by the Secretary of State for India, John Morley, and the Viceroy of India, The Earl of Minto, slightly increasing the involvement of Indians in the governance of British India. However, the reforms fell short of the Indian National Congress (INC) demand for a system of government as was applied in self-governing British colonies especially dominions. INC was demanding an increase in national power. US President, Woodrow Wilson, had also influenced many people in India with his

⁶⁴ Mangat, *A History of the Asians*, p. 104.

⁶⁵ Patel, *Alibhai Mulla Jeevanjee*, p. 17.

⁶⁶ Mangat, *A History of the Asians*, p. 104.

⁶⁷ John C. Hawley, *India in Africa, Africa in India: Indian Ocean Cosmopolitanisms* (Bloomington, IN: Indiana University Press, 2008), p. 86.

⁶⁸ Patel, *Alibhai Mulla Jeevanjee*, p. 26.

⁶⁹ Colonial Office, *Indians in Kenya: Memorandum*, Cmd 1922 (London: HMSO, 1923), p. 4. This is the Devonshire White Paper, a memorandum published in a special issue of the *Official Gazette* of 17 August, 1923.

⁷⁰ Courtenay P. Ilbert, *The Government of India, Supplementary Chapter (Indian Councils Act, 1909)* (London: Clarendon Press, 1907).

belief in national self-determination – that “people may now be dominated and governed only by their own consent,”⁷¹ a belief that undermined the basic idea of the British Empire. Thus, the British government had to deal with the issue of Indians who sought to be governed by the Indians living in Kenya.⁷²

Based on the pressure both locally and internationally the Indians were invited to present their memorandum to the Select Committee of the Legislative Council in 1917. In their deputation they sought representation based on other British colonies such as Uganda and Tanganyika.⁷³ Their demands were based on the strength of their population in Kenya, which stood at 22,822 against the Europeans’ 9,651.⁷⁴ Their high numbers made the Protectorate a virtual ‘appendage’ of British India with Indians envisaging it as a possible ‘America of the Hindu’.⁷⁵ European settlers’ proposal was that the Indians should be represented in the Council by a European appointed by the government. Subsequent efforts to control Indian immigration became a source of conflict between the Asians and the Europeans.⁷⁶ The Asians seemingly claimed greater ‘belongingness’ to the Protectorate than the European settlers and in their agitation they carried the Africans along for which the Europeans termed them inciters to crime and other vice.⁷⁷

In the Legislative Council Ordinance of 1919, Indians were allocated two (2) nominated seats. Arabs, whose population was 10,102,⁷⁸ were allocated one nominated seat, while

⁷¹ Trygve Throntveit, “The Fable of the Fourteen Points: Woodrow Wilson and National Self-Determination.” *Diplomatic History*, Vol. 35, No. 3 (2011): 447.

⁷² Chris Trueman, “India 1900-1947” at http://www.historylearningsite.co.uk/india_1900_to_1947.htm. Accessed on 31 January, 2012.

⁷³ Deputation of Indians to the Legislative Council Committee on Elective Representation, 31 May 1917, KNA: AG/24/36.

⁷⁴ Colonial Office, *Indians in Kenya*, op. cit., p. 10.

⁷⁵ Mangat, *A History of the Asians*, p. 63.

⁷⁶ Colonial Office, *Indians in Kenya*, p. 4.

⁷⁷ Elspeth Huxley, *White Man's Country: Lord Delamere and the Making of Kenya, Volume 2* (London: Chatto and Windus, 1968), p. 114.

⁷⁸ *Ibid.*

Africans, with an estimated population of 2.5 million,⁷⁹ had no representation. The Indians found the subsequent Royal Instructions of 1919 short of their expectations, as there was no change from the previous equation.⁸⁰ Arab representation in the Legislative Council was included in the Royal Instructions of 1919. The Arab member constituency included 12 African tribes (chief among which were the Miji Kenda), some Indians and African-born Baluchis.⁸¹ While African tribes were included in the Arab constituency, they were not consulted before the decision on the constituency was taken. Consequently, Arab demands were in conflict with those of Africans in subsequent constitutional discussions. On one hand, provision for additional European unofficial members through nomination assured the white settlers of a continued privileged position. On the other hand, the colonial government was assured of a majority in the legislature. Thus, as the Protectorate was converting into a colony, the British government ensured that it had a tight grip on the administrative affairs.

2.3 Constitutional Challenges, 1920-1940

The period 1920-1940 was characterised by racial conflict and increased settler pressure for the control of the economic and political life of the Kenya Colony amid change in thinking in the Colonial Office over trusteeship of Africans. Africans started to express political consciousness with the formation of parties and agitation for reforms in colonial governance, which was manifested in the Harry Thuku riots. British government's response was to issue the Devonshire White Paper aimed at addressing the Indian question, but also stating its trusteeship role. The settlers reacted to the White Paper with sustained pressure on the colonial government until there was a lull following the outbreak of World War II.

⁷⁹ Ibid., p. 9.

⁸⁰ Royal Instructions, published as Government Notice no. 436 in the *Official Gazette*, 24 December 1919.

⁸¹ Circular from Colonial Secretary, 11 January 1924, KNA: PC/Coast/2/3/7.

2.3.1 Declaration of Crown Colony

Governor Sir Edward Northey proclaimed the territory hitherto referred to as East Africa Protectorate to be “Crown Colony and Protectorate of Kenya” on 23 July 1920. The declaration was the Kenya (Annexation) Order in Council of 11 June 1920. This effectively changed its status and relationship with Britain. The development was welcomed by the European settlers who saw it as a step towards realising their political aspiration of elective representation in the Legislative Council and as a means of accessing public loans from the metropolis by the colonial government.⁸² Their guiding principle was the one stated by Sir Charles Eliot, that, “...white interest must be paramount, and the main object ... should be to found a white colony”.⁸³ They also hoped that it would follow the traditional imperial practice of devolving self-government on white settlers whenever practicable as had happened in elsewhere in the Empire, especially ethnically British colonies. For example, Cape Colony became self-governing in 1872 and Natal followed in 1873. In 1910, the Union of South Africa became a White Dominion, and the settlers of Southern Rhodesia were attained self-government in October 1923.⁸⁴

The declaration fell short of the expectations of Indians who had agitated for racial parity.⁸⁵ The Indians sought racial equality; specifically they wanted Kenya to be regarded and treated as an Indian colony the same way it was being regarded as a British colony. This brought the Indians into direct conflict with the European settlers.

Africans were also disappointed given their status in the new dispensation. Despite comprising the majority, they had no direct representation and ranked lowest in respect of precedence. Their grievances with regard to alienation of land, racial discrimination,

⁸² Berman, *Control and Crisis in Colonial Kenya*, p. 189.

⁸³ Arnold, *Kenya and the Politics of Kenya*, pp. 53-60.

⁸⁴ Robert D. Pearce, *The Turning Point in Africa: British Colonial Policy 1938-48* (Taylor & Francis, 1982), sec 10.

⁸⁵ Royal Instructions, *The Official Gazette*, Vol. XXI No. 687, 21 December 1919.

restriction of movement and taxation were still outstanding. They were particularly fearful that the new status meant more loss of land to white settlers.⁸⁶ This marked the emergence of African dissent.

2.3.2 Racial conflict

By the time of declaring the Crown Colony, the racial structure had been legally defined. Africans took the bottom rung of the hierarchy despite making up the majority in terms of population. Having hitherto remained passive in the unfolding racial conflict, they came out to oppose new colonial policies such as the unilateral increase in taxation ostensibly to finance additional expenditure in the new colony such as the Soldier Settlement Scheme.⁸⁷ Nationalist movements emerged at the local level, especially in Nyanza and central Kenya.⁸⁸

Declaration of the crown colony heightened racial tension between the Europeans and Indians. Failure of the colonial government to restrict immigration of Indians saw Lord Delamere resigning from the Legislative Council in 1920 in protest and launched his Reform Party in 1921 to oppose the Indian claims.⁸⁹ The party participated in the March 1924 Legislative Council elections, which the Indians boycotted.⁹⁰ In May 1921, the Indian Association met with the Colonist Association under the chairmanship of Governor Northey at Government House in a bid to resolve the racial conflict. The three day meeting did not produce any agreement.⁹¹ Indians' principle of "No taxation without representation", fuelled more controversy. At the Imperial Conference in June 1921, the Colonial Secretary, Winston

⁸⁶ Kyle, *The Politics of the Independence*, p. 4.

⁸⁷ Robert M. Maxon, *Struggle for Kenya: The Loss and Reassertion of Imperial Initiative, 1912-1923* (Madison, NJ: Fairleigh Dickinson Univ Press, 1993), p. 139.

⁸⁸ Oginga Odinga, *Not Yet Uhuru* (Nairobi: Heinemann, 1967), p. 24-29.

⁸⁹ Patel, *Alibhai Mulla Jeevanjee*, p. 23.

⁹⁰ "Kenya Elections: European Candidates' Programme", *The Times*, 27 March 1924, p. 13.

⁹¹ Patel, *Alibhai Mulla Jeevanjee*, p. 23.

Churchill, stated that the British ideal was one of no racial, colour and creed barrier for anyone or any community wishing for advancement.⁹²

Africans were not represented in any of the proceedings despite their contribution to the World War I effort. Instead of being rewarded, they lost more land and faced an increase in taxes. The implementation of the Native Registration Ordinance of 1915 also subjected them to carrying 'kipande'. In response to these post-war developments, an informal movement emerged in the Nyanza region known as 'Piny Owacho' to protest the declaration of the colony and the consequent changes, but was quietly suppressed.⁹³ Simultaneous political activity emerged among the Luo and Gikuyu when Young Kavirondo Association and Young Kikuyu Association (YKA) were formed in 1921 to express African grievances. The former was however replaced by the missionary-sponsored Kavirondo Taxpayers Welfare Association (KTWA), formed by the head of CMS in Maseno, Archdeacon Walter Owen, in 1923.⁹⁴ In 1924, Archdeacon Owen formed the North Kavirondo Taxpayers Welfare Association (NKTWA) for the Luyhia, but the membership was eventually co-opted into "responsible channels" and absorbed in colonial institutions effectively diminishing the protests.⁹⁵ Protest movement among the Gikuyu continued primarily because they experienced the intensity of colonial policies more due to their closeness to Nairobi.⁹⁶

2.3.3 The 'Harry Thuku Riots' and African protest

As early as 1915, African political consciousness had been aroused when women and girls started being recruited into forced labour.⁹⁷ This was one of the grievances that prompted Harry Thuku, a young mission-educated Gikuyu from Kiambu, to form YKA. He renamed it

⁹² Ibid.

⁹³ Odinga, *Not Yet Uhuru*, p. 24-29.

⁹⁴ Ibid, p. 28-29.

⁹⁵ Berman, *Control and Crisis in Colonial Kenya*, p. 231.

⁹⁶ Ibid.

⁹⁷ Harry Thuku, *An Autobiography* (Nairobi: Oxford University Press, 1970), p. 16.

East African Association (EAA) the same year “in an attempt to suggest and acquire pan-tribal unity”.⁹⁸ The aim was to recover the lands lost when Kenya became a British crown and to spearhead the struggle against forced labour, especially after it had been discouraged by the Secretary of State for the Colonies on his advice to the Governor but continued being practised by private employers.⁹⁹ There was also protest against the taxation policy where Africans felt they paid most of the taxes, but the settlers received virtually the entire benefit of government services.¹⁰⁰ Thus, it was EAA that led the African dissent protesting against racialism, the enactment of the Registration of Natives Ordinance (the *kipande*) and increased taxation. Thuku traversed the rural areas articulating Africans’ grievances against the colonial government and mobilising support.¹⁰¹ His militancy and growing support drew reaction from the government culminating in his arrest on 14 March, 1922. An attempt by his followers to release him from police custody in Nairobi while awaiting detention resulted in the ‘Harry Thuku Riots’ in which several people were killed.¹⁰² The protests alarmed the administration, the Colonial Office and the settlers who had hitherto dismissed EAA as of little consequence and unrepresentative of African opinion.¹⁰³ Harry Thuku was subsequently detained.

There were no radical changes to the British or colonial government policies following the ‘Harry Thuku Riots’. However, tax was reduced thereby signalling the end of coercing Africans into the labour force by increasing their tax rate. The issue of forced labour, which embarrassed the British government, culminated in the replacement of Governor Sir Edward Northey who had yielded to settler pressure to issue controversial circulars on compulsory

⁹⁸ Audrey Wipper, “Kikuyu Women and the Harry Thuku Disturbances: Some Uniformities of Female Militancy”, *Journal of the International African Institute*, Vol. 59, No. 3 (1989), p. 301.

⁹⁹ “Colonial Office Dispatch on Native Labour in Kenya Colony”, Government Notice No. 385, *Kenya Gazette*, 19 October 1921, p. 924.

¹⁰⁰ Ken Olende, “The Brutal Legacy of Britain’s Colonial rule in Kenya,” *Socialist WorkerOnline*. Available at <http://www.socialistworker.co.uk/art.php?id=1384>. Accessed on 31 October 2014.

¹⁰¹ Wipper, “Kikuyu Women”, p. 302.

¹⁰² Louis S. Leakey, *Mau Mau and the Kikuyu* (London: Routledge, 1952), p. 88.

¹⁰³ Wipper, “Kikuyu Women”, p. 316.

labour for private purposes.¹⁰⁴ The ‘riots’ also demonstrated that serious tension existed prompting the authorities both in Kenya and Britain to recognise the urgent need for reform; hence, African grievances were accorded some frank discussion.¹⁰⁵

The Royal Instructions issued in 1923 provided for some constitutional reforms.¹⁰⁶ In the Legislative Council elections of 1924 and the subsequent composition of the Council, a member was nominated to represent African interests. The representative, Reverend Dr John William Arthur, was a Scottish missionary who had started work at the Kikuyu Mission Station in 1907 and was the leader of the Alliance of Protestant Missions.¹⁰⁷ Dr Arthur had particularly expressed concern for the welfare of Africans challenging the power of white settlers and their abuse of Africans in the agricultural sector. However, the decision to nominate him to represent African interests was reached without consultation with the African nationalists who had started to express broader and more focused demands which encompassed other earlier grievances.¹⁰⁸ Dr Arthur was later to represent Africans in the Executive Council.

To provide a channel for the African voice the colonial government designed structures to receive African grievances. Through the Native Authority (Amendment) Ordinance of 1924 the Local Native Councils (LNCs) were established in 1925 to promote “the welfare and good government of the native inhabitants...in respect of matters affecting purely local native administration” and was composed of partly elected and partly nominated membership.¹⁰⁹ The Councils were presided over by the respective District Commissioners

¹⁰⁴ Ibid, p. 308.

¹⁰⁵ Ibid.

¹⁰⁶ Royal Instructions, published as Government Notice No. 422, *Official Gazette*, Vol. XXV No. 917, 12 December 1923.

¹⁰⁷ Robert Maxon, *East Africa: An Introductory History* (Nairobi: East African Educational Publishers, 1994), p. 159. (see Government Notice No. 153, Legislative Council. *Official Gazette of the Colony and Protectorate of Kenya*, 30 April, 1924).

¹⁰⁸ Memorandum of KCA on Hilton Young Commission Report, 30 May 1929, KNA: PC/CP.8/5/3.

¹⁰⁹ Colonial Office, *Annual Report on the Social and Economic Progress of the People of the Kenya Colony and Protectorate, 1931* (London: HMSO, 1933), p. 7.

representing the colonial administration. Africans were required to channel their grievances through these Councils (LNCs).¹¹⁰ Africans disliked the Councils, regarding them as forums to “let off steam” as they were severely constrained by the administrators who refused to let politics intrude in the proceedings.¹¹¹ In addition, there were instances where the administrators pushed unpopular measures through them to give them “a veneer of acceptance”.¹¹² The Councils nevertheless provided ambitious young men who had been co-opted into them with avenues for future leadership though they curtailed progressive forces as they lacked clearly defined linkage with the Legislative Council and therefore opened search for alternative channels including protest movements. The Harry Thuku incident had also demonstrated that it was possible to bypass the local and colonial channels and petition the metropolitan authorities directly.

The removal of Harry Thuku from the scene resulted in the fading off of EAA. By establishing LNCs the colonial government aimed to regulate and restrict political activity to an ethnic level. Nevertheless, the protest movement was still alive. A new category of African leaders came to the limelight who openly rejected the fundamental premises of white rule and adopted a more militant and uncompromising approach to political change.¹¹³ From the embers of EAA emerged the Kikuyu Central Association (KCA) under the leadership of Fort Hall-based and Anglican-educated James Beauttah, Joseph Kang’ethe and Jesse Kariuki. Kang’ethe had been ejected from his Fort Hall LNC seat due to his militancy.¹¹⁴ KCA’s main aim was to agitate for the return of land held by the Europeans and against the affront on African cultures by the missionaries.¹¹⁵ Jomo Kenyatta, a Scott-mission educated worker of

¹¹⁰ E.B. Horne to Chief Native Commissioner, 25 September 1929, KNA: PC/CP.8/5/3.

¹¹¹ Berman, *Control and Crisis in Colonial Kenya*, p. 217.

¹¹² Ibid. p. 311.

¹¹³ Carl Rosberg and John Nottingham, *The Myth of ‘Mau Mau’: Nationalism in Kenya* (New York: New American Library, 1966), p. 42.

¹¹⁴ Berman, *Control and Crisis in Colonial Kenya*, p. 241.

¹¹⁵ Leakey, *Mau Mau and the Kikuyu*, p. 88-89.

the Nairobi Municipal Council from Kiambu, joined in later and played a prominent role in expounding African grievances both locally and abroad.

2.3.4 Devonshire White Paper of 1923

Devonshire White Paper was the British government response to the aggressive approach that the European settlers had adopted in their search for enhanced political and economic position at the expense of other races. The Paper's declared principle of African paramountcy was a culmination of the effort by the British government to settle the Indian question and also to reassert itself in a settler-dominated colonial set-up.¹¹⁶

The declaration in the White Paper was preceded by a show of frustration and dissatisfaction from European settlers in respect of the provisional solution to the Indian question as proposed by Secretary of State, Winston Churchill, in the 1921 conference in London. The Europeans had wished for the "extinction of Indians in the Colony".¹¹⁷ Their Convention of Association had come up with the policy of "Irreducible Minimum" on the status of Indians in Kenya, which comprised two nominated Indians as an extreme concession on the Legislative Council. The Colonial Office had approved four seats for Indians, which prompted the settlers to convene countrywide meetings that endorsed any deterrent action recommended by the Association.¹¹⁸ In their meetings, they proposed arrangement for a coup d'état where they would kidnap the Governor, seize all arms and ammunition, and take over the railway, postal and telegraphic services. They would thereafter deport all the Indians by railway and invite the Transvaal Boers who would demonstrate how Africans ought to be treated.¹¹⁹ This threat of settler insurrection was taken seriously with the Commissioner of Police, William Notley, warning that the government would act decisively to contain

¹¹⁶ Maxon, *Struggle for Kenya*, p. 280.

¹¹⁷ William McGregor Ross, *Kenya from Within: A Short Political History* (Oxford: Routledge, 1968), p. 365.

¹¹⁸ *Ibid.*, p.

¹¹⁹ Prakash Chand Jain, *Racial Discrimination Against Overseas Indians: A Class Analysis* (New Delhi: Concept Publishing Company, 1990), p. 151-2.

“revolutionary activity”.¹²⁰ It also prompted the Colonial Office to convene a conference in London which was the basis for drafting the White Paper. Neither the Indians nor the settlers found the settlement satisfactory and hence the tension was perpetuated.

Just as the colonial government was encouraging white settlers, Indians were also fighting for their stake going as far as seeking the annexation of Kenya to the Indian Empire as a provincial government under an Indian viceroy.¹²¹ As their agitation for inclusion in governance intensified, they caught the attention of both the imperial and the colonial government. The British government mediated the Indian demands with a skewed outcome and therefore leaving them unresolved, which was to become a continuous source of racial conflict. The consultations that involved the Governor, settlers, missionaries and the Indians resulted in the formation of an interdepartmental committee of the imperial government to propose settlement terms that were to be studied by the Governments of Kenya and India.¹²² The proposals dealt with issues of representation in the Legislative, Executive and Municipal councils, franchise, immigration, segregation and the White Highlands, and were presented in the Wood-Winterton Report with observations that the Indians sought, not domination, but the admission of not more than one-tenth of their population into the franchise and the recognition of their right as British citizens.¹²³ However, the committee consideration did not fully resolve Indian grievances.

Intervention by the Government of India on the question of Indians in Kenya prompted the Conservative government in Britain to issue the Devonshire White Paper containing the general policy in respect of races in the Colony. It stated that, “however irreconcilable the views of the Europeans and Indian communities in Kenya on many points may be, there is

¹²⁰ Ross, *Kenya from Within*, p. 380.

¹²¹ Quoted in Assa Okoth, *A History of Africa: African Societies and the Establishment of Colonial Rule, 1800-1915* (Nairobi: East African Educational Publishers, 2005), p. 357.

¹²² Colonial Office, *Indians in Kenya*, p. 10.

¹²³ Edward Hilton Young, *Report of the Commission on Closer Union of the Dependencies of Eastern and Central Africa, Cmd 3234* (London: HMSO, 1929), p. 204.

one point on which both are agreed, namely, the importance of safeguarding the interests of the African natives”.¹²⁴ It recommended that a provision should be made for Indians to have five elected unofficials in the Legislative Council, that no provision should be made for Indian representation in the Executive Council, that representation of other races in Municipal (including Indians) should be considered further, that racial segregation in townships should continue, that the White Highlands should continue being reserved for Europeans, and that further considerations would be made regarding the control of Indian immigrants into Kenya (and Uganda).¹²⁵

At the time the Devonshire White Paper was issued in 1923, conceptions were changing in the Colonial Office. The British government was bent on revolutionising the methods and purpose of British rule and therefore sought to pursue more progressive policy. The ‘natives’ were no longer regarded as “merely a superior form of ape”, but inhabitants for whom it had responsibility.¹²⁶ This was due to the emergence of an influential pro-native lobby that had grown up in Britain. Subsequently, the British government officially accepted the principle of trusteeship against the wishes of white supremacists, especially in Kenya and Northern Rhodesia. It was later to clarify that there was no place in its establishment for the doctrine that one race was superior to another.¹²⁷ The principle of trusteeship not only endowed it with good conscience, but it also vetoed settler self-government.¹²⁸ However, this remained just a theory and little changed on this account.

An amendment to the Royal Instructions in 1923 actualised the proposals on the principal issues addressed by the paper. However, only the issues of representation in the Legislative Council and immigration were partially dealt with, while the position of the

¹²⁴ Colonial Office, *Indians in Kenya*, op cit, p. 9.

¹²⁵ Ibid, pp 11-18.

¹²⁶ Pearce, *The Turning Point in Africa*, sec 6.

¹²⁷ Ibid.

¹²⁸ Ibid.

settlers in the colony was ignored. British government mediation of the Indian question once again left an unsustainable settlement. With regard to Africans, the most significant policy statement in the paper was that,

Kenya is an African territory, and His Majesty's Government think it necessary definitely to record their considered opinion that the interests of the African natives must be paramount, and that if, and when, those interests and the interests of the immigrant races should conflict, the former should prevail. Obviously, the interests of the other communities, European, Indian or Arab, must severally be safeguarded.¹²⁹

The concept of 'trusteeship', formulated by colonial administrator Lord Fredrick Lugard and adopted as a policy by the Colonial Office in 1905, was a means of governing the colonies in the interest of their inhabitants. Its objective was envisaged as economic development for the mutual benefit of the "imperialist and colonial subject".¹³⁰ Nevertheless, the Devonshire White Paper did not address any of the key grievances of the Africans neither did it give them any prominence. It restated the British government's trusteeship role as a tripartite responsibility, while upholding the interests of Africans.¹³¹ This responsibility included furthering the development of natives and that of the immigrant communities.¹³²

Despite this policy statement, it remained just a policy; in practice, it "extended more control to Europeans," giving them a share as well as exercise of colonial mandate.¹³³ They not only retained a clear majority in the Legislative Council, but they were also visible in government as a community. Alienation of native land continued unabated further increasing

¹²⁹ Ibid, p. 10.

¹³⁰ R. M. Douglas, Michael D. Callahan and Elizabeth Bishop (eds.), *Imperialism on Trial: International Oversight of Colonial Rule in Historical Perspective* (Oxford: Lexington Books, Jan 1, 2006), p. 35.

¹³¹ Elizabeth Hopkins, "Racial Minorities in British East Africa", in S. Diamond and F. Burke (eds), *The Transformation of East Africa: Studies in Political Anthropology* (New York and London: Basic Books.1966), pp 83-156.

¹³² Ibid, p. 90.

¹³³ Ibid, p. 91.

the tension between the Africans and the white settlers.¹³⁴ As this declaration was submerged in the “Indian Question in Kenya”, it remained not more than a political catch-phrase to mask the underlying issues and only laid bare the British government’s indifference to the African position.¹³⁵ The declaration was therefore a victory for the Europeans who continued to exhibit faith and confidence in making white settlement in the highlands a success, aspiring to build a British civilisation devoid of “South African or West African character”.¹³⁶ In the Legislative Council elections held in March 1924, under the constitution arrangements contained in the Royal Instructions of 1923, the settlers still had an upper hand although the Council had a greater composition of officials.¹³⁷ The Indians boycotted the election protesting the separation of the roll and non-parity in seats, while Africans’ interests were represented by a nominated European.¹³⁸ In the absence of the Indian elected members, there was provision to nominate five unofficials to represent their interests.¹³⁹ Although the Indians participated in the subsequent elections in 1931, they boycotted proceedings of the Council.¹⁴⁰

The expectations raised by the Devonshire declaration encouraged the African nationalists to refine KCA and use it to express their demands. When the issue of female circumcision came up in 1929, KCA capitalised on it to drum up African grievances and constitutional proposals. In its memorandum upon the publication of Hilton Young Commission report, KCA suggested a structure of legislature that reflected the proportion of 3 Africans, 2 Europeans and 1 Indian with the number of Africans increasing gradually

¹³⁴ Kenneth Mufaka, “Scottish Missionaries and the Circumcision Controversy in Kenya 1900-1960”, *International Review of Scottish Studies* Vol. 28 (2003), p. 57. Available at: www.irss.uoguelph.ca/article/download/176/218

¹³⁵ Christopher P. Youé, *Robert Thorne Coryndon: Proconsular Imperialism in Southern and Eastern Africa, 1897-1925* (Waterloo, ON: Wilfrid Laurier Univ. Press, 1986), p. 175.

¹³⁶ W. Omsby-Gore, *Report of the East Africa Commission, Cmd 2387* (London: HMSO, 1925), p. 171.

¹³⁷ Royal Instructions, *Official Gazette*, Vol. XXV No. 917, 12 December 1923, p. 984.

¹³⁸ *Ibid.*

¹³⁹ Royal Instructions, *Official Gazette*, Vol. XXVIII No. 1063, February 17, 1926, p. 264.

¹⁴⁰ Youé, *Robert Thorne Coryndon*, p. 174.

towards clear majority African rule.¹⁴¹ The Hilton Young Commission was appointed by the Secretary of State for the Colonies in July 1927 to visit the East African Dependencies and make recommendations on closer union between the different governments in Central and Eastern Africa particularly with regard to development of transport and communications, customs, scientific research and defence.¹⁴² The Commission was chaired by Sir Edward Hilton Young, a peer, politician and writer. KCA also demanded elections on a common roll where all educated subjects of the Crown would participate and Kiswahili would be extended as criteria for franchise, and an end to political repression as well as an enabling environment for political organisation. It not only proposed Kenyatta to represent native interests in the Legislative Council, but it also proposed a national native council to deliberate on issues affecting Africans in the colony.¹⁴³ Such a central body was not acceptable to the colonial government and KCA went as far as starting branches in other parts of Kenya in a bid to come up with a colony-wide political organisation. Examples of these branches were the Taita Hills Association (THA) and Ukamba Members Association.¹⁴⁴

Affront on the cultural rites of the Gikuyu by the Christian missionaries on account of female circumcision created a wedge between them and the traditionalists as well as KCA leadership. Although Dr Arthur had distinguished himself as an advocate of paramountcy of African interests, he antagonised the Africans when he campaigned against joining the KCA at the height of the missionaries' resistance to the practice of female circumcision for which he expressed more enthusiasm than other missionaries.¹⁴⁵ Africans insinuated that, by his zealous campaign, he had introduced an Eleventh Commandment: "Thou shalt not join the

¹⁴¹ Memorandum of KCA, op cit.

¹⁴² Colony and Protectorate of Kenya, *Reports for 1927* (London: HMSO, 1928), p. 18.

¹⁴³ Memorandum of KCA, op cit.

¹⁴⁴ Bill Bravman, *Making Ethnic Ways: Communities and their Transformations in Taita, Kenya, 1800–1950* (Oxford: James Currey, 1998), p. 241.

¹⁴⁵ Mufaka, "Scottish Missionaries", p. 55.

KCA”.¹⁴⁶ His determined and uncompromising stand alienated him from both the Africans whose interests he represented and the colonial government which accused him of misrepresenting it. School attendance suffered and many Kikuyu Christians left the church in protest. Early in the campaign, he was accused of using his position in government to intimidate the chiefs. KCA even made a linkage between his campaign and prospective loss of tribal land.¹⁴⁷ The Governor asked him to resign.¹⁴⁸ Rev. John Britton was nominated in November 1926 to replace him as the representative of African interests.¹⁴⁹

The repercussion of the break-up from the Christian churches was that children of the traditionalists were denied education in mission schools prompting the emergence of the independent schools movement. The movement featured two organisations: Kikuyu Independent Schools Association, (KISA) and Kikuyu Karinga Education Association (KKEA) both of which aimed to provide education in direct opposition to mission education. The emergence of independent schools was accompanied by the founding of independent churches.¹⁵⁰ Mbiyu Koinange, an American and Britain trained educationist and the first Kenyan African to hold an MA degree, returned to Kenya in 1938 and established the Kenya Teachers College at Githunguri with the support of KISA and KKEA. It became the centre of general political education and awareness.¹⁵¹ Koinange stepped down as principal for Kenyatta when the latter returned to Kenya in 1947 by which time the enrolment was over 1000 students. James Gichuru, a former teacher at Alliance School, and Gikonyo Kiano, an

¹⁴⁶ Rosberg and Nottingham, *The Myth of 'Mau Mau*, p. 120.

¹⁴⁷ Macharia Munene, “Intercultural Conflict: The Fight Over Female Circumcision, 1914-1932”, *MILA*, Vol. 1 (1996), p. 80.

¹⁴⁸ Mufaka, “Scottish Missionaries”, p. 56.

¹⁴⁹ Government Notice No. 446, *Official Gazette*, Vol. XXVIII, No. 1106, 10 November 1926.

¹⁵⁰ Zablon Nthamburi, “The Beginning and Development of Christianity in Kenya: A Survey”, *Dictionary of African Christian Biography*, available at: <http://www.dacb.org/history/beginning%20and%20development%20of%20christianity%20in%20kenya.html>. Accessed on 30 August 2014.

¹⁵¹ Charuthi N. Wairia, “Githunguri: Cradle of Independent Schools”, available at <http://kenyabeyond2005.blogspot.com/2006/06/githunguri-cradle-of-independent.html>. Accessed on 31 August 2014.

American educated political scientist from Murang'a, taught at the college.¹⁵² Therefore, African opposition in the 1930s was driven by the Kikuyu Independent Schools Movement, which had a close affiliation with KCA.¹⁵³

Like KCA, the independent schools movement was founded from the uneasy alliance between the pro-establishment tribal elders and a new group of younger, more politically-oriented and mission educated leaders and who also formed parallel independent churches. These institutions became centres not just for educational purposes but also for the Kikuyu nationalists to extend their influence in the rural areas and a training ground for politicians.¹⁵⁴ On the eve of the outbreak of World War II KCA and its satellite associations were banned.¹⁵⁵ The colonial government used the Defence Regulations of 1939, which empowered it to apply enhanced coercive powers to deal with internal security, to lay suspicion of high treason by claiming a possible collaboration with the invading Italians from Ethiopia. In May 1940, 22 of their leaders were arrested and detained for the rest of the war period thereby suppressing overt African political activity in Kenya for the next four years.¹⁵⁶

2.3.5 Government reaction and quest for Closer Union

Government response to African demands was to discourage African political activity and organisations. Whenever Africans came out to express themselves they were prosecuted for agitation and sedition – as had happened to Kabula wa Muli in Ukambani – and in most cases they were branded troublemakers and dealt with severely.¹⁵⁷ The colonial government also paid little attention to KCA as it felt the organisation was not representative of the natives and castigated its young membership for disrespect as it did not consult the elders whose

¹⁵² University of Nairobi, "Citation on Dr Julius Gikonyo Kiano", available at: <http://www.uonbi.ac.ke/sites/default/files/Kiano.pdf>. Accessed on 31 August 2014.

¹⁵³ Leakey, *Mau Mau and the Kikuyu*, p. 92.

¹⁵⁴ Michael H. Kovar, "The Kikuyu Independent Schools Movement: Interaction of Politics and Education in Kenya (1923-1953)", PhD Dissertation, University of California, USA, 1970.

¹⁵⁵ Leakey, *Mau Mau and the Kikuyu*, p. 92.

¹⁵⁶ Berman, *Control and Crisis in Colonial Kenya*, 244.

¹⁵⁷ *Ibid.*

membership was in the more pro-establishment and conservative Kikuyu Association.¹⁵⁸ However, this was the preferred mouthpiece of the majority Africans who abandoned missionary establishments to join its independent movement.¹⁵⁹

The colonial government claimed that African representation in the Legislative Council was impeded by the absence of Africans with “character and ability” and education.¹⁶⁰ The “properly educated” Africans were absorbed into the public service meaning they were the only ones available for nomination.¹⁶¹ The enactment of the Local Native Council Ordinance of 1924 created the institution of the Local Native Councils (LNCs) through which African grievances were channelled. The institution was ostensibly meant to initiate participation of Africans in the government for which councils were established in all the native reserves and were chaired by administrative officers.¹⁶² They were placed under the District Commissioners, and generally under the Chief Native Commissioner, who was an official Member of the Legislative Council. Membership to the councils was not elective (it was by nomination), and did not represent African opinion.¹⁶³ As an institution, therefore, the LNC structure did not address the grievances of the Africans, but controlled their politics at the local level.

The arrival of Sir Edward Griggs (an admirer of South African policies) as Governor in 1925 provided impetus to the white settlers’ aspirations of greater role in the colony’s economic and political development. He sided with the white settlers against native interests though his discretion over the unofficial interests of the settlers and by adopting policies that circumvented Devonshire’s African paramountcy.¹⁶⁴ With domination over colonial politics

¹⁵⁸ E.B. Horne to Chief Native Commissioner, op cit.

¹⁵⁹ Mufaka, “Scottish Missionaries”, p. 56.

¹⁶⁰ Rennie to Secretary of State, Despatch, 22 December 1945, KNA: CS/2/4/9.

¹⁶¹ Memorandum of KCA, op cit.

¹⁶² E.B. Horne to Chief Native Commissioner, op cit.

¹⁶³ Jesse Kariuki to H.E. Governor, 21 May 1930, KNA: PC/CP.8/5/3.

¹⁶⁴ Youé, *Robert Thorne Coryndon*, p. 178.

the settlers looked outwards and supported the British government in its bid at establishing closer union of British territories in East and Central Africa. The initiative, formulated by colonial administrator Sir Harry Johnston as part of the Cape to Cairo plan to acquire a continuous band of territory down Africa “by linking British possessions in southern Africa with her sphere in East Africa and the Egyptian Sudan.”¹⁶⁵ This idea attracted official interest from the Colonial Office after World War I.¹⁶⁶ Sir Winston Churchill, the Secretary of State for the Colonies in 1922, expressed the British government’s desire to amalgamate the dependencies of Kenya, Uganda Tanganyika and Zanzibar for ease of administration and economic development.¹⁶⁷ The settlers saw the initiative as an opportunity to expand their influence provided they had a major voice in government and in its policies.¹⁶⁸ The East African Commission appointed to explore measures that would accelerate the Union however discouraged the idea of federation instead recommending regular periodic conference of governors.¹⁶⁹

In all the East African territories, the idea of federation was rejected by Africans. In Kenya, the leaders feared that federation would interfere with their demands for representation in the Legislative Council. In Uganda, the inhabitants were apprehensive of any move that might place them under the dominance of the settlers in Kenya, while in Tanganyika there was fear that it might threaten the well-being of the African population.¹⁷⁰ Another commission was appointed in 1928 by the Colonial Secretary, Leo Amery, chaired by Edward Hilton Young, to survey the possibility of federation or a closer form of union. It

¹⁶⁵ Robert I. Rotberg, *The Founder: Cecil Rhodes and the Pursuit of Power* (Oxford: Oxford University Press, 1988), p. 280.

¹⁶⁶ James C. Taylor, *The Political Development of Tanganyika* (Stanford CA: Stanford University Press, 1963), p. 62.

¹⁶⁷ *Ibid.* pp. 62-63.

¹⁶⁸ Moses Wamboga Wamanga, “Closer Union of East African Territories”, available at: http://file1.hpage.com/009737/90/html/closer_union_of_east_african_territories.html. Accessed on 02 August 2014

¹⁶⁹ Omsby-Gore, *Report of the East Africa Commission*, p. 9.

¹⁷⁰ Wamanga, “Closer Union”, *op cit.*

was Lord Amery's strategy to create a white-settler dominated colony in the region.¹⁷¹ A key question that faced the commission was the form of constitution that was suitable for the territories considering that non-native immigrant communities had gained permanent residence. It was also to consider the application of Governor Coryndon's "dual policy" in the political and economic spheres.¹⁷² The policy, which had been formulated by Governor Robert Coryndon in 1923 and recommended by the Conference of East African Governors in 1926, emphasised the complementary development of African and European economies.¹⁷³ The Commission dismissed an immediate possibility of the European minority achieving responsible self-government, but also emphasised that every race and interest must be given a sense that their views were considered and safeguarded, and hence an increase in nominations to represent African interests, including nominating persons of African descent.¹⁷⁴ The Commission also advised against the idea of federation but recommended the creation of a position of Governor-General.¹⁷⁵ However, the British government forged ahead with the optional policy of economic cooperation.

KCA issued a memorandum in reaction to the publication of the Hilton Young Commission Report in which they emphasised the issue of land, representation in the Legislative Council and political development in Kenya.¹⁷⁶ Settler influence was a principal concern among the Africans and Indians. Both groups appealed to Britain not to grant self-government to European settlers.¹⁷⁷ They demanded a definite declaration regarding the future of the natives in Kenya. Their demands became more radical, calling for immediate independence and majority rule. In February 1929, Jomo Kenyatta, as Secretary of KCA,

¹⁷¹ Stephen Constantine, *The Making of British Colonial Development Policy 1914-1940* (London: Frank Cass and Co., 2005), p. 151.

¹⁷² Youé, *Robert Thorne Coryndon*, p. 178.

¹⁷³ Ibid.

¹⁷⁴ Young, *Report of the Commission on Closer Union*, p. 204.

¹⁷⁵ Ibid, p. 36.

¹⁷⁶ Memorandum of KCA, op cit.

¹⁷⁷ Ibid.

travelled to London to present the Africans' case as contained in the memorandum to the British officials and members of Parliament. The items in the memorandum included the land question, native representation in the legislative and municipal councils, education, labour question, and Kikuyu native administration.¹⁷⁸ While in London, he made as many contacts as possible among officials and non-officials as well as some former colonial officers in Kenya through whom he represented the KCA grievances. Although he met with the Undersecretary of State, he did not derive any commitment from the Colonial Office.¹⁷⁹ To reach the British public, he wrote articles to the press, such as *Times*.¹⁸⁰ Kenyatta also visited the Scotland Church in Edinburgh with a view to restoring better relations with the Scottish Mission, but the distrust between the Church and Kenyatta, and hence KCA, left no room for concessions.¹⁸¹ From this point, Kenyatta was inclined to support the independent school movement. Kenyatta's representation in the United Kingdom, which was to be followed by other Kenyans' visits to countries such as United States, Russia, India and Egypt, underscored the efforts that nationalists were making to establish relations with London and other foreign entities if only to leverage their freedom struggle.

In the Legislative Council elections that were held in 1931, the Indians boycotted the elections to protest the separate voting rolls for whites and Indians, and the lack of representation for Africans. In accordance with the constitutional provisions, nominations were made to the seats. The 1934 elections was a turning point for Indian representation. They participated in the elections and took their seats in the Legislation Council. Following the recommendations of the Joint Select Committee on Closer Union of 1931, representation of African interests was increased to two and the restriction that limited the choice of

¹⁷⁸ Anne Beck, "Some Observations on Jomo Kenyatta in Britain. 1929-1930", *Cahiers d'Études Africaines*, Volume 6, Issue 22 (1966), pp. 308-329.

¹⁷⁹ *Ibid.*

¹⁸⁰ For example, Jomo Kenyatta, Letter to the Editor, *Times*, 26 March 1930.

¹⁸¹ *Ibid.*

representatives to Christian missionaries was removed. The changes were implemented after the 1934 elections. Rev. Canon George Burns, who had replaced Rev. John Britton, and Rupert W. Hemsted, a distinguished colonial civil servant and retired Provincial Commissioner, were appointed.¹⁸² Canon Burns retired in 1938 and was replaced by H.R. Montgomery, a retired colonial administrator and a former official nominee to the Legislative Council.¹⁸³

Arab agitation was passive. Their population was mainly confined to the coast and resided within the territory formerly held by the Sultan of Zanzibar, but had migrated into East Africa in diverse periods over a period spread over a thousand years.¹⁸⁴ An agreement signed between the British government and the Sultan in 1895 put the territory under British protection with the Sultan of Zanzibar being paid some £17,000 annually while his subjects got some guarantees that were specified thus: "... all the affairs connected with the faith of Islam would be conducted to the benefit and honour of the religion and all the ancient customs would be allowed to continue".¹⁸⁵ The region had no 'leading' personalities to represent Arab opinion, as the leaders of the various sectors of the community were residing in Arabia.¹⁸⁶ It was left to the land and property owners and those who were literate to represent the opinion under the umbrella of the Afro-Asian Association.

Settler aspirations were significantly disrupted by the Asians in the inter-war period with the latter's search for equality. Constant racial conflict was experienced as the British government strived to accommodate the Asians within the governance structures while the settlers pushed for their relegation to the background. The repressive attitude of the colonial

¹⁸² Kenya, *Legislative Council Debates 1934* (Nairobi: Government Printer, 1934), pp. 79-80.

¹⁸³ Kenya, *Legislative Council Debates 1938* (Nairobi: Government Printer, 1938), pp. 3-4.

¹⁸⁴ Miller, *Lunatic Express*, p. 13.

¹⁸⁵ *Ibid*, p. 282.

¹⁸⁶ Senior Commissioner, Coast, to Colonial Secretary, 13 October 1924, KNA: PC/Coast/2/3/7.

government towards African nationalist organisations further silenced their voices and subordinated their demands.

2.4 Post-World War II Developments and the Mau Mau War, 1940-58

The last phase in the colonial state's constitutional negotiation process involved two wars, World War II and the Mau Mau war. The former was a war for empire, while the latter was a war to dismantle the empire. At the outbreak of World War II, thousands of young Africans were conscripted to the war. African political organisations such as the KCA, Taita Hills Association (THA) and Ukamba Members Association (UMA) were banned in 1940. The Convention of Associations transformed itself into the Kenya European Electors' Union to champion white supremacy. The Union was affiliated to the United Central African Association of Southern Rhodesia since 1948.¹⁸⁷

No significant progress was made during the war period since many of the African political leaders were in detention. Also Kenya did not have a substantive Governor from January 1940 up to 11 December 1944 when Sir Philip Mitchell was appointed to replace Sir Robert Brooke-Popham. The war experience reshaped colonial policy and encouraged liberal approach to dealing with natives.¹⁸⁸ The British government authorised its colonies to exercise discretion for a more liberal inclusion of the native populations in governance.¹⁸⁹ Governors were required to exercise a wider choice in the selection and nomination of persons into the Legislative and Executive Councils without consideration for social or racial features, but to consider character and ability. They were also to select from various sections of the community.¹⁹⁰ However, due to settler influence, the colonial authorities in Kenya felt they were not compelled to exercise the discretion. The settlers pushed for local autonomy

¹⁸⁷ Kendall Ward, "Kenya and Dr. Malan", *The Spectator*, 15 June 1950, p. 17.

¹⁸⁸ Colonial Office Circular to Governors in all Colonies, Dispatch A, 22 May 1941, KNA: CS 2/4/9.

¹⁸⁹ Ibid.

¹⁹⁰ Ibid.

while hoping for direct rule of the colony from the Colonial Office aiming at inhibiting the African political advance.¹⁹¹ While serving as Undersecretary of State for the Colonies in 1942, Harold Macmillan warned against the settler attitude forecasting that population pressure in Central Province and the processes of internal social differentiation would provoke a serious peasants' revolt within ten years.¹⁹²

On 14 August, 1941, US President, Franklin D. Roosevelt, and British Prime Minister, Winston Churchill, issued a joint declaration containing their vision for a post-War world. The declaration, which came to be referred to as the Atlantic Charter, followed a meeting of the two leaders aboard naval ships on Placenta Bay of the Atlantic Ocean, off the coast of Newfoundland, Canada. Article 3 of the Charter stated that Britain and the United States “respected the right of all people to choose the form of government under which they will live”.¹⁹³ In January 1942, a group of 26 Allied nations met in Washington DC and pledged support for the Charter, which became a significant step in the establishment of the United Nations in 1945. The principles expounded in the Charter aroused the hopes and inspirations of the African people. It fired their imagination of living in a free post-War world. The Charter’s call for “all the men in all the lands to be able to live out their lives in freedom from fear and want” crystallised the idea of “fundamental freedoms”.¹⁹⁴ This had implications on the appreciation of the freedoms and liberties for which the war was fought, and for the intensification of the struggle to realise them. African nationalists came to appreciate the adoption of Bill of Rights in the constitutions. Another implication was that Britain committed itself to the self-determination of the peoples under its colonial rule.

¹⁹¹ Gary Wasserman, “European Settlers and Kenya Colony: Thoughts on a Conflicted Affair.” *African Studies Review*, Vol. 17, No. 2 (September 1974): 433-437.

¹⁹² David Throup. “The Construction and Destruction of the Kenyatta State”. In Michael Schatzberg (ed.), *The Political Economy of Kenya* (London: Praeger, 1987), pp. 33–74.

¹⁹³ Pearce, *The Turning Point in Africa*, sec. 6.

¹⁹⁴ Elizabeth Borgwardt, *A New Deal for the World: America’s Vision for a New World* (Cambridge, MA: Harvard University Press, 2005), p. 5.

In Kenya nominal change had been accommodated in the constitution of the Legislative Council towards the end of the War in 1944 when the first African, Eliud Wambu Mathu, a British-educated teacher and son of a witchdoctor who had turned political activist, was nominated to the Legislative Council to join Rev. Leonard Beecher as the second representative of African interests. Mathu was nominated for his education and good command of English than his political activism.¹⁹⁵ A second African, Benaiah Apolo Ohanga, a former teacher and civil servant from Luo region, was nominated in 1947 to replace Rev. Beecher. However, this did not assuage the impatience of the Africans who were dissatisfied by the rate of political advance as they formed the overwhelming majority of the population.

In the post-World War II period, pan-Africanism and the Cold War took the centre stage in global politics raising Africans' consciousness and stirring up the nationalists into a liberation cause. It played a major role in the radicalisation of Africans. Nationalists like Kwame Nkrumah led his country Ghana to independence in 1957 and became an inspiration to others in the continent. The movement was epitomised in the Fifth Pan-African Congress held in Manchester in October 1945, which Jomo Kenyatta helped organise and was also attended by Mbiyu Koinange.¹⁹⁶ The Congress encouraged Africans in their demands for democratic rights, civil liberties and self-determination, and concluded by urging the nationalists to return to their respective home countries and spearhead the liberation struggle. Nkrumah moved with purposiveness and dynamism to achieve not only the liberation of the rest of Africa, but also the integration of African countries at all levels. By convening the Conference of Independent African States in April 1958 and soon thereafter the All-Africa Peoples Conference, he was determined to encourage nationalists all over Africa to intensify

¹⁹⁵ Robert Maxon, *Britain and Kenya's Constitutions, 1950-1960* (Amherst, NY: Cambria Press, 2011), Note 39.

¹⁹⁶ Kwesi K. Prah, *Beyond the Color Line: Pan-Africanist Disputations : Selected Sketches, Letters, Papers and Reviews* (Trenton, NJ: Africa World Press, 1998), p., 22.

their struggle against colonialism.¹⁹⁷ Support from other independent African states, especially Egypt, sparked confidence among the nationalists and encouraged them to pursue the aim of complete expulsion of colonialists from Africa.

The immediate outcome of World War II was the descent of the Iron Curtain in Europe where Soviet Union blocked itself from open contact with the Western countries. Both sides of the divide defined areas of competition for dominance initiating what came to be referred to as the Cold War.¹⁹⁸ The emergence of the Cold War that bi-polarised global geopolitics had implications on the strategies of the superpowers, especially decolonisation. With its intensification came the possibility of the spread of Communism in the colonies, as the African nationalists whose demands were not being met could turn to the Soviet Union and China for help. The Soviet Union and its allies were offering extensive aid not only to states that were deemed vulnerable, but also to liberation movements that were fighting against colonialism. Africa therefore became to be entangled in the East-West conflict, making the possibility of regional conflict real.¹⁹⁹

Intensification of Cold War tensions prompted Third World nations in Asia and Africa to seek a middle ground. They also wanted a political voice and economic development strategy outside communism or capitalism, and opposed imperialism, colonialism, neo-colonialism, racism, and all other forms of foreign domination and exploitation.²⁰⁰ The search took the form of non-alignment with either of the power blocs, an initiative that was spearheaded by Jawaharlal Nehru (India's first Prime Minister), Gamal Abdel Nasser (Egypt's second President), U Nu (Burma's first Prime Minister), Sukarno, (Indonesia's first

¹⁹⁷ David Goldsworthy, *Tom Mboya: The Man Kenya Wanted to Forget* (Nairobi: Heinemann Educational Books, 1982), p. 106-107.

¹⁹⁸ Patrick Wright, *Iron Curtain: From Stage to Cold War* (New York: Oxford University Press, 2007), sec. 18.

¹⁹⁹ David S. Gordon, "International Economic Relations, Regional Cooperation and Foreign Policy", in *Beyond Capitalism Vs. Socialism in Kenya and Tanzania*, edited by Joel D. Barkan ((Boulder, CO: Lynne Rienner, 1994), pp. 239-240.

²⁰⁰ Hans Köchler (ed.), *The Principles of Non-alignment* (Vienna: Third World Centre for Research and Publishing, 1982), p. 132.

President), and Josip Broz Tito (Yugoslav President) who formed the Non-Aligned Movement during a conference held in Belgrade, Yugoslavia, in September, 1961. An Afro-Asian conference that preceded the Belgrade Conference and held in Bandung, Indonesia, in April 1955, brought together people who had been subjected to forms of colonialism, racism and class oppression to oppose foreign domination.²⁰¹ The Bandung Conference provided a pivotal moment in the struggle against colonialism amid the Cold War laying the foundations for the non-aligned policy. The conference also gave impetus to African nationalists in their liberation struggle.

India's attainment of independence in August 1947 and transition to a republican constitution in January 1950 was a blow to the concept of British Empire renowned for the saying that, "The sun never sets on the British Empire."²⁰² Loss of India prompted the British government to reform its Commonwealth to accommodate members that were not Dominions, but with the British monarchy as the symbol of the free association of its independent member nations and as the Head of the Commonwealth.²⁰³ Accordingly, India, Pakistan and Ceylon joined the renamed Commonwealth of Nations.²⁰⁴ India was traditionally a valuable colony, which Britain considered "the jewel in the crown" of its worldwide empire.²⁰⁵ Britain was therefore keen to retain it within its ambit. The Commonwealth facilitated the retention of British relationship with former colonies providing it with a consolation prize for the loss of Empire. It also provided a tool with which Britain could bolster a sense of importance and retain influence in the global arena.

²⁰¹ Christopher J. Lee (ed), *Making a World after Empire: The Bandung Moment and Its Political Afterlives* (Athens, OH: Ohio University Press, 2010), p. 9.

²⁰² Philippa Levine, *The British Empire: Sunrise to Sunset* (London: Routledge, 2013), pp. 116-117.

²⁰³ "London Declaration", available at:

<http://web.archive.org/web/20120927031216/http://www.thecommonwealth.org/files/214257/FileName/TheLondonDeclaration1949.pdf>, accessed on 28 February 2015.

²⁰⁴ Nicholas Mansergh, *Survey of British Commonwealth Affairs: Problems of Wartime Cooperation and Post-War Change, 1939-1952* (New York: Routledge, 2013), p. 250.

²⁰⁵ Judith E. Walsh, *A Brief History of India* (New York: Facts On File Inc., 2011), p. 89.

Indians in Kenya suffered sectarian division after World War II to reflect the split between India and Pakistan upon attaining independence in 1947. The Indians demanded separate representation in the Legislative Council and Executive Councils featuring Asian Muslims and Non-Muslims. The demand was addressed ahead of the elections in May 1948 by amending the Legislative Council Ordinance of 1935.²⁰⁶ From the five seats allocated to the Asians, two were reserved for the Asian Muslims. The non-Muslims were Chunilal B. Madan, Ahluwalia Pritam and Ambalal Bhailalbai, while the Muslims were Ibrahim E. Nathoo and Mohamed Ali Rana, spread over Central, Eastern and Western regions.

The Royal Instructions of 1948 provided for the accommodation of demands for more unofficials in the Legislative Council. It also provided for the Office of the Speaker of the Council who was to be its Deputy President, while the Governor retained the position of President. The subsequent composition of the Council saw African representation increased to four (4) members. Nominations of Eliud Mathu and B.A. Ohanga were retained. The other two nominations were John Kisugut arap Chamalan from Rift Valley and Jimmy Jeremiah from the Coast. The four Members immediately formed the African Unofficial Members Organisation (AUMO) to promote and defend African interests. They opposed self-government for European settlers, called for continued British rule, and advocated additional African members in the Legislative Council, and representation in the Executive Council.²⁰⁷

A new crop of settlers, some of whom were graduates of Eton College, a renowned institution for educating generations of British aristocracy, had taken up political positions in the colony. The settlers included Ferdinand Cavendish-Bentinck (8th Duke of Portland) of Kiambu, Laurence Robert Maconochie Welwood of Uasin Gishu, Michael Blundell of Solai Valley in Nakuru, Sir Wilfrid Havelock of Limuru in Kiambu, and Capt. David Lowry Cole

²⁰⁶ *Official Gazette*, Vol. L No. 8, February 24, 1948, p. 34.

²⁰⁷ Maxon, *Britain and Kenya's Constitutions*, op cit.

(6th Earl of Enniskillen) of Nyeri. These settlers had the attention of the Colonial Office and Whitehall, and had the potential to influence government policy in the metropolis.

The European Electors' Union led by Sir Alfred Vincent reacted to the proposals in the Royal Instructions of 1948 by issuing the "Kenya Plan" in September 1949 emphasising that Kenya should develop politically along "British lines". The Plan proposed that acceptance of "British way of life" should be a prerequisite for participation in political and government affairs. It opposed self-government for majority Africans and any change in the racial representation in the Legislative Council preferring a dominant status. However, the Plan was opposed by Africans and Asians with the latter sustaining their opposition to settler privileges, especially their political influence and the reservation of White Highlands for exclusive European occupation, control on Indian immigration and racial discrimination. The European Elected Members Organisation (EEMO), comprising the elected Members of the Legislative Council and led by Sir Michael Blundell, was more moderate and instead sought to have a multiracial legislature. The Plan also found no sympathy in official circles, which gravitated to the pursuit of the multiracial policy.²⁰⁸

The multiracial policy was an attempt by the British government to execute its trusteeship responsibility without consulting the various racial groups. In trying to contain both settler extremists and African agitators, Sir Philip Mitchell (Governor of Kenya from 1944 to 1952), had envisaged an arrangement where Africans progressively participated in politics and where a multiracial society would be cultivated.²⁰⁹ The latter was an arrangement where all races would participate in government and collaborate to create a dominant class. Africans would be brought to a point where a segment of their population would be created to

²⁰⁸ Ibid.

²⁰⁹ Wasserman, "European Settlers and Kenya Colony", p. 426.

form a class, which would share the same ‘vital interests’ of the colony as the other races, but the process would be gradual and would take between 50 and 250 years.²¹⁰

The colonial government proposed constitutional changes handed as Royal Instructions (Order-in-Council) of 1951 and implemented in 1952. In these proposals, the number of officials in the Legislative Council was increased from 16 to 26, European elected Members were increased from 11 to 14, Asian elected Members were increased from 5 to 6, African nominated representatives were increased from 4 to 6, and Arabs Members were increased from 1 to 2 (one elected and the other a nominated). While the Council reflected an unofficial majority (in the proportions of 26 officials against 28 unofficials), the number of elected Europeans equaled the sum total of representatives of other races. The Governor continued to retain a strong government side in the Legislative Council through nominated members and official members.²¹¹ This was in line with the objectives of the British government of maintaining effective control while at the same time balancing the demands of the immigrant community and those of the native population.

Lack of consensus among the racial groups on constitution-making and the specifics of constitution prompted the Secretary of State, James Griffith, to give policy that was to guide constitutional development in Kenya in December 1950.²¹² The policy was based on four main principles. First, the objective was to attain “self-government within the Commonwealth”. Secondly, the self-government had to provide for all the communities that had made their home in Kenya and their security in the long-run had to rest with the good relations between them. Thirdly, African resources had to be development to enable them participate in the political and economic life alongside other communities. And fourthly,

²¹⁰ Berman, *Control and Crisis in Colonial Kenya*, 287.

²¹¹ Correspondence between Dr V.V. Patwardhan and W.B. Havelock on Memorandum to Prof. Mackenzie, 7 December 1959, KNA, MSS/12/12.

²¹² Robert Maxon, “Constitution-Making in Contemporary Kenya: Lessons from the Twentieth Century,” *Kenya Studies Review*, Volume 1, Number 1 (December 2009), p. 17.

Africans had to take ultimate control of their territory when other communities felt secure about their future in a state of mutual confidence and harmony.²¹³ The principles did not herald a new policy, but offered a clarification to what had been the attitude of the British government since 1905. The Colonial Office also sought to reassert control of constitutional development in the colony.

Based on the principles, the Royal Instructions of 1951 were issued. Other than increasing racial representation in both the Legislative Council and the Executive Council across the board, election of African representatives through the LNCs was envisaged. However, the development was interrupted by the outbreak of the Mau Mau war in 1952. Other constitutional reforms were also put on hold.

2.4.1 KAU and African nationalism

Banning of KCA had sent its membership underground. The nomination of Eliud Mathu to the Legislative Council in 1944 led to the formation of Kenya African Study Union, with James Gichuru as President, to support him in legislation.²¹⁴ Unlike KCA, the organisation encompassed nationwide membership and it was later transformed into Kenya African Union (KAU) in 1946. Its membership mainly reflected that of KCA, which gave the impression that KCA and KAU were synonymous because it enjoyed overwhelming Gikuyu support. To avoid trouble with the authorities, die-hard members referred to KCA as *Kiama kia Ndemwa Ithatu* (the Party of Three Letters).²¹⁵ In some cases, former KCA leaders in the local branches took over the same role in KAU, while KAU leaders in non-Kikuyu areas had been

²¹³ Maxon, *Britain and Kenya's Constitutions*, op cit.

²¹⁴ Stanley Diamond and Fred G. Burke, eds, *The Transformation of East Africa: Studies in Political Anthropology* (New York: Basic Books, 1967), p. 209.

²¹⁵ Leakey, *Mau Mau and the Kikuyu*, p. 93.

known to work closely with KCA.²¹⁶ These observations were vindicated by the ascendancy of Jomo Kenyatta as President of the party in 1947.²¹⁷

The end of World War II resulted in demobilised African soldiers who were politically conscious and who flooded the urban centres looking for work. Their frustration and harsh work conditions pushed them into membership of trade unions where political grievances were articulated. KAU's membership came to be connected with the labour movement, which explains the election of Fred Kubai, Secretary General of the East African Trade Union Congress as Chairman of KAU, Nairobi branch.²¹⁸ Other radicals who were elected in the June 1951 elections were Bildad Kaggia and Paul Ngei as Secretary and Assistant Secretary General respectively.²¹⁹ The presence of the demobilised soldiers in Nairobi who had formed the "Age Forty Group" and subsequently joined KAU gave the party a militant outlook.²²⁰ They formed an underground movement that started binding its membership against the British by mass oath, which was a magnification of the oathing that had been carried out during the Olenguruone Crisis of 1948, which intensified the anti-European feelings.²²¹ The movement also started to make secret plans for armed revolt.²²²

Militancy in KAU was responsible for the outbreak of the Mau Mau armed resistance. The militant response had been triggered by years of frustration at the refusal of the colonial government to redress grievances over land or to listen to demands for constitutional

²¹⁶ Ibid

²¹⁷ Ibid.

²¹⁸ Diamond and Burke, *The Transformation*, p. 213.

²¹⁹ Assa Okoth, *A History of Africa: African Nationalism and the De-colonisation Process, 1800-1915* (Nairobi: East African Educational Publishers, 2005), p. 57.

²²⁰ Wunyabari O. Maloba, *Mau Mau and Kenya: An Analysis of a Peasant Revolt* (Nairobi: East African Educational Publishers, 1993), p. 58.

²²¹ Tabitha Kanogo, *Squatters and the Roots of Mau Mau, 1905-63* (Nairobi: East African Publishers, 1987), p. 105.

²²² Maloba, *Mau Mau and Kenya*, p. 58.

reform.²²³ During the KAU's annual meeting in November 1951, the radicals, dissatisfied and impatient with constitutionalism and gradualism that characterised reforms, endorsed the call for independence within three years. The meeting also tasked Mbiyu Koinange and Achieng Oneko to draft a final plea to the Colonial Office and the United Nations in Paris.²²⁴ The petition, which was titled *Africa and the Future: Land Hunger in Kenya*, sought comprehensive constitutional changes.²²⁵ When response proved unforthcoming, they decided on action.²²⁶

Militancy within KAU was further fuelled by frustrations emanating from the colonial government's failure to contain the European settlers' push for a 'white dominion'. With the South Africa's National Party having captured power in 1948 under Daniel Malan and now comprehensively implementing the apartheid policy, Africans had reason to fear such a possible development in Kenya. This was mainly informed by the long association between the Europeans in Kenya and those in South Africa and Northern Rhodesia. Rather than experience the forms of systematic segregation, the Africans would launch a campaign of expelling Europeans from Kenya.

Although the entry of Jomo Kenyatta in KAU gave impetus to the party, the radical elements fomented indiscipline as they were growing impatient with the constitutional and gradualist approach. Kenyatta's orthodoxy in politics characterised by moderation and control did not endear him to the radical wing within KAU, and by 1950 his political style could no longer hold; he would either have to change and resort to violence or surrender his position to the young militants.²²⁷ However, at the time Kenyatta was indispensable because

²²³ Mark Curtis, "The Mau Mau war in Kenya, 1952-60", available at: <http://markcurtis.wordpress.com/2007/02/12/the-mau-mau-war-in-kenya-1952-60/>. Accessed on 25 August 2014.

²²⁴ Jeremy Murray-Brown, *Kenyatta* (London: E. P. Dutton, 1973), p. 282.

²²⁵ Mbiyu Koinange, Achieng' Oneko and KAU, *Africa and the Future: Land Hunger in Kenya* (London: Union of Democratic Control, London, 1952).

²²⁶ Murray-Brown, *Kenyatta*, p. 282.

²²⁷ Arnold, *Kenyatta and the Politics of Kenya*, p. 108.

he had no competition for political leadership in Kenya. Other tribes had not thrown up anyone of comparable stature neither had anyone reached a point of nationwide appeal.²²⁸ Upon taking up the leadership of KAU, he set out to tackle the main political problems of settlers and colonial government, militants within KAU, and creation of a trans-tribal political power base.²²⁹ On this basis, he built a moderate party that was committed to constitutional nationalism well aware that engagement in confrontational politics would result in it being proscribed.²³⁰ Nevertheless, his reputation and that of KAU were intertwined in the eyes of the European settlers and the colonial officials.²³¹ Despite his renunciation of violence, Governor Mitchell described KAU as “a political racket run by Jomo Kenyatta, Peter Koinange, Fred Kubai, James Beuttah and other demagogues and rogues...”²³²

Observing the prevailing racial tensions and suspicions towards the end of the 1940s, KAU warned that local constitutional agreement would not be possible and sought a constitutional forum through the Colonial Office.²³³ However, colonial authorities ignored KAU’s suggestion and instead continued to push their gradualist policies that tended to favour the Europeans. Radical elements in KAU began to express impatience and dissatisfaction. They were further provoked by the confidence and arrogance of the European settlers as displayed in their “Kenya Plan”, which carries the brochure titled, “We Are Here to Stay”.²³⁴ Employing rudimentary strategies such as oath-taking to enforce unity and ignoring the moderate gradualist KAU leadership, the militant wing launched a violent campaign to force political and constitutional advance.

²²⁸ Ibid., p. 38.

²²⁹ Ibid.

²³⁰ Maloba, *Mau Mau and Kenya*, p. 57.

²³¹ Arnold, *Kenyatta and the Politics of Kenya*, op cit., p. 38.

²³² Mitchell to Baring, Secret and Personal, Baring Papers, DUL GRE/I/18/4.

²³³ General Secretary, KAU to Lyttelton, December 28, 1951, BNA CO 822/598.

²³⁴ Anthony Clayton and Donald C. Savage, *Government and Labour in Kenya 1895-1963* (London: Routledge, 2012), p. 335.

2.4.2 Mau Mau war of 1952

The *Mau Mau* uprising in 1952 was a representation of African popular and legitimate demands – ‘*Uhuru na Mashamba*’ (independence and land) – as articulated by the nationalist movements.²³⁵ It was also an outcome of the perception held by the colonial government, that African nationalism was driven by indeterminate collective malcontents with no constitution, no representative authority and no constructive programme.²³⁶ At the time, a strong dichotomy existed between the Europeans and the Africans with both groups making their stand very clear. While the Europeans (through their Electors Union) aimed to entrench European supremacy in Kenya towards self-rule, the Africans (through KAU) fought for the total emancipation of Africans leading to full independence from British rule.²³⁷

At the eruption of the Mau Mau war the idea had been to start a form of unrest that would draw the attention of the metropolitan authorities to the situation in Kenya.²³⁸ Initial government reaction to the insurgency threat was to view it as a “violent manifestation of a limited revolutionary movement... [occasioned by] political unrest among the Kikuyu people of Kenya”; hence, they thought the situation would be contained.²³⁹ However, the declaration of the State of Emergency on 20 October 1952, and the arrest and the detention of KAU and other political leaders (including Kenyatta) was viewed by the Mau Mau activists as tantamount to a declaration of war.²⁴⁰ Thousands of those who had taken the oath took up arms with the main aim of driving out all the Europeans in Kenya and taking back their

²³⁵ Robert B. Edgerton, *Mau Mau: An African Crucible* (New York: Ballantine Books, 1989), p. 217.

²³⁶ Arnold, *Kenyatta and the Politics of Kenya*, p. 85.

²³⁷ John Spencer, *Kenya African Union* (London: KPI Limited, 1985), p. 40.

²³⁸ Curtis, “The Mau Mau war in Kenya”, op cit.

²³⁹ Ibid.

²⁴⁰ Martin Meredith, *The State of Africa: A History of Fifty Years of Independence* (London: Free Press, 2005), pp. 73-88.

land.²⁴¹ Full-scale confrontation ensued with the colonial authorities and the British government was forced to come to the rescue.²⁴²

The British government's military might and the intensity with which the colonial authorities suppressed the Mau Mau resulted in atrocities that drew the attention of the world. Unsatisfied and anxious over the way the colonial government was handling the Mau Mau war, the extremist settlers decided to 'storm' Government House on 23 January 1953, and oust the Governor in a bid to seize independence from the Colonial Office and take charge of the Emergency operations.²⁴³ A British parliamentary delegation that visited Kenya in 1954, comprising Walter Eliot, C.J.M. Alport, E.B. Wakefield (die-hard Tories), Arthur Bottomley, James Johnson, R.W. Williams (middle of the road Socialists), found that the authorities had committed brutality and malpractices on a scale that constituted "a threat to public confidence in the forces of law and order".²⁴⁴ The committee had been commissioned to report back on conditions in Kenya under the circumstances of what was called the Mau Mau insurrection. In 1955, Labour MP Barbara Castle also visited Kenya to investigate government involvement in torture and killings and concluded that the entire system of justice in Kenya had a 'Nazi' attitude towards Africans: "In the heart of the British empire there is a police state where the rule of law has broken down, where murders and tortures of Africans go unpunished and where the authorities pledged to enforce justice regularly connive at its violation".²⁴⁵ The findings of the parliamentary committee constituted an indictment on the colonial authorities and an official admission that Africans had justifiable grievances contrary

²⁴¹ Bruce Berman and John Lonsdale, *Unhappy Valley: Conflict in Kenya & Africa, Volume 2* (London: James Currey Publishers, 1992), p. 250.

²⁴² Maloba, *Mau Mau and Kenya*, p. 234.

²⁴³ Michael Blundell, *A Love Affair with the Sun: A Memoir of Seventy Years in Kenya* (Nairobi: Kenway Publications, 1994), p. 138-141.

²⁴⁴ Colonial Office, *Report to the Secretary of State for the Colonies by the Parliamentary Delegation to Kenya: January, 1954, Cmd. 9081* (London: HMSO, 1954), p. 23.

²⁴⁵ Quoted in Curtis, "The Mau Mau war in Kenya", op cit.

to earlier assertion that Mau Mau fighters were gangsters. The findings were also an embarrassment to Secretary of State, Oliver Lyttelton, who had adopted a cynical attitude.²⁴⁶

The Mau Mau war not only forced the imperial and colonial authorities to undertake significant constitutional reforms to contain the discontent, but it also brought the imperial government to the realisation that the government and management of the colony's affairs would not be the same in real terms. The ensuing over-reaction to it had a profound effect on the colonial thinking towards Kenya.²⁴⁷ The uprising put to an end the hopes of European settlers' minority rule; by seeking British military support to contain the uprising, they signified that their political dominion was over. The uprising exposed to the British the futility of maintaining the empire through force and repression, and the need to initiate reforms aimed at realising a multiracial partnership.²⁴⁸

2.4.3 The Lyttelton Constitution of 1954

In response to the recommendations of the British Parliamentary delegation that Africans be permitted to participate in the political affairs, the Kenya Protectorate (Amendment) Order in Council of 1954 expanded representation of the various races and gave more responsibility to the Africans of the colony. While clarifying the policy expressed in the Royal Instructions of 1951, the Secretary of State, Oliver Lyttelton, formulated constitutional proposals dubbed the Lyttelton Constitution. The proposals sought to bring into effect the principle of multiracialism, correct the anomaly in the powers and composition of the Executive Council, and regulate African political participation by providing for separate racial representation.²⁴⁹

A Council of Ministers was introduced alongside the existing Executive Council, which now

²⁴⁶ George Padmore, "British Parliamentary Delegation Reports on Kenya", *The Crisis*, Vol. 65 No. 5 (May 1954), pp. 273-7.

²⁴⁷ Wasserman, "European Settlers and Kenya Colony" pp. 433-437.

²⁴⁸ *Ibid.*, p. 85.

²⁴⁹ CKRC, *Report of the Constitution of Kenya Review Commission, Vol. 1* (Nairobi: Constitution of Kenya Review Commission, 2003), p. 20.

consisted of the members of the Council of Ministers and such other persons as the Governor appointed. Membership to these councils was drawn from the nominated as well as elected members with the Council of Ministers consisting of 14 members. The Deputy Governor was at the helm as the fifteenth member. Provision was made for the Governor to appoint additional persons to serve in the Council who were also styled 'Ministers'. Positions of Parliamentary Secretaries to assist Ministers in their duties were also introduced; the appointees serving at the pleasure of the Governor.²⁵⁰ The arrangement ensured that there would always be a majority on the Governor's side and that the imperial government would be in complete control.

The constitution specified the persons appointed to the Executive Council as comprising 3 Europeans, 2 Asians and 1 African with the remaining 8 (eight) being officials.²⁵¹ The following were appointed to the Executive Council as unofficials: Michael Blundell, W.B. Havelock and L.R. Maconochie Welwood (Europeans), A.B. Patel and Ibrahim E. Nathoo (Asians) and B.A. Ohanga (African).²⁵² The Council was expected to subscribe to a policy statement, which comprised five broad objectives. These were: (1) to prosecute the fight against terrorism, Mau Mau, with the utmost vigour and to ensure the maintenance of law and order throughout Kenya; (2) to build within the British Commonwealth a strong and prosperous Kenya owing loyalty to the British Crown; (3) to promote racial harmony and friendliness and to develop opportunities for all loyal subjects, irrespective of race or religion; (4) to advance in accordance with character and ability; and (5) to ensure that individual rights of property were respected. They were also required to support the proposed study of African representation in the Legislative Council. This

²⁵⁰ Ibid.

²⁵¹ Colonial Office Despatch, 15 April 1954, Government Notice No. 583, 1954, *Official Gazette*, 13 March 1954, p. 483.

²⁵² Ibid.

approach served to eliminate radical elements in the Council and instead promote moderate opinion.

A study to realise political participation of Africans by elective representation was conducted by the Coutts Commission of 1955. The Commission, which was chaired by the Chief Secretary, Sir Walter Coutts, collected views from across the country. It generally recommended direct election by secret ballot and a limited and qualitative franchise. These recommendations resulted in the amendment to the Legislative Council (Amendment) Ordinance of 1924 and the publication of Legislative Council (African Representation) (Election of Members) Rules of 1956. These instruments facilitated election of the first African representatives in 1957. The eight Africans subsequently elected into the Legislative Council were: Tom Mboya (Nairobi), Jaramogi Odinga Oginga (Central Nyanza), Lawrence G. Oguda (South Nyanza), Masinde Muliro (North Nyanza), Daniel arap Moi (Rift Valley), Bernard Mate (Central), James Nzau Muimi (Ukambani) and Ronald Ngala (Coast). They were immediately dissatisfied with the level of African representation since it had failed to address their demands. They wanted 15 elected seats (more than the Europeans) and consequently resisted the implementation of the constitution, which compelled the British government to review the constitution in 1958.

2.4.4 The Lennox-Boyd Constitution of 1958

Refusal by the elected African Members to accept seats in the Council of Ministers under the Lyttelton proposals made the constitution unworkable. The resulting constitutional crisis prompted Lyttelton's successor, Alan Lennox Boyd, to hold consultations with the various interest groups, which resulted in more reform proposals. The proposals were issued as the Kenya Constitution Order-in-Council of 1958 in which the Executive Council was abolished and its functions taken over by the Council of Ministers whose composition was 2 Africans, 2

Asians and 4 Europeans. The number of Africans elected to the Legislative Council was also increased from 8 to 14 (the same number as Europeans) and there were 12 Special Members elected by the Legislative Council sitting as an electoral college. A Council of State was proposed to protect minority rights. However, the powers of the Governor remained largely unchanged. In the elections that were held in March 1958 for the six additional seats for the Africans' communal roll, the following were brought in: Julius Gikonyo Kiano (Central Province South), Francis Khamisi (Mombasa Island), David N. Mumo (Machakos), Jeremiah Nyagah (Embu), Justus ole Tipis (Maasai) and Taita Towett (Southern Area).

The constitutional proposals, which were christened Lennox-Boyd Constitution, did not satisfy the demands of both groups of Africans and Europeans, neither was it favoured by Asians who had all along been advocating parity in representation among all racial groups. In effect, the implementation of the Constitution encountered immediate resistance from all groups. African constituency elected Members, who had formed African Elected Members Organisation (AEMO), boycotted the process of electing African Specially Elected Members as they felt that it undermined their demands of majority rule.²⁵³ Hence, the AEMO engaged in a series of boycotts of the Legislative Council. They demanded a common electoral roll (as opposed to the communal roll), and unrestricted universal suffrage. The Governor's refusal to proffer acceptable constitutional changes in 1958 saw them withdraw from participating in all the proceedings of the Legislative Council. Asian Members also boycotted the sessions thereby occasioning a constitutional crisis. Despite the boycott, the Legislative Council went ahead and elected the Special Members.

African members coalesced and joined together with Asian and Arab members to form the Constituency Elected Members Organisation (CEMO); it was formed by all the 14 elected African, the Asian and Arab Members and one liberal white – Shirley Victor Cooke,

²⁵³ Odinga, *Not Yet Uhuru*, p. 162.

MLC for Coast.²⁵⁴ Its aim was to counter the unity shown by the white settlers and the government in implementing the constitutional proposals. In May 1959, another group emerged to provide a middle ground between the Africans and the white extremists maintaining that it held a non-racial and moderate opinion.²⁵⁵ The group – the New Kenya Group (NKG) – was led by Michael Blundell and was made up of 6 of the 14 elected European Members, 21 nominated members and all the Specially Elected Africans and Asians, all of whom were proponents of multiracialism.²⁵⁶ Within the European elected membership, those who did not join NKG went to spearhead white extremism under the United Party.²⁵⁷ The European electorate, which had hitherto been united against the reforms of the Colonial government, was split.²⁵⁸

With the failure of the Lennox Boyd constitution, the African nationalists sought a more effective way of achieving constitutional advance. One was to use Legislative Council platforms, and the other to petition the Colonial Office and the British Parliament. On 24 June, 1958, the African Elected Members sponsored a motion calling for a constitutional conference. The motion was rejected on the floor of the house having been voted out by the combined effort of the European Elected Members, the Specially Elected Members and the government; the Asian, Arab and African Elected Members who supported it were no match for the numerically strong European representation.²⁵⁹

2.4.5 Extremist versus moderate opinion

Among the outstanding African Elected Members were Jaramogi Odinga Oginga and Tom Mboya both of who went against the expectations of the colonial government of projecting

²⁵⁴ Ibid. p. 163.

²⁵⁵ Blundell, *A Love Affair with the Sun*, p. 107.

²⁵⁶ Ibid.

²⁵⁷ Ibid.

²⁵⁸ Ibid.

²⁵⁹ Tom Mboya, correspondence to Mbiyu Koinange, 28 June 1958, KNA, MAC/KEN/70/3.

radicalism and an overwhelming wave of African nationalism. Oginga Odinga, former teacher-turned businessman, brought to the Legislative Council an intense “battle against white domination and British imperialism.”²⁶⁰ He was a “shrewd politician [known for] making wild statements...[that] had a clear and well thought-out purpose behind them.”²⁶¹ On his part, Mboya brought youthful energy and dynamism that was required to power the revolutionary ideas; for some time, he had acted as the unofficial spokesman of the nationalist feelings under the cover of a trade unionist. In December 1958, Mboya attended the first All African Peoples Conference in Accra, Ghana, where he “ordered the colonial powers to ‘scram from Africa’”, emerging as one of the most powerful and articulate leaders of Africa.²⁶² In subsequent years Mboya and Odinga engaged in personal rivalries that had implications on the constitutional negotiations.

The European, alarmed and displeased at the notion of elections for Africans, demonstrated their stand by returning a strengthened membership of the extremist group in their communal elections led by Group Captain Briggs. This was at the expense of the moderates led by Michael Blundell. Some of the Asian representatives, propped by the East African Indian National Congress (EAINC), were willing to support an initiative that would see the three communities working out a formula of government that was acceptable to all. They were particularly sympathetic to the African cause given the freedom campaign that had been successfully waged by Jawaharlal Nehru and Mahatma Ghandi in India; hence, they wanted to associate with anti-colonial struggle in Africa. Therefore, they supported Blundell’s initiative against the backdrop of the two opposing radical groups of Africans and Europeans.

²⁶⁰ B.A. Ogot, “The Decisive Years, 1956-1963,” in B.A. Ogot and W.R. Ochieng (eds.) *Decolonisation and Independence in Kenya, 1940-1993* (Nairobi: East African Educational Publishers.1995), p. 267.

²⁶¹ Segal quoted in *Ibid.*, p. 269.

²⁶² “Africa’s New Leader Visits United States”, *Jet*, Vol. XVI, No. 1, 30 April, 1959, p. 12.

2.5 A Case for a Constitutional Conference

By 1959, the political climate in Kenya was tense characterised by racial tension, nationalist pressure for independence, suspicion amongst the racial groups and a British government that was determined to fulfil its tripartite responsibility of trusteeship. The sustained opposition by the Asians against white supremacy and a possible resurgence of Mau Mau armed resistance further heightened the tension. All the parties were agreed that a round-table conference that would bring together all the racial groups under the arbitration of the British government was necessary to agree on a constitution for self-government.

Africans were being involved for the first time in constitutional development for a country in which they were the majority. They had rejected the Lyttelton Constitution and the Lennox-Boyd Constitution, which had been imposed on them with features of multiracialism. Africans also harboured bitterness from the brutal conquest that had seen the displacement of agricultural and pastoralist communities with their lands having been alienated for European settlement. Their protests over the lost lands and exclusion from national life had been ruthlessly resisted further sowing seeds of discord among them. They hoped to see these lands revert to them once the immigrants exited.

Europeans still retained the dream of creating a “white man’s country” in which they would have a dominant voice. Claiming responsibility over all the development in the colony, they had no confidence in entrusting it to an African government. They argued that the African was inexperienced in the art of modern government and needed many years to attain the appropriate level of maturity. They wished to see the reversion of constitutional development to the early stages of colonialism where the government was run by an advisory council composed purely of European settlers.

The settlers' idea of "white man's country" had been vetoed by the British government, which had stuck to the principle of trusteeship despite their persistent demand for self-government. The British government exercised the perceived trusteeship over both the Africans and immigrant communities. Policy based on this principle was barely implemented in the colony due to administrators who were sympathetic to the settlers' interests. The declaration of the Devonshire White Paper to foreground African interests and the Dual Policy of complementary development of African and immigrant communities had been largely ignored sparking protest and intensifying dissent among the Africans. The Colonial Office was also in favour of a change from "paternalistic trusteeship" to "partners-in-development", but this was ignored on the ground.²⁶³ Changes in thinking within the Colonial Office were not replicated in the colony thereby creating the impression that the settlers were out of touch with the real world.

The Asians, who had sustained opposition to white supremacy, wanted parity in government in line with the experiences of British India. They held that they had contributed significantly in the development and defence of the country and were thus entitled to equal participation in the running of government. Encouraged by the independence of India in 1946, they pressed for self-government under a multiracial formula in which each racial group would have equal representation. However, the division among the Asians along religious lines caused by the break-up of India weakened their position as they could no longer present a common front.

External pressure was weighing heavily on the British government, especially in view of the aftermath of World War II that had resulted in changes in global thinking on human freedoms and the Cold War. Britain's commitment in the Atlantic Charter meant that decolonisation was a necessity, and that it no longer had the moral grounds to justify

²⁶³ Anthony H. M. Kirk-Greene, *On Crown Service: A History of HM Colonial and Overseas Civil Services, 1837-1997* (London: I. B. Tauris & Co. Publishers, 1999), p. 60.

colonialism. The main concern was the method of decolonisation that would uphold the realisation of its responsibility over the inhabitants of the colony. The intensification of the Cold War dictated the manner in which the government would engage the nationalists given that, as a superpower, it abhorred a vacuum as it would result in conflict. Public opinion in Britain as well as across Europe was against imperialism and was becoming more sympathetic to the African nationalists.

The post-War rewarding of the European demobilised soldiers by alienating more land from the Africans intensified resentment against colonialism. The Mau Mau war erupted mainly due to the insensitivity of the colonial government to their plight and the indifference of the British government to resolve their grievances. Land formed the principal grievance as it was the hallmark of inequity and exploitation. Although the Mau Mau uprising was beaten down, the political tension on which it was built never subsided. The wave of African nationalism did not recede, and the unrelenting pressure for freedom by the Africans was telling.

From the embers of the Mau Mau uprising and the growing wave of pan-Africanism rose a crop of nationalists who were intent on winning freedom for their people. These nationalists enjoyed massive support from the people who were bent on the expulsion of immigrants from the colony and end British rule in Kenya.²⁶⁴ There was no doubt in the mind of the British government that Africans had to form the majority government if stability had to be achieved. However, no African nationalist commanded adequate support as distinct as Jomo Kenyatta did, but he was still imprisoned. While the British government sought the predominant voice with who they would work towards self-rule, the settlers opposed the release of Kenyatta referring to him as “leader to darkness and death”.

²⁶⁴ Huw Bennett, *Fighting the Mau Mau: The British Army and Counter-Insurgency in the Kenya Emergency* (Cambridge: Cambridge University Press, 2013), p. 8.

It was nevertheless external pressure that informed the pace of decolonisation. In order to achieve its strategic objectives in an environment of predominant racial tension, the British government acceded to a constitutional conference, but approached it with predetermined outcomes as the next chapter will show.

CHAPTER THREE

THE FIRST KENYA'S CONSTITUTIONAL CONFERENCE - LONDON, 1960: PROCESS AND OUTCOME

3.1 Introduction

The year 1959 was a turning point in British policy towards Kenya's constitutional and political advancement. This chapter on the Kenya Conference in London and its immediate constitutional development is based on the first objective of this study regarding the examination and analysis of the nature of the negotiation process and responds to the question on how the negotiation was conducted. The assumption is that the context, actors and interests determine the process and outcome of negotiations.

The Chapter comprises three phases. The first phase is a preparatory period building up on the constitutional developments that are discussed in Chapter Two. It covers the year 1959 in which the British government decided on the date, venue, agenda and participants for the conference. The phase also has the respective interest groups in anticipation of the conference outcome. The second phase is the actual proceedings of the conference between January and February 1960 under the control of the Secretary of State for the Colonies. The conference served as a forum for the Secretary of State to convey the thinking of the British government and to listen to the views of the various interest groups. At the conclusion of the conference neither of the interest groups expressed satisfaction except the British government. This demonstrates how the British government controlled the negotiation process and determined the outcome in line with the power theory. The third phase discusses the implementation of the conference proposals between February 1960 and January 1962 in preparation for a second constitutional conference, which is discussed in Chapter Four.

3.2 Preparation for the Conference

The first phase started with a decision by Africans and Asians in November 1958 to boycott the Legislative Council in opposition to the Lennox-Boyd constitutional proposals. The British government then appeared to accept their demands for a round-table conference.¹ This acceptance made 1959 the year of preparation for the Lancaster House constitutional conference. Two men, Allan Lennox-Boyd and Ian Macleod, served as Secretary of State for the Colonies. The governors in Kenya were Sir Evelyn Baring and Sir Patrick Renison.

3.2.1 Political developments up to January 1960

The year 1959 started with the Secretary of State, Allan Lennox-Boyd, holding a meeting for the three East African governors – Sir Frederick Crawford of Uganda, Sir Evelyn Baring of Kenya, and Sir Richard Turnbull of Tanganyika – in January 1959 at Chequers, London, to consider the intensifying political developments and African nationalism. The governors recommended a policy towards independence for Africans.² In their timetable, Tanganyika would gain independence by 1970, Kenya in 1975 and Uganda between the two dates. Regarding Kenya, the meeting agreed that independence would be granted only if the government was satisfied that there would be no reduction in the standard of living or a threat to the developing parliamentary democracy.³

After the conference, Lennox-Boyd prepared a memorandum for the cabinet in March 1959,⁴ offering three options. First, Britain could adopt a rapid withdrawal policy so as to be out of East Africa by 1965. This option could lead to problem of violence in Kenya and also giving responsibilities to governments that could not stand on their feet. Secondly, Britain

¹ J.C.M. Nazareth, "Memorandum on Franchise", K.C. (60)11, 8th February 1960, KNA/MAC/KEN/43/2.

² Larry Butler and Sarah Stockwell (eds), "Introduction", *The Wind of Change: Harold Macmillan and British Decolonization* (London: Palgrave Macmillan, 2013), p. 6.

³ David Goldsworthy, *Tom Mboya: The Man Kenya Wanted to Forget* (Nairobi: Heinemann Educational Books, 1982), p. 114.

⁴ CO, Policy in East Africa, (AF (59) 23), 4 March 1959, CAB 134/1354 (PRO).

could consolidate its position and make it clear that it would not relinquish control in the foreseeable future. It would then have to prepare for violence and maintain control by force. The option would appeal only to settlers with extreme opinions. Thirdly, was ‘middle road policy’ in which Britain would prepare Tanganyika and Uganda for self-government within 10 years and then Kenya would follow slowly.⁵ The cabinet was persuaded by the last option but advised against making the timetable public in order to avoid pressure for accelerated change.⁶

Two incidents within the month of March 1959 forced a rethink of policy; the Hola massacre in Kenya and the State of Emergency in Nyasaland (Malawi). In the Hola detention camp, prison officers had killed 11 detainees and then tried to cover-up with the claims that the prisoners had drunk contaminated water. Through Dennis Pritt, Kenyatta’s lawyer, the truth of the killings reached the House of Commons and embarrassed Prime Minister Harold Macmillan’s government. The revelation that Lennox-Boyd knew of the atrocities and failed to act led the Parliament to censure him. He offered to resign but Macmillan persuaded him to stay in office.⁷ In Nyasaland, the colonial government had arrested Hastings Kamuzu Banda. On returning to Nyasaland, Banda had become President of the African National Congress and led the opposition to the Federation of the Rhodesias and Nyasaland. Accusing Banda of organising a Mau Mau-style conspiracy, the colonial government declared a State of Emergency on 3 March 1959 at the very time information on Hola was becoming public. Both the Hola and the Banda reports discredited the government, which needed re-imaging.⁸

⁵ Frank Heinlein, *British Government Policy and Decolonisation, 1945-63: Scrutinising the Official Mind* (London: Routledge, 2013), p. 190.

⁶ Ibid.

⁷ Richard Toye, “Rhetoric and Imperial Decline: Arguing the Hola Camp Massacre of 1959”, *Imperial and Global Forum*, available at: <http://imperialglobalexeter.com/2014/05/19/rhetoric-and-imperial-decline-arguing-the-hola-camp-massacre-of-1959/>.

⁸ Lawrence James, *The Rise and Fall of the British Empire* (London: Abacus, 1998), pp. 612-613.

It was then on 22 April, 1959, that Lennox-Boyd announced his intention to convene a constitutional conference for Kenya “well in advance of the General Election in 1960”.⁹ In his April statement, Lennox-Boyd declared that Britain would continue to retain authority, while doing everything to help the people of Kenya to create the conditions conducive for eventual transfer of power “with a good conscience”.¹⁰ The conditions were: a sufficient understanding of parliamentary institutions and sense of responsibility in public affairs; establishment of a sufficient measure of understanding and cooperation between the various communities; a reasonable prospect that future governments were capable of ensuring a fair standard of living for the people of Kenya in an expanding economy; and, a competent and experienced civil service.¹¹ The announcement to convene a constitutional conference coincided with Jomo Kenyatta’s completion of his prison sentence in Lokitaung on 14 April 1959 and who was then moved to Lodwar to start life under restriction.

In April 1959, the Colonial government pre-empted African demand for land by issuing policy in “Sessional Paper No. 10 of 1958/59 on Land Tenure and Control Outside the Native Lands”, which effectively opened access to the White Highlands to all races. The Paper included suitable safeguards against the economic or political exploitation of all those who held rights in land. It was also designed to standardise the basis of tenure and management of all agricultural land throughout Kenya regardless of race and tribe. This was expected to soften the perception in respect of land alienation.¹² The Legislative Council enacted the Native Lands Registration Ordinance with the aim of registering individual freehold title in parts of the African lands, and Land Control (Native Lands) Ordinance to effect the control of subsequent transactions. Africans could gain access to the White Highlands but on a “willing

⁹ Allan Lennox-Boyd, Parliamentary Debates, House of Commons, 22 April 1959, Vol. 604 col. 555-68.

¹⁰ Ibid.

¹¹ Ibid.

¹² Lennox-Boyd, Parliamentary Debates, HC Deb 22 April 1959 vol 604 cc555-68.

buyer willing seller basis". As John Keen observes, this was not what Africans expected and therefore "land grievances and injustices were not addressed properly".¹³

Although Lennox-Boyd kept out the details of his policy, he and Kenya's Governor, Sir Evelyn Baring entrusted Sir Michael Blundell to build a multiracial organisation. He was to bring together Europeans, Asians and 'moderate' Africans, and he tried this by forming the New Kenya Group (NKG). The Colonial Office strengthened his position and prestige by discreetly feeding him with some of its policy details such that statements it originally mooted seemed to have been proposed by Blundell and his party. This was intended to allay fears within the Conservative Party of the government's treatment of European settlers in Kenya.¹⁴ At its formation, NKG had 43 members consisting of most of the European elected members, 21 nominated members and all the Specially Elected Members (African and Asian). It wanted a three-phased approach to independence and an evolutionary development of representative parliamentary government based on a responsible electorate.¹⁵ The first phase would run from 1960 to 1961 and would consist of preparation for real responsibility in which Africans should accept responsibility and learn how government worked. Phase two would run for an indefinite period from 1961, where there would be acceptance and achievement of responsible government composed mainly of people in Kenya with advice from Her Majesty's Government (HMG). Phase three would be full independence after achieving responsible self-government. This plan was completely opposed by African nationalists as well as extremist Europeans, but it fitted within the multiracial proposals contained in the Lyttelton and Lennox Boys constitutions, and hence the government support.¹⁶ NKG was, however, aware that Africans could not be stopped from participating in

¹³ Keen, Personal Interview, op cit.

¹⁴ Heinlein, *British Government Policy*, p. 191.

¹⁵ NKG on Constitutional Conference, 8 December 1959, KNA, MSS/13/54.

¹⁶ Michael Blundell, *A Love Affair with the Sun: A Memoir of Seventy Years in Kenya* (Nairobi: Kenway Publications, 1994), p. 111.

the running of their country and that the Europeans, Indians and Arabs wanted their investments and homes maintained and protected.¹⁷

Upon formation of NKG, political interest groups came up. To start with, there was the formation of the United Party by five elected European Members – Group Captain Llewellyn Briggs (Mount Kenya), Major B.P. Roberts (Rift Valley), Major F.W.J.S. Day (Aberdare), Air Commodore E.L Howard Williams (Mombasa) and J.R Maxwell (Trans Nzoia). Led by Group Captain Briggs the party was an all-European and ultra-conservative outfit. The party loathed a situation where power would be transferred to Africans who they believed were “a race in the infancy of mankind and without the blessing of the art of good government”.¹⁸ The party’s membership had not conceded a situation where their office-boy or herds-boy had reached a position to assume responsibility of government.¹⁹ It also fought the unrestricted immigration of Indians and their participation in government.

Secondly, other non-European members in the Legislative Council formed the Constituency Elected Members Organisation (CEMO) in March 1959 with the aim of pressing for a constitutional conference in cooperation with all races. Its members were in favour of majority rule and immediate independence, and were also proponents of African nationalism. Its membership consisted of the 14 African elected members, all Asian and Arab elected members, and one European elected members of liberal opinion from Mombasa, Shirley V. Cooke. CEMO sent a delegation to the Secretary of State in April 1959 led by Jaramogi Oginga Odinga to petition the government “on the urgent need for a Round Table Conference... and a definite statement that Kenya should now be set on the shortest road to full undiluted democracy”.²⁰ The other members of the delegation were Julius Kiano, Daniel Moi and Masinde Muliro, three Asian and one Arab elected members, and S. V. Cooke. In a

¹⁷ NKG’s Précis for Meeting with Secretary of State, 14 December 1959, KNA, MSS/12/12

¹⁸ P.J. Rogers, “Notes on Kenya’s Future Constitution”, 11 January 1960, KNA, MSS/12/12.

¹⁹ Ibid.

²⁰ Kenya (Constitutional Situation), HC Deb 26 March 1959 vol 602 cc1549-67.

meeting with the delegates, the Secretary of State conceded the need for a constitutional conference. Based on the Secretary of State's promise, the African Elected Members ended their boycott of the Legislative Council, which they had held since November 1958.²¹

There were however frictions within CEMO. Tom Mboya's intransigence for an all-African led political outfit resulted in uncertainties within CEMO. There were those fearing that cooperation with Asians and Europeans would be interpreted as concessions to them.²² An initiative to constitute an organisation that would radically be distinct from Blundell's NKG saw CEMO break up. The press and European politicians, as stated by Gama Pio Pinto, further aggravated the relationship among the elected African members as they "took every opportunity to excite tribal animosity to the maximum".²³ Besides power struggle and external pressure, disagreements among the MLCs over the signing of "Sessional Paper No. 10 of 1958/59 on Land Tenure and Control Outside the Native Lands", which effectively opened access to the White Highlands to all races, led to the split of the African group into two and thereafter the formation of two opposing nationalist movements.²⁴ Masinde Muliro, Ronald Ngala, Daniel arap Moi, Francis Khamisi, James Muimi, Justus ole Tipis, Jeremiah Nyagah and Taita Towett signed up to form the Kenya National Party (KNP) in July 1959. KNP supported the principles of partnership and multiracialism, principles that were not favourable to many African nationalists.²⁵ However, its moderate demands and the gradualist approach to constitutional advance made it attractive to other groups, especially the Asians and the Arabs, and hence the signing up by Shirley Victor Cooke, European MLC for Coast, and the Asian members. Muliro became its leader.

²¹ Oginga Odinga, *Not Yet Uhuru* (Nairobi: Heinemann, 1967), p. 164.

²² Goldsworthy, *Tom Mboya*, p. 121.

²³ Pio Gama Pinto, *Glimpses of Kenya's Nationalist Struggle* (Nairobi: Asian African Heritage Trust, 1963), p. 30.

²⁴ Taita Towett, Personal Interview, 09 February 2007

²⁵ Robert G. Gregory, *Quest for Equality: Asian Politics in East Africa, 1900-1967* (New Delhi: Orient Longman, 1993), p. 91.

The KNP started facing stiff hostility from the Africans outside the Legislative Council who strongly opposed the principles of partnership and multi-racialism. The move by Asians to join KNP membership caused anti-Asian sentiments that rocked the country in 1959 with violent demonstrations in what came to be known as “anti-Asian” riots featuring cries of “Africa for Africans” and prompting serious reservations among the Asians and Arabs on the transfer of power to the Africans.²⁶ Six members who did not sign up for KNP – Oginga Odinga, Tom Mboya, Daniel Kiamba, Lawrence Oguda, Bernard Mate and Gikonyo Kiano; they were mostly from the Gikuyu and the Luo tribes, the two main ethnic groups. They had declined to sign up ostensibly in favour of keeping “true African nationalism” alive.²⁷ They formed the Kenya Independence Movement (KIM) with Odinga as the leader. KIM represented radical African nationalism with its leaders aiming to strengthen their stand for the upcoming constitutional conference.²⁸

The polarisation of the African members brought to the open the emerging minority fears of domination by the major tribes and the growing settler influence on African nationalism. Both parties were propped by district-based political associations affiliating to the respective leader such as Central Nyanza District Association (Odinga), Nairobi Peoples’ Convention Party (Mboya), Kilifi African Peoples’ Union (Ngala), North Nyanza District Congress (Muiro) and Mombasa African Democratic Union (Khamisi). Due to its predominantly African membership, KIM was denied registration to operate as a nationwide party.

In May 1959, Sir Conrad Corfield, a career civil servant, prepared a memorandum for the Colonial Office in response to the impatient African nationalism and the advancing

²⁶ Ibid.

²⁷ Goldsworthy, *Tom Mboya*, p. 124.

²⁸ James P. Hubbard, *The United States and the End of British Colonial Rule in Africa, 1941-1968* (Jefferson, NC: McFarland, 2010), p. 264.

Communism.²⁹ According to the memorandum delay in granting independence to African colonies would turn the nationalists, and hence potential leaders, into rebels to whom they would eventually be forced to hand over power in a dogged *retreat* situation. Such leaders would be so hostile that they would not serve long-term British interests.³⁰ It recommended that the British government builds a situation of *bargaining from strength* in which it would put the nationalist sentiments under control and guide the decolonisation process.

Britain held elections on 8 October 1959 that had implications on constitutional development in Kenya. Harold Macmillan was returned to office and he replaced Lennox-Boyd as Secretary of State for the Colonies with Ian Macleod. The appointment coincided with the posting of Sir Patrick Renison as Governor of Kenya upon Sir Evelyn Baring's departure. The rise of anti-colonial movements had resulted in a "wind of change" blowing across the British Empire comprising dominions, colonies, protectorates, mandates and dependent territories. At the beginning, it saw the breaking away of such significant colonies as India. In Africa, it saw the attainment of independence of Ghana, which gave impetus to the pan-Africanism movement and the fight for freedom for the Africans. Macmillan made reference to this "wind of change" during his month-long tour of Africa in January 1960, first in Accra, Ghana, on 10 January 1960, and then to the Parliament of South Africa in Cape Town on 3 February 1960. In his speech, Macmillan stated: "The wind of change is blowing through this continent and whether we like it or not, this growth of national consciousness is a political fact."³¹ This was an affirmation that the British government was intent on granting independence to its African dependences.

²⁹ Conrad Corfield, "Memorandum on Constitutional Policy," 18 May 1959, KNA, MSS/12/12.

³⁰ Ibid.

³¹ Larry Butler and Sarah Stockwell (eds), *The Wind of Change: Harold Macmillan and British Decolonization* (Hampshire: Palgrave Macmillan, 2013), p. 1-2.

Unlike his predecessor, Macleod was convinced that accelerating British withdrawal from Africa was imperative if ‘terrible bloodshed’ was to be avoided.³² He proceeded with speed, promptly announcing the end of ‘formal’ State of Emergency in Kenya in November 1959, and overturning the Conservative policy of multi-racialism in favour of a transition to majority African rule.³³ He also re-affirmed the earlier announcement of a constitutional conference for Kenya in January 1960, which would involve all members of the Legislative Council.

There was realignment in Kenya’s political scene. African elected members in KNP and KIM found some common purpose. Persuaded by Ronald Ngala, they agreed to form a united African front for the duration of the conference.³⁴ Ronald Ngala and Tom Mboya were selected to lead the group as Chairman and Secretary respectively. This was essentially a return to AEMO and the Colonial Office was not pleased. It preferred a strengthened NKG at the expense of both United Party and the new AEMO.³⁵ Nevertheless, the parties began preparing in earnest for the conference.

3.2.2 Memorandums, interests and attitudes

The prospects of a constitutional conference prompted various parties to consider holding preliminary discussions on their interests.³⁶ From December 1959, groups began consultations and discussions in readiness for the conference in January 1960. Although each group had a different perspective, they were all clear that self-government should be the ultimate aim.

³² Butler and Stockwell, “Introduction”, p. 6.

³³ Ibid.

³⁴ Ibid.

³⁵ Robert Maxon, *Britain and Kenya's Constitutions, 1950-1960* (Amherst, NY: Cambria Press, 2011).

³⁶ Blundell quoted by Foot in Kenya (Constitutional Situation), Parliamentary Debates, House of Commons, 26 March 1959 vol 602 cc1549-67.

There was a group calling itself the African Anti-colonial Movement of Kenya (AAMK). It was led by Joni Kamwithi Munyi, James Ochwata and James Kirua Wamatu (Chairman, Vice President and Organising Secretary respectively). It presented a memorandum to the Secretary of State outlining the popular African sentiments:

It is now clear to the millions of the African people of Kenya that a conference to decide the future of Kenya will be held in London in the coming month (January). The millions of Africans of Kenya believe that it must bring their long expectations for freedom, settlement and of peace, which has been absent in Kenya since colonization....³⁷

The contents of the memorandum coincided with the many appeals that had been advocated by Africans: that the realisation of the African rights must include the right to self-determination and the establishment of an undiluted democracy in Kenya.³⁸ The memorandum stressed African demands that minority rule must come to an end; Emergency laws must be repealed and brought to an end; Kenya must be declared an African state so that other races would remain with the consent of the Africans; independence must be granted to Kenya under majority rule; and, Jomo Kenyatta must be released immediately.

Africans did not envisage the conference failing and there was a tinge of threat in their demands. Any possibility of failure would be interpreted as a determination by the British government to perpetuate minority rule, which was not acceptable. Should this happen, they would have no option but to revert to armed struggle the same way as Cyprus and Algeria.³⁹ They hoped that the ultimate outcome of the conference would make the Africans feel that constitutional methods were good and that they could achieve results under British rule.⁴⁰

³⁷ “Popular African Statement on London Conference,” KNA, MAC/KEN/42/1

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ “African Elected Members Reply to the Policy Speech by the Secretary of State“ 25 January, 1960, KNA: MAC/KEN/42/5

Arab groups also expressed themselves. Concentrated along the coast, the Arabs were concerned about the future of the Coastal Strip, which remained a Protectorate when Kenya became a crown colony. They were a vocal minority, as out of an estimated population of 152,150 for Mombasa they comprised 21,000 (14%). The Europeans, Asians and Africans made up 4,500 (3%), 33,650 (22%) and 93,000 (61%) respectively.⁴¹ They held that the Protectorate and Colony of Kenya were two distinctive entities with the former made of Arabs who were an indigenous people living in a country that was basically Arab in culture, tradition and outlook. Unlike the Colony, which was part of Her Majesty's dominions, sovereignty of the protectorate rights rested with the Sultan of Zanzibar. Therefore, the rights of the Crown rested upon the Treaty of 1895, which the Arab community relied on. They regarded it as a breach of faith if any of the powers solely entrusted to Her Majesty's Government were devolved on to another government, or if the Protectorate were integrated with the Colony. Although they affirmed their loyalty and support for Her Majesty's Government, they rejected to be incorporated with the colony. They hoped that the conference will provide for their secession to join fellow Arab administration at Zanzibar.⁴²

The Asians also expressed their interests. They were divided into Muslims and non-Muslims. The Muslim Asians favoured a strong colonial presence to protect them against the Hindu. Generally, the East African Indian Congress, under which some of them were organised, supported gradualist approach to constitutional advance. They aligned themselves with some of African demands, but aimed for racial parity. Their claim was based on their contribution to development and in the defence of the colony during the World Wars and the Mau Mau Emergency. They opposed the common roll and undiluted democracy as it would

⁴¹ Colony and Protectorate of Kenya, *Statistical Abstract 1960* (Nairobi: Government Printer, 1960), p. 12.

⁴² Sheikh Salim Muhashamy, Record of the Tenth Plenary Session, 28 January 1960, 10.30 a.m., K.C. (60) 10th Meeting, KNA: MAC/KEN/42/5.

favour the Africans. They also wanted the size of the legislature reduced, with a strong government side.⁴³

On their part, the Europeans also had differences. The NKG consulted widely producing papers and memorandums for internal study and for publicising its policies and position on the conference in Kenya and abroad.⁴⁴ It appointed Patrick Daran, a public relations expert, to win and impress the British publics on its good intentions to protect immigrant communities. NKG hoped to defeat the ‘one man one vote’ system as proposed by Africans, portraying it as utterly racial and tribal, well aware that, to ordinary Britons, it would be regarded as such.⁴⁵

There was also the United Party that emphasised European control, abolition of the Legislative Council and separate governing systems for various racial groups. It strongly opposed the principle of common roll. It wanted the return to administration by the Colonial Office with an advisory council. It called for a system where specific representatives from all ethnic groups would be nominated with substantive control retained in the hands of Britons.⁴⁶ It still wanted to entrench European supremacy in Kenya, working towards self-rule. It hoped for reversal of the Lyttelton and Lennox-Boyd constitutional proposals and a recapture of European control.

The two European parties, NKG and the United Party, competed for influence. The NKG believed it represented the majority of the 60,000 Europeans in Kenya. It especially had the support of the progressive and enlightened Europeans given initial British government preference for a multiracial set-up. The new Secretary of State, Macleod, however developed doubts of NKG’s claims. The United Party, with only five members in the Legislative

⁴³ Dr V.V. Patwardhan corr. with W.B. Havelock on Memorandum to Prof. Mackenzie, 7 December 1959, KNA, MSS/12/12

⁴⁴ “The New Kenya Movement”, KNA: MSS/13/54.

⁴⁵ Cmd A.B. Goord, “Approach to the Constitutional Conference: A Discussion of Outstanding Points”, KNA: MSS/12/12.

⁴⁶ Rogers, “Notes on Kenya’s Future Constitution”, op cit.

Council, purported to represent the population that was responsible for the bulk of the Kenyan economy.⁴⁷ By 1958, they claimed, the European population was producing 97 per cent of the country's agricultural exports.⁴⁸ It also owned capital and provided skills in diverse areas. The retention of investments, skills and capital was crucial in preventing economic breakdown, as the country would not survive political turmoil.⁴⁹

There was also concern regarding the safety of white settlers and other minorities.⁵⁰ This reality made it imperative for the government to play down the extremist settler demands in favour of a strategy that would achieve and protect Britain's national interests regardless of personal preferences.

3.2.3 Pre-conference visit to Kenya

Prior to the announcement of the conference by Lennox-Boyd, the Minister of State for the Colonies, Lord Perth (John David Drummond), toured Kenya in April 1959 for a week and consulted interest groups and individuals in order to acquire first-hand impression of the political scene. He had consulted MLCs associated with the NKG under Blundell and CEMO under Odinga and then wrote a report which was to form a basis for constitutional negotiations.⁵¹ It stated the British aim as "...to build a nation based on parliamentary institutions and enjoying responsible self-government in conditions which secure for its people a fair standard of living and freedom from oppression from any quarter".⁵²

The Secretary of State, Ian Macleod visited Kenya for two weeks from 14 December 1959, to prepare himself for the conference and to make personal contact with the proposed

⁴⁷ Ibid.

⁴⁸ "The Defence of Kenya's Economy," KNA: MSS/12/12.

⁴⁹ Africa 1960 Committee Memorandum forwarded by Mrs Mervyn Rayner, 26 January 1960, KNA: MSS/13/51

⁵⁰ Heinlein, *British Government Policy*, p. 191.

⁵¹ Lennox Boyd, Parliamentary Debates, House of Commons, 22 April 1959 vol 604 cc555-68.

⁵² Ibid.

participants on their own ground.⁵³ He familiarised himself with the situation in Kenya, especially with regard to the inter-racial relations, and held informal discussions with all the racial and interest groups.⁵⁴ First he met with the Council of Ministers in two separate sessions, the whole council and thereafter the unofficial members of the council. During the meeting with the entire Council, he maintained that the constitutional changes must adhere to the main needs, aspirations and anxieties of the people of Kenya, and must contribute to the steady advance of the Africans. Regarding the size, distribution and portfolios of the Council of Ministers, and the application of the doctrine of collective responsibility in a multi-racial cabinet, he received diverse opinions, but he did not respond. Members proposed the ideal composition of the Council as having between 12 and 14 Ministers.⁵⁵

In the separate meeting with the unofficial Ministers, consisting of Bruce Mackenzie, Wilfrid Havelock, Ibrahim Nathoo, Norman Harris, Chunilal B Madan, William E. Crosskill and Musa Amalemba, Macleod gathered political opinion on the government and hinted on the procedure he was likely to adopt at the conference. This would be preparation of conference proposals for the agenda by Prof. Mackenzie, presentation of a keynote speech addressing the proposals, and setting up functional working committees on the legislature, franchise and council of ministers, and other vital issues such as economy and education. Observing that the previous constitutions, the Lyttelton and Lennox-Boyd proposals, had failed because the interested parties had not been given an opportunity to reach a compromise, Macleod pledged that even if agreement failed at the conference, he would not impose a constitution.⁵⁶

⁵³ KNA/MAC/KEN/42/6 Kenya Constitutional Conference, 1960, p.3; The Earl of Perth, Parliamentary Debates, HL Deb 01 December 1959 vol 219 cc1056-78.

⁵⁴ Macleod, "Kenya Constitutional Conference, 1960", KNA: MAC/KEN/42/6, p.3

⁵⁵ Record of the Meeting of the Secretary of State with the Council of Ministers, 14 December 1959, KNA: MSS/12/12.

⁵⁶ Record of the Meeting between the Secretary of State and Unofficial Ministers, 14 December 1959, KNA: MSS/12/12.

The meeting also discussed rising African nationalism. The Ministers expressed fears that the British government appeared to favour the demands of the extremists, in which case moderate opinion was interpreting the concessions to Africans as positive encouragements for them to join extremist nationalists. This fuelled fear that the interests of the immigrants would be ignored. Macleod assured them that, while the existence of African nationalism could not be ignored, this would not endanger the country's orderly progress.⁵⁷ He stated that the government would target the centre group (moderates) in considering measures for constitutional advance, especially the African middle class. He mentioned that he had left the door open for ideas and opinion, as his visit was generally for collecting views as widely as possible.⁵⁸

Macleod also met with the Executive of New Kenya Group (NKG) at the Parliament Building. The party had been understood in the Colonial Office as having stepped forward to help steady the political situation, especially on the European front. NKG stressed that it was interested in the continuance of good government by responsible people irrespective of their colour. Overall, it wished to establish a representative parliamentary democracy, but it did not believe that democracy could work on the basis of an uneducated electorate. It admitted that its opinion of 'the middle way' was unpopular among the races who wanted a stronger stand. Macleod agreed entirely on the principle of non-racial approach to constitutional development and wanted to see a non-racial approach with a broad measure of agreement.⁵⁹

From these consultations and with advice from his own advisers in the Colonial Office Macleod established his own goals and priorities for the conference and hence its outcome with the main aim being to study what would be the next step in the evolution of Kenya.⁶⁰

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Minutes of a Meeting of NKG Executive Committee, 14 December 1959, KNA: MSS/13/54

⁶⁰ Maxon, *Britain and Kenya's Constitutions*, op cit.

Before departing for London, he confirmed the dates of the conference as between 18 January and 6 February 1960 (19 days).⁶¹ He also sent individual invitations to the delegates.⁶²

3.2.4 Agenda, venue, participants and logistics

In preparation for the conference, several interest groups recruited special advisers. The British government contracted a constitutional expert to review and ascertain the views of the various groups and parties in Kenya prior to the conference.⁶³ This was William J.M. Mackenzie, Professor of Government at Manchester University. He was appointed to play the role of Constitutional Adviser, with Dr R.V. Rostowski as his Personal Assistant. Mackenzie had earlier served as special commissioner for constitutional development for Tanganyika in 1953 and was therefore considered a sympathetic advisor to the Kenyan situation.⁶⁴ His terms of reference were “to consult with political opinion of all shades with a view to affording advice to the participants in the forthcoming constitutional conference including the Kenya government and Her Majesty’s Government”.⁶⁵ The general arrangements of his visit were decided by the Secretary of State.⁶⁶

Mackenzie paid two visits to Kenya, first in September and then in December 1959, to familiarise himself with the local social and economic background, and to meet representative bodies. He met with the provincial administration, legislative council members and interest groups. Arrangements were also made for him to consult political opinion widely.⁶⁷ Members of the Legislative Council took him round their respective constituencies

⁶¹ African Elected Members Statement to the Colonial Secretary, 20 January 1960, KNA: MAC/KEN/42/3

⁶² Wally F. Coutts to Colonial Office, 23 October 1959, KNA, MSS/12/12.

⁶³ Kenya (Constitutional Situation), Parliamentary Debates, House of Commons, 26 March 1959 vol 602 cc1549-67.

⁶⁴ Richard Rose, “William James Millar Mackenzie”, *Proceedings of the British Academy: 1998 Lectures and Memoirs* (Oxford: Oxford University Press, 1999), 465-488. Available at <http://www.profrose.eu/publications/mackenzie.pdf>

⁶⁵ R.V.Rostowski to D.W.Hall, 18 November, 1959. KNA: OP/1/523.

⁶⁶ R.V. Rostowski to F. Lyod (Provincial Commissioner, Nyanza), 17 November 1959. KNA: OP/1/523.

⁶⁷ Ibid.

to meet people and familiarise with some of their problems.⁶⁸ He then prepared a report for presentation at the opening of the conference.⁶⁹ McKenzie's "Report on the Constitutional Agenda", circulated to the participants on the eve of the conference, analysed Kenya's constitutional position at the time of the conference. It outlined the main topics of discussions, critically examined each topic with regard to the constitutional conference, and provided some workable recommendations in line with the views he had gathered. However, he expressed hope that the acceptability of his suggestions would depend on the Secretary of State.⁷⁰

McKenzie recommended that discussions be based on three main items. These were general principles; the main organs of government; and, safeguards. Two other additional items that he proposed for discussion were future status of the Protectorate and Citizenship of Kenya. With regard to the general principles, McKenzie suggested that the Secretary of State would give guidance based on the prevailing attitude of the British government as contained in four previous policy documents. These were Proposals for New Constitutional Arrangements (Cmd 309) of Nov. 1957, Dispatch on the New Constitutional Arrangements (Cmd 369) of February 1958, Dispatch of 24 November 1958 (HC debates), and Statement of Kenya's Future of 22 April 1959 (HC debates). This implied that the British government did not anticipate a radical departure from earlier policies in constitutional advance.

Besides McKenzie, the Chief Secretary of Kenya, Sir Walter Coutts, also prepared a document. His was on the franchise, which was to be shared with the Governor and subsequently sent to the Secretary of State. The note contained geographical constituencies

⁶⁸ Ibid.

⁶⁹ "Report on the Conference Agenda," KNA, MAC/KEN/42/3.

⁷⁰ Professor Mackenzie, "Report on the Conference Agenda," KNA, MAC/KEN/42/3.

based on statistical information and proposals for the communal and ‘open’ common roll seats.⁷¹ It also contained proposals on the possible delimitation of the constituencies.

The Secretary of State, Macleod, made it clear that he was in charge and that he would decide on the venue and on the list of the delegates.⁷² He would control the content and the flow of the agenda of the conference.⁷³ He selected Lancaster House, situated in West End London close to Buckingham Palace. Previously, Carlton House Terrace had been selected, but Lancaster House was later picked because it could accommodate more participants.⁷⁴ In addition, it would insulate the delegates from ‘offstage pressure’ and enable the Colonial Office to exercise control over the course of discussion.⁷⁵ Once selected, the venue was exclusively reserved for the conference with restricted access and was open only for the delegates during the duration of the conference.⁷⁶

Every group was allocated working space within the venue including telephone facilities and support staff.⁷⁷ All the material required for the sessions was processed and stored within the venue. Any documents produced or received for discussion had limited circulation within the conference and the accredited observers were required to return them upon the completion of the deliberations.⁷⁸ Control of information flow was essential to avoid leakages that could jeopardise the discussions.

The Government of Kenya’s Chief Secretary and the Cabinet and Foreign Affairs Offices in the United Kingdom determined the participants for the conference.⁷⁹ The participants from Kenya comprised two groups, one of all elected Members of the Legislative

⁷¹ W.B. Coutts to Colonial Office, 15 December 1959, KNA, MSS/12/12.

⁷² African Elected Members, op cit.

⁷³ Ibid.

⁷⁴ See Correspondence between Wally F. Coutts and the Colonial Office, 23 October 1959, KNA, MSS/12/12.

⁷⁵ Maxon, *Britain and Kenya's Constitutions*, op cit.

⁷⁶ “Kenya Constitutional Conference: Administrative Arrangement”, K.C. (60) 1, 13 January 1960. KNA: MAC/KEN/42/2.

⁷⁷ Ibid.

⁷⁸ Ibid; “Record of the Second Plenary Session”, Wednesday, 20 January 1960, K.C. (60) 2nd Meeting, KNA: MAC/KEN/42/4.

⁷⁹ Wally F. Coutts to Colonial Office, 23 October, 1959, KNA, MSS/12/12.

Council (MLCs) with a few nominated members who were invited to represent special interests, and the other consisting of Kenya government officials represented by the Governor and the Attorney General. The Kenya government was also listed as a co-convenor of the conference.⁸⁰ For the UK government, the list consisted of the Secretary of State and the Minister of State for Colonies, officials from the Colonial and Cabinet Offices, and the Secretariat providing support staff from the Cabinet Office.⁸¹ The Secretary of State chaired the conference. African delegates had sought to have Jomo Kenyatta released to enable him attend the conference as the undisputed political leader of the Africans.⁸² Governor Renison responded that the conference was limited to Members of the Legislative Council and thus Kenyatta could not attend even if he were released.

Broadly, the participants were divided into two: the UK delegation and the Kenya delegation.⁸³ The former comprised the Secretary of State, who headed the Colonial Office (advisers, officials and the Secretariat), while the latter consisted of Members of the Kenya Legislative Council (MLCs), the Kenya Government officials and groups' special advisers. The Secretary of State led the political group of the UK government while the technical group was led by Sir Hilton Poynton, Permanent Under-Secretary of State. MLCs were grouped into four racial and two special categories. The four racial categories were African Constituency Elected Members, European Constituency Elected Members, Arab Constituency Elected Members, and Asian (Muslim and non-Muslim) Constituency Elected Members. The two special categories were specially elected members (African, European, Asian and Arab) and nominated members representing the Coastal Strip (as Liwali for the Coast) and the Northern Frontier District.⁸⁴ However, at the conference, the delegates had

⁸⁰ Ibid.

⁸¹ Coutts to Colonial Office, op cit.

⁸² Odinga, *Not Yet Uhuru*, p. 191.

⁸³ "Administrative Arrangements", K.C. (60) 1, 13 January, 1960, KNA: MAC/KEN/42/2.

⁸⁴ Ibid.

informally grouped themselves into four distinct categories, namely the African Constituency Elected Members led by Ronald Ngala, the United Party led by Group Captain Briggs, New Kenya Group (NKG) led by Michael Blundell, and Asian and Arab Group led by Dr S. Hassan. Members of the respective racial groups belonged to either of these categories.

Each of the African and European groups had a constitutional adviser. Arthur T. Culwick, Chairman of the United Party, a farmer in western Kenya and a prime mover of the Federal Independence Party (FIP), was the advisor of his group. Commander A.B. Goord was adviser to the NKG. C.W.P Harries, a farmer from Thika, attended the conference on behalf of Sir Charles Markam, the European elected member for Ukambani.⁸⁵ The African group had Thurgood Marshall as adviser. Marshall was a NAACP (National Association for the Advancement of Colored People) lawyer, whose services Mboya had secured through his American connection.⁸⁶ Each group raised special issues. For example, Odinga proposed that Peter Mbiyu Koinange, an old associate of Kenyatta and KAU's representative in exile, who was working in Ghana as adviser to President Kwame Nkrumah, also serve as an adviser to the African delegation.⁸⁷ However, Mboya's choice of Marshall and Odinga's recommendation of Mbiyu highlighted the growing rivalry between the two, the former portraying a Kenyan focus and the latter the American influence.⁸⁸

The Kenya Public Relations Office in the Cabinet Office made the arrangement for travel and accommodation for the delegates from Kenya. African delegates were booked at Eccleston and Rubens Hotels (in the Bloomsbury area of London) together with some members of the Asian group.⁸⁹ Some arrangements changed upon arrival where Odinga, Ronald Ngala and Daniel arap Moi stayed at Bloomsbury Hotel.

⁸⁵ Biography; C.W.P Harries, MSS/115/7/3.

⁸⁶ Goldsworthy, *Tom Mboya*, p. 133.

⁸⁷ *Ibid.* p. 177.

⁸⁸ Hubbard, *The United States and the End of British Colonial Rule in Africa*, p. 265.

⁸⁹ Goldsworthy, *Tom Mboya*, p. 133.

On 13 January 1960, the Secretary General, who was in charge of the Secretariat and the general administration, released the arrangements for the conference providing for directions and information on accommodation, general conduct, seating arrangement, facilities, security and schedules.⁹⁰ The conference was ready to begin.

3.3 Structure of the Conference

In all, there were seventeen plenary sessions held during the conference. The formal opening was at 11.00 a.m. on Monday, 18th January, 1960, by the Secretary of State for the Colonies, Iain Macleod, in the Long Gallery of Lancaster House. It was open to BBC TV and the press, but it started with a hitch. The African Constituency Elected Members boycotted the session on account of Macleod's refusal to recognise and admit their choice of an additional constitutional adviser, Peter Mbiyu Koinange.⁹¹ Mbiyu's admission was unacceptable to most European delegates. Captain Brigg's group, the United Party, threatened to leave the conference altogether if the Colonial Office conceded. The Kenya government was not ready to admit him either for his perceived role in the "Mau Mau". With the African delegation refusing to back down, there was a standoff.

Macleod nevertheless gave his opening statement and outlined three policy issues. One, that the intention of the British government was to lead Kenya to enjoy full self-government and ultimately independence within the Commonwealth. Secondly, that, while planning for the constitutional evolution, due recognition must be made to the fact that Africans were "easily the majority". Thirdly, that those who had made Kenya their home were entitled to make full contribution to the work of governing their country.⁹² He emphasised that the objective of the conference was not independence, but to plan the next step in Kenya's

⁹⁰ "Administrative Arrangements", K.C. (60) 1, 13 January, 1960, KNA: MAC/KEN/42/2.

⁹¹ "African Members Statement to the Colonial Secretary", 20th January 1960, KNA: MAC/KEN/42/3.

⁹² "Opening Statement by the Secretary of State", Record of the First Plenary Session, K.C. (60) 1st Meeting, 18 January 1960, KNA: MAC/KEN/42/3.

constitutional evolution. The purpose of the conference was not “to take decision on the future of Kenya, as that was the responsibility of Her Majesty’s Government”. He also stated that the Conference would be “discussing foundations which must be laid for eventual self-government”.⁹³ He gave the broad agenda as contained in two aims formulated by Her Majesty’s Government for Kenya: “... first, [is] to build a nation based on parliamentary institutions on the Westminster model and enjoying responsible self-government under certain traditional conditions, and secondly, to achieve a general acceptance by all of the right of each community to remain in Kenya and play a part in public life.”⁹⁴

The Secretary of State’s address was followed by a statement from the Governor of Kenya, Sir Patrick Renison, who observed that Kenya’s problems were largely those of human relationships. He identified the main challenge for the conference as consisting of building of lasting confidence between the national leaders of all races so that their followers could work together. This implied that the Kenya government was inclined to the adoption of a multiracial set-up. After the opening of the conference by Macleod and Renison, the conference adjourned to the privacy of the Music Room where all plenary sessions took place.⁹⁵

Apart from plenary sessions and committee meetings, the conference had informal meetings among participants, and between the Secretary of State and respective groups. Prime Minister Harold MacMillan also held an informal meeting with the European NKG delegates at the Cabinet Room of the Downing Street office to explain to them the British government’s decision to deviate from their idea of “all races playing a full part in the

⁹³ Ibid.

⁹⁴ Professor W.J.M. McKenzie, “Report on Conference Agenda,” KNA, MAC/KEN/42/3.

⁹⁵ Record of the First Plenary Session, K.C. (60) 1st Meeting, 18 January 1960, KNA: MAC/KEN/42/3.

creation of a new Kenya".⁹⁶ This explains the determination with which the British government sought to have its ideas accepted by the participants.

3.3.1 Plenary sessions

Plenary discussions were attended by various delegates with advisers being observers, but the Africans were missing. Macleod proposed the narrowing of discussion into three subjects for which committees were to be formed.⁹⁷ The subjects were: Council of Ministers; Legislative Council and the franchise; and, Bill of Rights, local government and any other matter arose.⁹⁸ Consequently, he proposed that a committee be appointed to assist in the drafting of the conference report; that the members who wished to speak in response to his statement to notify the Secretary General so as to determine the speaking order; and, that the proceedings would entirely be plenary. Two sessions were to be held in a day, and no sessions were scheduled for Friday afternoons and weekends. He also proposed the composition of committees. The committee on Legislative Council and Franchise was chaired by Sir Hilton Poynton (Permanent Under-Secretary of State in the Colonial Office), the committee on Council of Ministers by Sir Patrick Renison (Governor of Kenya), and the committee on Safeguards (Bill of Rights), Local Government and other matters by Sir John Martin (Deputy Under-Secretary of State in the Colonial Office). There was to be a publicity committee made up of a representative from all groups, which was responsible for issuing press communiqués.

Since the committees were constituted in the absence of African representatives Macleod recognised the potential of the conference failing if the African group was excluded. He initiated informal discussions. The Africans argued that while they had gone to Lancaster conference to demonstrate their faith in the talks despite their demands being ignored. The most important demand was the invitation of Jomo Kenyatta and exclusion of the specially

⁹⁶ Blundell, *A Love Affair*, p. 111.

⁹⁷ Record of First Plenary Session, K.C. (60) 1st Meeting, 18 January 1960, KNA: MAC/KEN/42/3.

⁹⁸ Ibid.

elected members, but Macleod had remained adamant. They felt they could not concede on the issue of special adviser.⁹⁹ As a result, no serious sessions were held for the next two days and when the second plenary session met on the afternoon of 20 January 1960, it was to form the Publicity Committee “to consider the nature and timing of communiqué to be issued to the press regarding the proceedings of the conference”. Its membership still excluded the Africans and was chaired by W.B.L Monson of the Colonial Office with the secretary being R.W. Francis of the Kenya Public Relations Office.¹⁰⁰ Macleod announced that he would pursue private and informal discussions with the Africans hoping to convene the next session the following day (21 January 1960). This would also give room for consultations and ample time for members to study his statement.

The third session was critical in settling the Special Advisers issue. While some European members wanted the conference to proceed without the Africans, the Africans, in a memorandum, accused Macleod of starting the conference in their absence.¹⁰¹ Macleod successfully pleaded for time to settle the matter and the conference resumed on Monday, 25 January 1960, in the morning. Africans’ boycott had been sustained for five days during which time the parties reached a compromise. Macleod confirmed Koinange’s status as a Special Adviser, but then was not allowed into the plenary or committee meetings. For this decision, the Secretary of State took responsibility against the expectations of the extremist Europeans who viewed it as official recognition of Mau Mau.¹⁰²

The reaction to the compromise on the Koinange issue varies. The five members of the United Party – Group Captain Briggs, Major F.W.J.S. Day, Air Commodore E.L Howard Williams, J.R Maxwell and Major B.P. Roberts – boycotted the next (afternoon) session in

⁹⁹ African Elected Members’ Statement to the Colonial Secretary, 20th January 1960. KNA: MAC/KEN/42/3.

¹⁰⁰ Record of the second preliminary session Wednesday, 20 January, 1960 K.C. (60) 2nd Meeting, KNA: MAC/KEN/42/14.

¹⁰¹ African Elected Members’ Statement to the Colonial Secretary, 20th January 1960. KNA: MAC/KEN/42/3.

¹⁰² Record of the Fourth Plenary Session, 25 January 1960, 10.30 a.m., K.C. (60) 4th Meeting, KNA: MAC/KEN/42/5.

protest.¹⁰³ In the United States, the reaction was one of acknowledging Koinange's potential influence on independent Kenya. It promptly gave him multiple entry visas although he had not applied but had been denied in 1948 on the advice of the British government.¹⁰⁴ The proposals moved for adoption by the Secretary of State manifested the face of power possessed by the British government.¹⁰⁵

After settling the Koinange issue, the delegates went into the fourth session. The groups presented their opening statements as a reply to the Secretary of State's statement. During the presentations, Macleod encouraged the speakers to intervene whenever necessary "to correct statements of fact".¹⁰⁶ First to speak was Group Captain Briggs for the United Party, followed by Ronald Ngala for the African Elected Members, Dr Said Hassan for Asians, Michael Blundell for NKG, and finally Sheikh Mackawi for the Arabs. Each of the group's presentation comprised a summary of their memorandums as aligned to the Secretary of State's statement. Thereafter, individuals in the respective groups spoke to the statement and responded to points raised by other speakers. In his presentation, Odinga questioned the ambiguity of the Secretary of State's statement regarding the British government's aim for Kenya's independence; while it was acceptable, "the course in attaining it was not clear".¹⁰⁷ The vagueness that Odinga detected was actually in line with the cabinet decision not to diverge the timetable for constitutional advance so as to forestall pressure and anxiety among racial groups.¹⁰⁸

¹⁰³ Record of the Fifth Plenary Session, 25 January 1960, 3.00 p.m., K.C. (60) 5th Meeting, KNA: MAC/KEN/42/5.

¹⁰⁴ Macharia Munene, *Historical Reflections on Kenya: Intellectual Adventurism, Politics and International Relations* (Nairobi: University of Nairobi Press, 2012), p. 16.

¹⁰⁵ Steven Lukes, *Power: A Radical View*, op cit.

¹⁰⁶ Record of the Eighth Plenary Session, 27 January 1960, 10.30 a.m., K.C. (60) 8th Meeting, KNA: MAC/KEN/42/5.

¹⁰⁷ Record of the Ninth Plenary Session, 27 January 1960, 3.00 p.m., K.C. (60) 9th Meeting, KNA: MAC/KEN/42/5.

¹⁰⁸ Heinlein, *British Government Policy and Decolonisation*, p. 190.

Reaction to the Secretary of State's statement continued in other sessions until every delegate had made presentation. Thereafter, Macleod proposed the commencement of discussions in committees, but also suggested the committees be put on hold until "fundamental questions of the franchise and legislative council had been dealt with in the plenary committee".¹⁰⁹ He reiterated that the "status of the conference was advisory" and that there was no question of voting or taking decisions.¹¹⁰ He further urged the delegates in the respective groups to continue with informal discussions although their deliberations were not a matter for settlement by the conference.¹¹¹ Plenary sessions were put on hold after 3 February 1960 to give committees a chance to hold discussions. It was on this day that Prime Minister, Harold Macmillan made his "wind of change" speech in the Houses of Parliament in Cape Town, South Africa, acknowledging that majority black populations in the colonies were claiming the right to rule themselves and that growth of national consciousness was a political fact.¹¹² This acceptance by the British government that independence under African majority was reality disarmed the Europeans at the conference and inspired Africans to seek the speeding up the process of independence.

3.3.2 Committee meetings

Delegates spent the twelve-day break from plenary sessions on private, informal and committee discussions. The first committee was on **Legislature and Franchise** whose terms of reference were, "...to consider and make recommendations to the conference of the size and composition of, and the franchise arrangements for, a legislative appropriate to the next

¹⁰⁹ Record of the Fifteenth Plenary Session, 3 February 1960, 10.30 a.m., K.C. (60) 15th Meeting, KNA: MAC/KEN/42/5.

¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹² "Macmillan Speaks of 'Wind of Change' in Africa", *BBC News*, 3 February, 1960, available at: http://news.bbc.co.uk/onthisday/hi/dates/stories/february/3/newsid_2714000/2714525.stm, accessed on 20 February 2015.

stage of constitutional advance in Kenya”.¹¹³ Macleod chaired it although it had initially been placed under Sir Hilton Poynton. This reflects the importance of the committee in Macleod’s overall objective. When it first met on 5 February, building on unofficial discussions on the groups’ memorandums, Briggs complained that the African members were so rigid in their original demands that they made it difficult to achieve progress. Similarly, Humphrey Slade of NKG threatened to abandon the conference.¹¹⁴ The Secretary of State suggested more time for unofficial discussions.

During the second committee meeting on 8 February, Mackenzie’s paper on “The Reservation of Seats for Minorities within a Common Roll” was introduced as an addition of his earlier paper was titled “The Franchise”.¹¹⁵ The former outlined three elements for discussion: common roll on a wide franchise (“one man one vote”); common roll with special qualifications; and, communal rolls. Macleod urged the delegates to respond to the proposals in Mackenzie’s paper in their discussions alongside his own speech on franchise. In his speech, Macleod hinted on a move towards universal adult suffrage in respect of some of the common roll seats and a reduction in the number of communal seats.¹¹⁶

African members prepared a paper containing their views on Mackenzie proposals and circulated it to all the delegates.¹¹⁷ They observed that “the Secretary of State had taken upon himself, and without any specific request from the immigrant communities, to decide beforehand as to the nature of restrictions he should place on both the franchise and the legislature”.¹¹⁸ They had impressed on him prior to the conference that they would not compromise over the question of a common roll and the ‘one man vote principle’ and had

¹¹³ “Committee Structure”, KNA: MAC/KEN/43/1.

¹¹⁴ Record of the First Plenary Committee Meeting, K.C. (P.C.) (60), 1st Meeting, 5 February, 1960, KNA: MAC/KEN/42/3.

¹¹⁵ “The Reservation of Seats for Minorities within a Common Roll”, K.C. (P.C.) (60) 4; “The Franchise” K.C. (P.C.) (60) 2, 2 February, 1960.

¹¹⁶ K.C. (P.C.) (60) 2, 2 February, 1960, KNA: MAC/KEN/43/1.

¹¹⁷ K.C. (P.C.) (60) 3, KNA: MAC/KEN/43/1.

¹¹⁸ Ibid.

emphasised on undiluted democracy with a legislature of 71 seats, which would include any reserved seats for the minority groups. They were unwilling to discuss unofficial or official seats in the legislature.

Arab and Asian elected members also circulated their memorandum based on a meeting of the Indian Congress and the Muslim League on 5 January, 1960. They supported African political advancement and, as the ultimate objective, the abolition of the communal rolls. The abolition however should take time, they argued, since no candidate would “seek votes of the minorities on a predominantly African roll”.¹¹⁹ They proposed two schemes for the next stage in constitutional development. One scheme involved retention of communal seats with all races having universal adult suffrage in their rolls, a common roll. It would have high qualification to give equal influence to all the major races, and common roll with universal African franchise and a legislature of 56. The second scheme involved abolition of communal rolls and the creation of a common roll with qualified franchise to return 32 African, 14 Europeans, 14 Asian and 4 Arabs for a total of 64.

Karsanji D. Travadi and John C.M. Nazareth, both non-Muslim Asians, presented their own constitutional memorandums to the delegates for consideration. They advocated a phased constitutional evolution ultimately establishing a genuine democratic parliamentary system.¹²⁰ Travadi’s 12-point memorandum envisaged responsible government in 1960 and self-government after nine years. The proposal also contained a three-phased approach which would culminate in the disappearance of the communal roll by 1968. He advocated parity in the legislative council comprising 16 government nominees, 16 Europeans, 16 Asians, 16 Africans and 4 Arabs.¹²¹

¹¹⁹ “Constitutional Proposals”, K.C. (60) 9, 4 February 1960, KNA: MAC/KEN/43/6.

¹²⁰ K.D. Travadi, “Constitutional Proposals”, K.C. (60) 9, 4 February 1960, KNA: MAC/KEN/43/6; JM.C. Nazareth, “Franchise and the Constitution of the Legislature Council”, K.C. (60) 11, 8 February, 1960, KNA: MAC/KEN/43/2.

¹²¹ Travadi, “Constitutional Proposals,” op cit.

The Africans rejected European, Asian and Arab proposals and were unwilling to compromise on their demands. Failure to reach any agreement prompted Macleod to suggest further informal discussions and said that they would go on “until the views of members were thoroughly exchanged”.¹²² He also suggested that the meeting to reconvene two days later on 10 February. However, no other committee meeting on Legislature and Franchise was convened implying that the issues were settled through informal discussions.

The **Committee on the Executive**, which was chaired by the Governor Renison, had as its terms of reference “to consider and make recommendations to the conference on the size and composition of a Council of Ministers appropriate to the next stage of constitutional advance in Kenya, and on the division of responsibility amongst ministers and the method of their appointment.”¹²³ In particular, it was to consider the following three questions: (1) how could the views of Her Majesty’s government be met to encourage more Africans to take a greater share in the government; (2) how could the views of Her Majesty’s government be met to make members of the principal races take some ministerial posts, and how many of these posts were to be reserved; and, (3) how far would the Governor act to fill all these ministerial posts after consultation with political leaders in the legislative council.¹²⁴

The committee did not hold formal meetings. Instead, an aide memoire was circulated from the Colonial Office for the members to consider. It contained the attitude of the Secretary of State, who had stated that: “The interests of Kenya required greater participation by Africans in the government of the country and the inclusion in the executive of members drawn from the principal races”.¹²⁵ It also contained the views of informal discussions from the members who were in favour of reduction in the membership of the council to 12 or 13,

¹²² Record of the Second Plenary Committee Meeting, K.C. (P.C.) (60), 1st Meeting, 8 February, 1960, KNA: MAC/KEN/42/3.

¹²³ “Committee Structure”, KNA: MAC/KEN/43/1.

¹²⁴ “The Executive”, K.C. (E) (60) 2, 2 February, 1960, KNA: MAC/KEN/43/33.

¹²⁵ Ibid.

retention of 3 to 4 civil service ministers; and, use of assistant ministers (or parliamentary secretaries) for training purposes. The aide memoir also contained a list of ministries and their functions to guide in the assessment.¹²⁶

The **Committee on the Safeguards** held two meetings on 16 February, 1960. Chaired by Sir John Martin, it had its terms of reference as, “to consider and make recommendations on the methods of safeguarding human rights as Kenya’s constitution develops.”¹²⁷ In an earlier statement, the Secretary of State had extended its mandate to consider the issues of land and education.¹²⁸ Its composition included all members of the conference.¹²⁹ In its first meeting, Sir Kenneth Robert-Wray, the Colonial Office Legal Adviser, and Thurgood Marshall, adviser to the African group, introduced their memorandums. Sir Robert-Wray’s paper on the Bill of Rights was drawn from Universal Declaration of Human Rights of 1948, the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, and the Nigerian Constitution of 1959.¹³⁰ Thurgood Marshall explained the source of his own papers as being from the US Constitution, the Malayan Bill of Rights, and the Nigerian Constitution. He proposed that the drafting of the Bill of Rights be done by a commission, because it was not possible for the committee to do “more than agree on general principles”.¹³¹ Discussions on the Bill of Rights attracted interest from all the racial groups, which were in general agreement that a code of rights was important to be included in the constitution. Ngala said that the acquisitions of unused land for distributions to the landless should come within the interpretation of ‘public purposes’, as this would allow the government to expropriate land for distribution. Kenya’s Attorney-General, Griffith-Jones,

¹²⁶ Ibid.

¹²⁷ “Committee Structure”, KNA: MAC/KEN/43/1.

¹²⁸ Record of the First Meeting of the Committee on Safeguards, K.C. (S) (60) 1st Meeting, KNA: MAC/KEN/43/4. Secretary of State’s statement had been circulated as K.C.(60) 13.

¹²⁹ K.C.(S)(60), 15 February 1960.

¹³⁰ K.C. (60) 6, 29 January, 1960, MAC/KEN/43/5.

¹³¹ Record of the First Meeting of the Committee on Safeguards, K.C. (S) (60) 1st Meeting, KNA: MAC/KEN/43/4.

warned that ‘public purposes’ should not be confused with ‘public interest’.¹³² The former entails such public use as government buildings, while the latter involves such activities as environmental protection and conservation.

During the second meeting in the afternoon, members considered a draft prepared by the secretariat on land issues.¹³³ African members said that the “Bill of Rights should not interfere with a future government effort for land reforms”.¹³⁴ Slade proposed that the Bill should provide for freedom to lawfully acquire and dispose property reiterating that the fear on the future of land in Kenya was real among the Europeans, and that unless the fears were removed a new constitution would not be “happily launched”.¹³⁵ Griffith-Jones particularly proposed two conditions of acquiring land by the government provided that adequate compensation was made. One was the compulsory acquisition of property by government for ‘public use’ even when such property was well utilised; and, secondly, the compulsory acquisition of property that was improperly used to make it available to another person for economic use. He clarified that compulsory acquisition of property ought not to be within the scope where property was acquired to make it available to another person.¹³⁶ They did not exhaust the issue.

The next day, 17 February, instead of continuing with the land issue, the Colonial Office prepared and circulated a brief draft, which was circulated to the delegates for consideration.¹³⁷ The draft contained the points raised in the meetings and mostly went along the lines requested by NKG and UP. It included issues of education and raised fears among

¹³² Record of the First Meeting of the Committee on Safeguards, K.C. (S) (60) 1st Meeting, KNA: MAC/KEN/43/4.

¹³³ K.C.(S) (60) 5, 16 February, 1960, KNA: MAC/KEN/43/4.

¹³⁴ Record of the Second Meeting of the Committee on Safeguards, K.C.(S) (60) 2nd Meeting, KNA: MAC/KEN/43/4.

¹³⁵ Ibid.

¹³⁶ Ibid.

¹³⁷ K.C.(S)(60) 4, 17 February 1960, KNA: MAC/KEN/43/4.

Europeans of the future of schools in an environment where majority were non-Europeans.¹³⁸

It also touched on admission of pupils of other races, management of the schools, and the financial policy.

When they resumed on 15 February, 1960, in the sixteenth session, the delegates discussed the Constitutional Proposals circulated as K.C. (60) 12 and K.C (60) 13. The Secretary of State explained that the proposals had been made on the basis of attempting to bring various groups together to achieve as much of common ground as possible, and “to build a political bridge between Kenya’s past and future”.¹³⁹ The indication was that these proposals had not been unanimously adopted as Reggie Alexander questioned whether the views of the various groups “had been cleared” to which Macleod responded that he had “done his best in the time available” and that the statement represented his understanding of the situation.¹⁴⁰

The seventeenth and final plenary session was convened on Sunday, 21 February, 1960, at 4.30 p.m. to consider the Draft Conference Report, the Secretary of State’s statement on safeguards, and to issue closing statements. At the adoption of the draft conference report the only amendments were minor. They involved the inclusion of an acknowledgment of Mackenzie and Marshall for their contribution as constitutional advisers.¹⁴¹

3.3.3 Conference report

The adoption of the Draft Conference Report marked the end of the sessions. Proceedings were run on the basis of establishing what common ground existed between the various

¹³⁸ K.C (5) (60)3, 17th February 1960, KNA: MAC/KEN/43/4..

¹³⁹ Record of the Sixteenth Plenary Session, 15 February 1960, 3.00 p.m., K.C. (60) 16th Meeting, KNA: MAC/KEN/42/5.

¹⁴⁰ Ibid.

¹⁴¹ Record of the Seventeenth Plenary Session, 21 February 1960, 4.30 p.m., K.C. (60) 17th Meeting, KNA: MAC/KEN/42/5.

groups.¹⁴² Arriving at the draft report had taken many long and tedious meetings in efforts to attain settlement. Macleod had to deal with adamant and militant Africans demanding the independence timetable and the determination of the land rights. He persuaded the Africans to postpone discussion on land issues and await the Bill of Rights to be tabled for discussion in the Legislative Council.¹⁴³ He threatened to withdraw the proposals warning that they would have to wait for a longer time, even up to a year, for the government to form a commission of inquiry, which would determine the next course of action.¹⁴⁴ The Africans, not willing to delay independence, conceded. With the help of Blundell and Ngala, Macleod assembled majority of delegates for some agreement.¹⁴⁵

Group views on the draft report were contained in the closing remarks of the respective leaders and all had reservations over the proposals. To the Africans, they fell far short of their immediate expectations. NKG's expectation of a stable government and a genuine incorporation of all races in all the spheres of public life were not fully realised. It felt that the Secretary of State had gravitated more towards African demands and recognised that broad lines of cabinet policy with regard to Africa had already been decided prior to the conference along which lines Kenyan solutions would be patterned.¹⁴⁶ The Asian and Arab groups had reservations on the level of franchise, the proportion of African ministers, and the position of national members. Group Captain Briggs of the United Party rejected them outright and termed them "a death blow to the European community", and that the outcome was inimical to their interests. He also observed that too little attention was paid to the United Party's views.¹⁴⁷ Nevertheless, the party was ready to take part in further discussions on safeguards. The rest of the groups, including Her Majesty's cabinet, accepted them for implementation as

¹⁴² Speech by Secretary of State for the Colonies," 21 February 1960, KNA, MAC/42/3.

¹⁴³ Odinga, *Not Yet Uhuru*, p. 179.

¹⁴⁴ Hubbard, *The United States and the End of British Colonial Rule in Africa*, p. 265.

¹⁴⁵ Ibid.

¹⁴⁶ Special Plenary Meeting of the New Kenya Group, 27 February 1959, KNA, MSS/13/54.

¹⁴⁷ Record of the Seventeenth Plenary Session, 21 February 1960, 4.30 p.m., K.C. (60) 17th Meeting, KNA: MAC/KEN/42/5.

the next stage in Kenya's constitutional advance. All parties were also in agreement that the constitutional conference and the resultant Macleod arrangements were not suitable for advancing Kenya to independence.

Along with preparation of the final conference report, the Secretary of State proposed a separate committee to further consider the appropriate constitutional safeguards, which included property rights, with the aim of maintaining confidence and encouraging investment and development, and well aware that what mattered in the end was African goodwill.¹⁴⁸ Sir Kenneth Roberts-Wray was charged with the duty of supervising the drafting of the provisions.¹⁴⁹ Safeguards in respect of the judiciary were to continue being considered under the Governor of Kenya.¹⁵⁰ The Governor was also required to constitute a Working Party comprising the Chief Secretary and the Attorney General, to draw up the details of the proposals, including recommending principles that would govern the qualification and nomination of candidates as well as the distribution of reserved seats and delimitation of constituencies.¹⁵¹

The Secretary of State published the final report in February 1960.¹⁵² His new constitutional arrangement on the legislature, franchise and the executive were issued in the form of a White Paper as the policy of Her Majesty's government".¹⁵³ The arrangements were christened the Macleod Constitution and were promulgated as Kenya (Constitution) Order-in-Council of 1958-61 (Cmd. No. 960).

¹⁴⁸ Heinlein, *British Government Policy*, p. 190.

¹⁴⁹ Report of the Kenya Constitutional Conference, 1960, KNA: MAC/KEN/42/3.

¹⁵⁰ Ibid.

¹⁵¹ Ibid.

¹⁵² Special Issue, *Kenya Gazette*, Vol. LXII, No. 13, 25 February 1960 (Nairobi: Government Printer, 1960).

¹⁵³ Record of the Seventeenth Plenary Session," 21 February 1960, KNA, MAC/42/3.

3.4 Outcome of the Conference

In addition to the Macleod Constitution, there were various concessions that encouraged Africans to believe they would realise their demands. Such concessions as increased representation, lifting of the State of Emergency with the consequent release of detainees, and opening up political activity to nationwide levels. These convinced the Africans that the British government was committed to their constitutional advance.

The Macleod proposals increased African representation in the Legislative Council and the Council of Ministers. Given their dominance in respect of population, it was certain that 33 of the 53 open seats would all go to the Africans. There were 20 reserved seats 10 of which were for the Europeans, 8 for Asians and 2 for Arabs and were to be subjected to communal primary elections. Then there were 12 national members with the African and European groups having 4 seats each, while Asian non-Muslims had 2, Asian Muslims 1 and the Arab 1. The national members were to be elected by the elected members of the Legislative Council using proportional representation.¹⁵⁴ With the four (4) national seats, this made a total of 37 of the 65 seats in the Legislative Council. The Governor still retained powers to nominate an unlimited number of members, which gave him control of the council.

The Council of Ministers comprised 12 members. The majority, 8 unofficial posts, were distributed as follows: 4 Europeans, 3 Africans and 1 Asian. An Arab representative had the right of attendance. The three positions reserved for Africans, especially when all the official members were Europeans, denied Africans the influence they desired in government, which also reflected on public service. Recognition that in the approach to self-government Africans would form the majority prompted discussion on the localisation of the public

¹⁵⁴ Report of the Kenya Constitutional Conference, 1960, KNA: MAC/KEN/42/3.

service by bringing in more Africans, and hence the need to accelerate the process.¹⁵⁵ A Working Party was constituted to advise on the modalities.

The lifting of the State of Emergency had been deemed essential in creating a reasonable political atmosphere for negotiation.¹⁵⁶ Although Macleod had announced the lifting of the Emergency on 10 November 1959, it was not until 20 January, 1960, that this was formally effected. This was after the Colonial government enacted legislation such as the Preservation of Public Security Ordinance of 1959 to deal with potential breakdown of law and order following the expected mass release of detainees and other political prisoners. It was also to reassure the European population of stability. The Africans opposed this replacement legislation, which purported to deal with public meetings, seditious publications, and control of printing presses and movement.

That new law was used to deny KIM registration on account of being an all-African organisation despite amendment to Legal Notice No. 37 of 1956 on the control of colony-wide African political associations. After the conference, the environment was ripe for Africans to form such associations.¹⁵⁷ While celebrating a united front at the conference and the gains for the African people, the delegates agreed to form a nationwide political party that would bring together all the district associations with the aim of forming a formidable front to advance their interests in future negotiations.¹⁵⁸

As much as the conference broke new grounds for future negotiations, it was the last nail in the coffin of the Europeans' dream of sustaining a 'white man's country'. The white settlers felt that Britain had betrayed them.¹⁵⁹ Some settlers were so disappointed that they started leaving the country. The United Party not only set out to influence African

¹⁵⁵ Ibid.

¹⁵⁶ Baring to Lennox-Boyd, CO 822/1230, 28 September, 1959.

¹⁵⁷ Odinga, *Not Yet Uhuru*, p. 193.

¹⁵⁸ Ibid.

¹⁵⁹ C.S. Nichols, *Elsbeth Huxley: A Biography* (London: Harper and Collins, 2002), p. 311.

polarisation,¹⁶⁰ but it also pressed for the resignation of all the European members who supported the new (Macleod) constitution. When this did not happen, A.T. Culwick moved to South Africa.¹⁶¹ Group Captain Briggs died in London in November, 1960, of a blood clot at the age of 63 years a heart broken man.¹⁶²

Blundell noted that the conference reinforced the idea that Kenya could not be a European-dominated country and the Europeans had to work together with and for the Africans as part of their homeland. Observing the intense emotions that engulfed the Africans on the prospects of self-rule, he led NKG to accept Macleod's proposals to avoid long-term strife and bitterness.¹⁶³ However, upon his return to Kenya he met with protests from Europeans who thought he had betrayed them and sold them out to Africans. Eggs, tomatoes and thirty pieces of silver were thrown at him on diverse occasions during meetings, and he was spat at by white farmers in Njoro and Nakuru. For some time, he was humiliated and ostracised.¹⁶⁴ As the prospects of an African-led self-government became real, some of those who had taken part in move towards multiracialism accepted the changes and began to participate in the new dispensation.

3.5 Implementation of the Macleod Proposals and Developments up to 1962

Macleod's constitutional proposals were designed to come into effect after the February 1961 general elections, but the Governor had the power to make changes in the Council of Ministers to accommodate elected African Members. When he offered ministerial posts, he put the Africans in a dilemma on whether to take up the offer from the Governor or to await the Macleod constitution to come into operation. The Africans responded with conditional

¹⁶⁰ Mboya to Murumbi, 22 March 1960, KNA: MAC/KEN/70/3.

¹⁶¹ Maxon, *Britain and Kenya's Constitutions*, op cit.

¹⁶² Franks, *Scram From Kenya*, p. 324; "Right Wing Leader of Kenya Whites Dies", *Jet*, Vol. XIX, No. 6, 1 December 1960, p. 23.

¹⁶³ Blundell, *A Love Affair*, p. 122.

¹⁶⁴ *Ibid.*

acceptance of ministerial positions. They demanded the release Jomo Kenyatta, operationalisation of the executive part of the Macleod constitution, and the dismissal of Musa Amalemba from the Council. They felt that accepting to serve in the Council as set up then meant serving under the Lennox-Boyd constitution, which they had vehemently opposed. They also wanted nothing to do with Musa Amalemba since they had already ostracised him.¹⁶⁵

When the Governor proposed to circumvent Lennox-Boyd constitution by forming a caretaker government and to avail four posts to the Africans in March 1960, they accepted the offer. Ronald Ngala, Gikonyo Kiano, James Muimi and Taita Towett took up the portfolios with Ronald Ngala becoming Minister for Labour, Social Security and Adult Education, Gikonyo Kiano becoming Minister for Commerce and Industry, and James Muimi becoming Minister for Health and Welfare. Taita Towett became Assistant Minister for Agriculture. They accepted the offer on the understanding that they would be clearing the way for an African majority, protect the interests of the Africans at the top level, and fight for the release of Jomo Kenyatta.¹⁶⁶ The rest of the African members took positions in the opposition benches from where they pressed for independence and the release of Jomo Kenyatta, protected their cabinet colleagues in public meetings, and organised for elections. They also continued to harass the government on constitutional reforms.¹⁶⁷

3.5.1 Formation of political organisations

Settler manipulation, personality conflicts, power struggles and minority fears worked against African members' aspiration of formulating a common front after the Lancaster House conference. Motivated by the concessions that they had achieved in the conference and also by the need to advance politically, they held informal meetings with a view to forging

¹⁶⁵ Odinga, *Not Yet Uhuru*, p. 184.

¹⁶⁶ Goldsworthy, *Tom Mboya*, p. 138.

¹⁶⁷ *Ibid.*

permanent unity in the form of a united political party. Ten of them signed up to form Uhuru Party of Kenya.¹⁶⁸ In response, the settlers set out to generate African polarisation and attract some Africans into their camp. The United Party under Briggs immediately started to arouse the Maasai people in respect of the terms of the Maasai Agreements of 1904 and 1911, to create anti-Gikuyu sentiments and build support for European attitude. They also discouraged the Maasai from joining an organisation whose top hierarchy comprised politicians from the dominant Luo-Gikuyu axis. Both the United Party and NKG hoped to see minority groups working together to safeguard minority interests.¹⁶⁹

The result was a sharp dichotomy of African nationalism. When the Members agreed on a united political strategy while in London, Masinde Muliro disagreed rekindling the KIM-KNP era when both Muliro and Mboya were unable to work together; the former had vowed not to belong to the same party with Mboya.¹⁷⁰ A meeting convened in Kiambu on 27 March, 1960, with the purpose of forming the political party did not produce the desired results as personality and ethnic conflict frustrated the initiative.¹⁷¹ Respective members were requested to bring in constituency delegations from the district-based associations. At the meeting, a committee was constituted to lay the party foundation and whose report formed the basis for reconvening the meeting of 14 May, 1960, in which the delegates resolved to revive the Kenya African Union (KAU).¹⁷² Only the eight members who had formed KIM – Oginga Odinga, Tom Mboya, James Muimi, Bernard Mate, Jeremiah Nyagah, Julius Kiano, Samuel Ayodo and David Kiamba – turned up to found the Kenya African National Union (KANU). Jomo Kenyatta was elected President in absentia, Jaramogi Oginga Vice-President, Tom Mboya Secretary General and Arthur Ochwada Assistant Secretary General. Daniel arap

¹⁶⁸ “Political Parties and Independence”, *History of KANU*, available at: <http://www.kanuparty.com/index.php/our-history?showall=&start=3>. Accessed on 29 September 2014.

¹⁶⁹ Mboya to Murumbi, 22 March 1960, KNA: MAC/KEN/70/3.

¹⁷⁰ Odinga, *Not Yet Uhuru*, p. 181.

¹⁷¹ Goldsworthy, *Tom Mboya*, p. 144.

¹⁷² Odinga, *Not Yet Uhuru*, p. 194-195.

Moi and Ronald Ngala were elected Treasurer and Assistant Treasurer respectively in absentia. Despite their election the other African members did not join in.

Application for KANU's registration was made, but was vetoed by the Colonial government on two grounds. One was the inclusion of Jomo Kenyatta as President although he was still restricted in Maralal. James Gichuru was picked as a suitable replacement and to play a caretaker role having previously worked closely with Kenyatta in KAU. Gichuru was then living in Githunguri where he had been repatriated under restriction orders.¹⁷³ Kenyatta's name was withdrawn in the application and Gichuru's name was inserted as 'Acting President' on the understanding that he would step down for Kenyatta upon his release.¹⁷⁴ The second was the formal affiliation of the Kenya Federation of Labour (KFL) to the party, which had followed the practice of white trade unions and white political parties in countries such as Southern Rhodesia. The government discouraged this and made it a precondition for registration.¹⁷⁵ When the conditions were met, KANU was formally registered on 11 June 1960.¹⁷⁶

Upon the formation of KANU, NKG made effort to capture selected African leaders. The following day on 15 May 1960, some of its officials to meet with "the disgruntled elements" who had failed to attend the KANU launch meeting – Taita Towett, Daniel arap Moi, Justus ole Tipis, Masinde Muliro, Francis Khamisi and Ronald Ngala – to explore ways of partnering with them in the formation of an opposition party with a view to safeguarding the interests of the minority groups and which they would influence as much as possible.¹⁷⁷ The members were leaders of their region-based parties – Kalenjin Political Alliance (Moi and Towett), Coast African Political Union (Ngala and Khamisi), Maasai United Front (ole

¹⁷³ Wambui Waiyaki Otieno, *Mau Mau's Daughter: A Life's History* (Boulder: Lynne Rienner, 1998), p. 74.

¹⁷⁴ Goldsworthy, *Tom Mboya*, p. 148.

¹⁷⁵ James S. Coleman and Carl G. Rosberg (eds), *Political Parties and National Integration in Tropical Africa* (Oakland, CA: University of California Press, 1966), p. 342-343.

¹⁷⁶ Gazette Notice No. 2883, *The Kenya Gazette*, Vol. LXII, No. 32, 21 June 1960.

¹⁷⁷ Notes by W. Havelock, KNA: MSS/13/50.

Tipis) and Kenya African People's Union (Muliro). Kalenjin Political Alliance and Maasai United Front were ostensibly formed to defend the land rights of their tribes, a mission that fitted well with the settler scheme. Europeans passed as minority tribe and hoped to join other minority groups, which would enable them to win the 1961 general election. NKG's strategy was to bring these parties together and ensure that the resulting federation was conservative rather than socialist or communist so that once it was formed it would seek areas of common ground with the prospect of forming a post-election coalition. Secondly, as the newly formed KANU was likely to get some funding from the United States and Egypt, NKG would help raise funds for the proposed federation secretly. Thirdly, NKG would restructure its membership to strengthen its Asian and European wing and leave the African membership to be absorbed in the new party's structure.¹⁷⁸

The European ploy succeeded. On 25 June, 1960, the strategy was actualised when, at a meeting in Ngong, delegates from four organisations – the Kenya African Peoples' Party, Coast African Political Union, Kalenjin Political Alliance and Maasai United Front – were joined by the Somali National Association of Osman Araru to launch the Kenya African Democratic Union (KADU). Ronald Ngala was elected President, Masinde Muliro Vice-President and Daniel arap Moi Chairman.¹⁷⁹ In accordance with the NKG designs the federated KADU represented Africans from areas where white settlement was more pronounced. There still existed other ethnic-based associations in minority areas that did not join KADU such as the Buluyia Political Union (led by Musa Amalemba), Kenya Freedom Party, Shungwaya Freedom Party, Coast Peoples Party and Tana River Pokomo Union. The latter three strived for the autonomy of the Coastal Strip (Mwambao) and were to be joined

¹⁷⁸ Ibid.

¹⁷⁹ Goldsworthy, *Tom Mboya*, p. 146.

later by the Kenya Protectorate People's National Party and the Coastal League to form Mwambao United Front led by O.S. Basaddiq and Sheikh A. Nassir.¹⁸⁰

Both KANU and KADU had ridden on the membership of political organisations formed on district basis after 1956 when political activity was lifted in the colony save for central Kenya. They also shared a feature where the party organisation was centred around dominant personalities. However, while KADU sought to achieve a system where the smallest administrative unit could initiate political action, KANU was inclined to centralisation of party activities.¹⁸¹

European settlers sought to eliminate the dichotomy in their political landscape to forge a common front with the main aim of protecting the interests of the settlers and to lobby for an orderly transition to independence.¹⁸² In March 1960, Sir Ferdinand Cavendish-Bentinck resigned as Speaker of the Legislative Council to found the Kenya Coalition Party for this purpose. With the settlers still divided along moderate and extremist lines, Cavendish-Bentinck, a converted extremist, attempted to bring them together on a middle ground.¹⁸³ Most Europeans had felt let down by the New Kenya Group following the outcome of the constitutional conference, as the party had dealt with the broad political issues.¹⁸⁴ The party had accepted the goal of independence and the prospects of African majority rule, but it was more concerned with minority interests in the same lines as the United Party. Membership to the Kenya Coalition was open to any person, party or group who supported its aspirations.¹⁸⁵

The political realignment reflected the fragmentation consequent upon the eventual declaration of the future of Kenya by the British government. Each interest group had to

¹⁸⁰ Eric M. Aseka, *Ronald Ngala* (Nairobi: East African Educational Publishers, 1993), p. 13.

¹⁸¹ George Bennett and Carl Rosberg, *The Kenyatta Election: 1960-1961* (London: Oxford University Press, 1961), p. 44.

¹⁸² "Kenya Coalition", KNA: MSS/13/50.

¹⁸³ Dickson A. Mungazi, *The Last British Liberals in Africa: Michael Blundell and Garfield Todd* (West Port, CT: Greenwood Publishing Group, 1999), p. 95.

¹⁸⁴ "Kenya Coalition", KNA: MSS/13/50.

¹⁸⁵ Ibid.

accept self-government under majority African rule as the ultimate goal. It was up to them to determine how they secured their space in the new political dispensation. This formed the basis upon which they went into the election.

3.5.2 The 1961 General Election

The 1961 election was a key feature in the implementation of the Macleod constitution, as it actualised the arrangement determined at the conference.¹⁸⁶ Campaigns for the elections were overshadowed by two main issues. One was the future well-being of the minorities. The British government's aim was to achieve a general acceptance that all the races of Kenya—African, Asian, European and Arab—would play their part together and in harmony.¹⁸⁷ After the conference, the Europeans were more concerned about guarantees for their land titles and value, and the Asians feared over their property rights.

The other issue was the release of Jomo Kenyatta whose continued restriction was generating a lot of interest among the Europeans and increasing anxiety among the Africans.¹⁸⁸ Calls for the release of Kenyatta and other detainees became a central issue in the campaigns and KANU used this effectively as a slogan to appeal for votes – “*Uhuru na Kenyatta*” (Independence and Kenyatta). KANU's thinking was that pre-Emergency political leaders, represented by Kenyatta and other detainees, should be allowed to re-enter politics and blend with the youthful leaders to create a truly representative government.¹⁸⁹ In late January 1961, the party sent delegations to both the Governor and the Secretary of State to press for Kenyatta's release so that he could take charge of the party and participate in the elections.¹⁹⁰ The issue of Kenyatta's release had less meaning to KADU, which put its leaders fundamentally on the defensive during the campaigns and saw KANU penetrate

¹⁸⁶ Report of the Constitutional Conference, 1960, op cit.

¹⁸⁷ The Earl of Perth, Parliamentary Debates, House of Lords, 28 March 1960 vol 222 cc305-420.

¹⁸⁸ Fraser, Parliamentary Debates, House of Commons, 28 March 1961 vol 637 cc1121-2.

¹⁸⁹ Odinga, *Not Yet Uhuru*, p. 204.

¹⁹⁰ *Ibid*, p. 205.

areas where KADU was strong.¹⁹¹ Kenyatta was not released and the election was held without him.

The elections held on 27 February 1961 returned a KANU majority. The party won 19 of the 53 common roll seats. KADU, the closest party, got 12 seats, which included its supporters like the Buluyia Political Union where Musa Amalemba, the sole party's candidate, won the North Nyanza seat overwhelmingly subsequent to which he transferred his support and seat to KADU. New Kenya Party got 4 seats, Kenya Coalition and Kenya Indian Congress got 3 seats each, Kenya Freedom Party got 2 seats, Shungwaya Freedom Party got 1 seat and the independents got 9 seats across the racial groups. Of the total votes cast, KANU had 590,661 representing 67 per cent, while KADU had 143,079 representing 16 per cent.¹⁹² KANU's popular majority did not translate into parliamentary seats as the constituency boundaries seemed to favour KADU. KADU triumphed mostly in the White Highlands districts.¹⁹³

The new Legislative Council, which was the twelfth, was inaugurated on 11 May, 1961, in which Jeremiah Nyagah was elected Deputy Speaker and Chairman of Committees. When the elections for the national seats were carried out, the KANU-KADU ratio stood at 20 to 14. This changed to 19 to 15 when KANU lost a member to KADU; Bernard Mate crossed over at the offer of a ministerial position.¹⁹⁴ Overall, KANU had a popular majority with votes distributed across the country, while KADU mostly triumphed in the White Highlands districts.¹⁹⁵ With the conclusion of the election, the next phase of constitutional advance was set out.

¹⁹¹ Bennett and Rosberg, *The Kenyatta Election*, p. 126.

¹⁹² Common Roll Election Summary, KNA: MAC/KEN/44/1.

¹⁹³ Ibid.

¹⁹⁴ Goldsworthy, *Tom Mboya*, p. 181.

¹⁹⁵ Common Roll Election Summary, KNA: MAC/KEN/44/1.

3.5.3 KADU-NKG coalition government

As the majority party, KANU was invited by the Governor to form a government, but the party leadership refused until its demand for the release of Jomo Kenyatta was met.¹⁹⁶ KANU candidates had signed a pledge to the effect that none of the leaders, if elected, would take part in government unless Kenyatta was released and was in a position to take over the leadership of the African government.¹⁹⁷ The Secretary of State reacted to KANU's demand with more intransigence maintaining that anybody who was invited to serve in the government, whether African, European or Asian, should "realise that the question of whether a man is or is not released from restriction is in no circumstances a matter on which the Governor can bargain."¹⁹⁸

After a joint KANU-KADU delegation meeting with Kenyatta at Lodwar on 23 March 1961, KANU confirmed its boycott.¹⁹⁹ KANU's refusal to form a government over Jomo Kenyatta created a deadlock. While on his way from Zanzibar and Aden, Macleod held a meeting with the nationalist leaders in Nairobi, on 3 April 1961, but neither KANU nor KADU agreed to co-operate in forming a government unless Kenyatta was first released unconditionally.²⁰⁰ James Gichuru, KANU caretaker President, cited his own previous five-year imprisonment as a threat to security, yet he had done "nothing but good" since his release.²⁰¹ Macleod however warned that continued deadlock was itself a security risk and could delay independence and Kenyatta's release.²⁰²

¹⁹⁶ Odinga, *Not Yet Uhuru*, p.203.

¹⁹⁷ *Ibid.*, p.203.

¹⁹⁸ Macleod, Parliamentary Debates, House of Commons, 02 March 1961 vol 635 cc1740-2.

¹⁹⁹ *Ibid.*

²⁰⁰ Macleod, Gichuru Interviews, Reuters, 2350/61, 3 April, 1961.

²⁰¹ *Ibid.*

²⁰² *Ibid.*

The deadlock prompted the Governor to strike a deal with KADU. The party would team up with the NKG to form a government.²⁰³ Both parties commanded little support from members of their racial groups although this had been envisaged in a future KADU-NKG cooperation.²⁰⁴ On 1 May 1961, KADU's Ronald Ngala, Daniel arap Moi, Masinde Muliro and Taita Towett joined NKG's Wilfred Havelock, Michael Blundell, Sheikh Mohammed Alamoody and Arvina Jamidar to form the first national Kenya government.²⁰⁵ KANU took the opposition role in the Legislative Council of criticising KADU, the colonial administration and the Lancaster constitution.²⁰⁶ This way, KANU wished to demonstrate that it had the rightful leadership role and had a considerable degree of initiative in constitutional advance.

This development worried Kenyatta who had been moved from Lodwar to Maralal on 11 April 1961. He felt that African unity was being undermined with one group in the government and the other in the opposition. This prompted him to summon a consultative meeting of KANU and KADU leaders with the aim of bringing them together. The meeting resolved four main points, which came to be known as the Maralal Agreement. One was to improve the relationship between KANU and KADU and to facilitate joint action on matters of common interest, especially the release of Jomo Kenyatta and immediate independence for Kenya. Secondly, they were to set up a joint working committee and charge it with the task of sending a joint delegation to the Governor and the Secretary of State to demand Kenyatta's release. Thirdly, they were to have the joint committee study the land problem. Finally, the joint committee was to report on the Agreement in respect of the recommendations on the steps to be taken for the achievement of independence in 1961.²⁰⁷

²⁰³ Goldsworthy, *Tom Mboya*, op cit, p. 183.

²⁰⁴ Notes by W. Havelock, KNA: MSS/13/50.

²⁰⁵ Goldsworthy, *Tom Mboya*, op cit, p. 183.

²⁰⁶ Odinga, *Not Yet Uhuru* op. cit., p.203.

²⁰⁷ Odinga, *Not Yet Uhuru* op. cit., p. 215.

On 27 June 1961, KANU's delegation comprising James Gichuru, Jeremiah Nyagah, Kariuki Njiiri, Bruce Mackenzie, Tom Mboya, Dr Julius Gikonyo Kiano and Fitz D'Souza met the Secretary of State, Ian Macleod, in London.²⁰⁸ Macleod had earlier indicated that future delegations organised by KANU would serve no useful purpose as Kenya now had an elected African government which KANU had refused to serve.²⁰⁹ However, owing to the deteriorating situation in the country, he gave the delegation audience. Top on the agenda for discussion was the unconditional release of Jomo Kenyatta, whom KANU believed would bring the desired stability, confidence and security.²¹⁰ Another issue was constitutional development whereby KANU wanted a review of the constitutional arrangement with a view to creating a proper foundation for independence. It also pressed for a constitutional conference and the recognition of the Maralal Agreement drafted between KADU and KANU in Kenyatta's presence seeking independence in 1961.²¹¹ On land, KANU stated that it was ready to discuss with any interested parties the issue of land problems and property rights.²¹² In his response to all the petitions, the Secretary of State stated that he would give careful consideration to the release of Jomo Kenyatta, and also pledged that discussions would commence in Nairobi under the chairmanship of the Governor on constitutional advance and matters relating to land and property rights with interested parties. Further discussions would also be held in Nairobi and London, with a joint KANU/KADU meeting.²¹³

Macleod also held a meeting with the Kenya government in London on the same day. The government impressed upon the Secretary of State that early discussions would be initiated with a view to procuring full internal self-government in 1961 and that it was ready to discuss the land and property rights problem. The government also expressed its strong

²⁰⁸ Statement on Meeting of KANU's Delegation with Secretary of State, 28 June 1961, KNA: MAC/KEN/44/1

²⁰⁹ See Goldsworthy, *Tom Mboya*, op cit, p. 184.

²¹⁰ Statement on Meeting of KANU's, op cit.

²¹¹ Ibid.

²¹² Ibid.

²¹³ Ibid.

conviction that Kenyatta should be released despite the protest from a section of Europeans. Macleod asked the government to initiate discussions within itself and with the opposition on practical steps to be taken on land and property rights.²¹⁴

In July, Ferdinand Cavendish-Bentinck led a delegation to the UK and the Colonial Office with the objective of getting assurances on four main issues: an orderly transition, increasing levels of intimidation, land titles, and restoration of confidence. The delegation consisted of Ferdinand Cavendish-Bentinck, Cedric Oates (Convention of Associations), and Clive Salter, Mr Maconochie Welwood and Major B.R. Roberts (United Party). Cavendish-Bentinck had expressed the view that, although his Kenya Coalition had accepted the general pattern of the constitutional proposals emanating from the Lancaster House conference, it was unhappy about the ancillaries, which included the details of how the European interests were to be addressed.²¹⁵

3.5.4 KANU-KADU consultations

In pursuance of the Maralal Agreement, a joint KANU-KADU committee was constituted and held 10 sittings subsequent to which it presented a memorandum to a Joint KANU/KADU Parliamentary Group meeting held on 20 July 1961.²¹⁶ Among the recommendations was a date for independence proposed as 1 February, 1962. The two parties also came up with an 18-member joint committee tasked to consider issues of mutual interest, namely the release of Jomo Kenyatta, independence and land. Membership to this committee comprised the key leaders of both parties. Oginga Odinga (KANU) was nominated Chairman and Habenga Okondo (KADU) was nominated Secretary.²¹⁷

²¹⁴ Kenya Government Meeting in London, 27 June 1961, KNA: MSS 12/21.

²¹⁵ Kenya Coalition, KNA: MSS/13/50.

²¹⁶ Minutes of the Joint Committee of the KADU and KANU held on 10 August 1961," KNA, MSS/12/21

²¹⁷ Ibid.

The joint KANU-KADU talks that started in July 1961 held discussions on the following: the amendments to Kenya (Constitution) Order-in-Council 1960-61 to allow for constitutional development; the structure and nature of constitution for independent Kenya with a date for independence and with elections before the independence; formation of an interim government (whereby KANU/KADU agreed to the formation of an interim government and the move towards full internal self-government); land titles and tribal rights (which they agreed should be respected and safeguarded in the interest of the people of Kenya); and, the Coastal Strip (in which it was agreed that Britain should end the agreement with the Sultan of Zanzibar). The parties agreed on many issues except on the formation of an interim government.²¹⁸

During its 5th meeting, the committee proposed to form a sub-committee on the constitution. Taita Towett, Musa Amalemba, Tom Mboya and Henry Mulli were appointed to draw a skeleton constitution for perusal by other members. The sub-committee invited Members of the Legislative Council (MLCs) to submit their ideas. In addition, an announcement went to the public inviting them to submit any constitutional ideas that they would have to their respective MLCs for onward transmission to the sub-committee.²¹⁹ One of the problems was that many of the MLCs had no confidence in the ability of the sub-committee to draft a constitution; they thought that its proposals would not reach acceptable standards.²²⁰

One of the issues that Africans had raised repeatedly was the release of Jomo Kenyatta whom the Colonial government viewed as a risk to law and order in Kenya.²²¹ Kenyatta's name was being used to attract attention and draw support of the masses.²²² There was

²¹⁸ Joint Committee of the KADU and KANU, 10 August 1961, KNA: MSS/12/21.

²¹⁹ Ibid.

²²⁰ Minutes of the Joint Committee of the KADU and KANU held on 10 August 1961," KNA: MSS/12/21.

²²¹ Fraser, Parliamentary Debates, House of Commons, 28 March 1961 vol 637 cc1121-2.

²²² Report of the Buluyia Political Union Visit to Jomo Kenyatta at Maralal, 11 July 1961, KNA: MSS/12/21.

general feeling that it was appropriate to release him so as to take away the political advantage.²²³ Governor Renison, on whom the responsibility of Kenyatta's release lay, had described him as "the African leader unto darkness and death",²²⁴ further intensifying anxiety among Africans. Some Europeans viewed him as a man who had inspired horror and disgust.²²⁵ Macleod however recognised the prospects of the British government having to negotiate with Kenyatta and subsequently intervened.²²⁶ The government released him to his Gatundu home on 14 August, 1961, amid public jubilation and ultimately removed all restrictions on him on 21 August 1961. Since both KANU and KADU wanted him, he tried to reconcile their differences but failed. He leaned towards KANU, as it embodied the aspirations of the Africans that he had identified with.

Despite the joint memorandum issued by KANU and KADU, there were differences between the two parties. Whereas KADU was not keen on a constitutional conference, instead favouring the amendment of the Macleod Constitution, KANU wanted a full constitutional conference in September 1961 to map the timetable for attaining independence. Even the British government was not supportive of KADU's view, as it felt that the framework of the proposals in the Macleod Constitution was so weak that it was incapable of producing an independence constitution.²²⁷ And since KADU was in government, it developed a lukewarm attitude towards the joint plan of action as contained in the memorandum maintaining that its hands were not tied to it.²²⁸

The failure of the joint talks prompted the Governor to call for KANU-KADU constitutional talks at Government House, Nairobi, in September 1961, for MLCs only. This

²²³ Ibid.

²²⁴ Quoted in Goldsworthy, *Tom Mboya*, op cit., p. 143.

²²⁵ Lord Milverton, Parliamentary Debates, House of Lords, 28 March 1960 vol 222 cc305-420.

²²⁶ Clyde Sanger, *Malcolm MacDonald: Bringing an End to Empire* (Montreal: McGill-Queen's Press, 1995), p. 391.

²²⁷ Odinga, *Not Yet Uhuru*, p. 214

²²⁸ Ibid., p. 209.

restriction had the effect of leaving Kenyatta out because he was not a member of the Legislative Council. KANU delegates pushed for the removal of this obstacle for which KADU did not render any support.²²⁹ Once again, Kenyatta became an issue. KANU was unwilling to continue sitting in the meetings as “a spectator in the opposition; it proposed an interim government in which it would participate in an “all-in” and not “some-in” basis (either full involvement or no involvement at all)”.²³⁰

Discussion on the sharing out of ministerial positions in the proposed interim government hit a deadlock; KADU wanted 4 ministers out of the 15 yet it was a minority party. Also, while KANU wanted Kenyatta to be head of government, KADU was not explicit on who they wanted to head the government though it was clear it would be Ronald Ngala.²³¹ This was not acceptable to KANU. When the formation of a coalition government was almost getting a breakthrough, KADU introduced its plan for regionalism, giving no options to KANU; it was either adopted or the talks were to fail. At the draft form, the proposals had been pencilled “in Havelock’s handwriting”, implying that the concept was not KADU’s original idea.²³² The possibility of a form of regional government in Kenya with certain powers delegated to the regions had been raised earlier with the British government. The idea was to accept and develop it upwards into an East African Federation with individual rights enshrined in the constitution.²³³ The Governor, who was chairing the talks, supported KADU’s ultimatum against KANU. Thus the talks broke down without finding a way of getting KANU adequately into the government.²³⁴

With the collapse of the talks, KANU prepared a delegation to meet with the newly appointed Secretary of State, Reginald Maudling. Maudling had replaced Iain Macleod in

²²⁹ Minutes of the Joint Committee, op. cit.

²³⁰ Tom Mboya, Joint KANU/KADU Talks, 16 August 1961,” KNA: MAC/KEN/44/2.

²³¹ Ibid.

²³² Odinga *Not Yet Uhuru*, op cit., p. 220.

²³³ Blundell, *A Love Affair*, op cit, p. 113.

²³⁴ Governor’s Address in *Kenya Digest*, No. 266, 42 (October 1961), KNA: MAC/KEN/44/3.

October when the latter lost support of a section of the Conservative party over Rhodesia due to his decolonisation policy and negotiation style.²³⁵ There had also been a general feeling that the decolonisation process was “moving too fast” and this created friction for Macleod among the British public.²³⁶ The meeting was held in London on 7 November 1961 with the purpose of impressing on Maudling the need to hold a constitutional conference before the first quarter of 1962 and to brief him on the political and economic situation in Kenya. The delegation consisted of Jomo Kenyatta as leader, James Gichuru, Jaramogi Oginga Odinga, Bruce Mackenzie, Peter Maran, S.M. Mati, Tom Mboya, Achieng Oneko, Fitz D’Souza, Chanan Singh, Njoroge Mungai, and Joseph Murumbi. The bypassing of the Governor by the delegation reflected the extent to which Kenyatta and Renison did not share rapport.²³⁷ The delegation had been doubtful whether the Governor had put forward KANU’s attitude impartially, as he had showed sympathy with KADU, especially in the creation of a representative coalition government. The delegation also wished to impress on Maudling that, contrary to what may have reached him from Governor Renison, minority and tribal fears were not as significant as had been suggested, that the situation presented by Kenya was a normal and not a unique one, and that democracy must have the same form in Kenya as in other countries.²³⁸

The meeting discussed many issues. Key among them included Kenyatta’s entry into the Legislative Council. KANU delegates impressed upon Maudling that Africans felt very strongly about Kenyatta joining the Council, although the colonial government had imposed a ban that made it difficult for him. It was important that Kenyatta participated in the Legislation Council and government as he was the leader of the majority party, then he would

²³⁵ Michael D. Kandiah, *Rhodesian UDI* (London: Institute of Contemporary British History, 2001), p. 24.

²³⁶ Lord Wrenbury, Parliamentary Debates, House of Lords, 28 March 1960 vol 222 cc305-420.

²³⁷ Sanger, *Malcolm MacDonald*, p. 391.

²³⁸ Notes on KANU’s Meeting in London, KNA: MAC/KEN/44/1.

be in a position to exercise the required control.²³⁹ KANU's difficulties in reaching KADU areas and the KANU-KADU Government House talks were also discussed. KANU also addressed the misrepresentation it had suffered from KADU and some of its affiliate MLCs. Specifically, these were Michael Blundell, R.S. Alexander and Wilfred Havelock who claimed that KANU was a coalition of Luo and Gikuyu, and that the rest of Kenya was afraid of them. Moreover, the Kenya Government was portraying KADU as the spokesman of the minority tribes and that these tribes were solidly united against KANU. Through a memorandum, KANU demonstrated that it had the majority common roll seats as well as the popular majority, including in the areas occupied by the so called minority tribes. It gave an assurance that a KANU government did not imply an imminent civil war as had been portrayed by KADU.²⁴⁰ Although the KANU delegation applied pressure on Maudling to announce the date of the constitutional conference, he remained non-committal. The indication was however that the conference would be held during the first quarter of 1962.

3.6 Overview of the Conference

What came to be termed later as the First Lancaster House Conference was critical to the constitutional process in Kenya. It changed the political dynamics and gave hope to the Africans who went home happier as there was no longer a possibility that Kenya would develop to be a "white man's country". It helped to remove political restrictions on the Africans, led to the release of Jomo Kenyatta, and the formation of major political parties, KANU and KADU. These parties developed conflicting positions with regard to independent Kenya. The key player on the side of the British government was the Secretary of State, Ian Macleod.

²³⁹ Ibid.

²⁴⁰ Kenyatta, Memo on Meeting with Secretary of State, KNA: MAC/KEN/44/1.

Ian Macleod's goal for the Lancaster House conference, and in general the objectives of the British government, were realised. His aim was to get moderate Africans and NKG to agree on a new constitution that would allow all the communities in Kenya to participate in government. He managed to convince the African members that the conference was a major improvement over the previous constitutions. Moreover, the successful and peaceful outcome of the 1961 election was regarded as a compliment to his skilful handling of the constitutional talks.²⁴¹ Ultimately, he created a new government that he envisaged would lead to a moderate multiracial government in Kenya.²⁴²

Nevertheless, the conference failed to satisfy the other parties all of whom accepted the constitutional proposals with reservations. Issues that were of immediate concern were ignored and left out of the agenda. For example, land rights were central in all previous encounters, but they were not discussed to the satisfaction of all parties. The British government avoided these issues as they would potentially derail the conference, which was against its interests. Exclusion of the land issue in the conference agenda undermined the confidence of Africans who confirmed their fears that the determination of the land question would perpetually rest with the Colonial Office. Africans therefore sought independence to deal with the issue in their own way. They wanted not only independence under majority rule, but also a timetable for attaining that independence, which they did not get. Their diehards in the negotiations viewed the conference as a failure given that their aspirations were not discussed. Their threat to return to the forest became real.

Europeans and Asians wanted guarantees for their property rights, especially land rights, but this was not agreed upon and this was a source of concern. These rights were discussed under the Bill of Rights for which agreement was not derived from the delegations; hence, the Secretary of State had to act on his and eventually publish it in the Kenya

²⁴¹ Stonehouse, *Parliamentary Debates, House of Commons*, 02 March 1961 vol 635 cc1740-2.

²⁴² Hubbard, *The United States and the End of British Colonial Rule in Africa*, p. 264.

(Constitution) Order-in-Council 1960-61. Arabs wanted a discussion on the future of the Coastal Strip, but the Secretary of State dismissed it as a responsibility of Her Majesty's government. By exercising control on issues for discussion it reinforced the credence that it is the British who wrote the constitution.

Another consequence of the conference was that the British government made its interests known, which changed the attitudes of the respective racial groups. It made it clear that the Africans would form independent government. Africans were divided as ethnic and minority fears were roused. Asians were also divided with one side accepting the possibility of African self-rule and thus went all out to support the African course, while another was alarmed at the prospects of an all-African government and hence sought delayed independence and creation of constitutional safeguards for the future. The Europeans were more concerned about the future of their land rights and value. They became lukewarm on the political scene and preoccupied themselves with lobbying the British government for protection of their rights. This undermined the prospects of racial cohesion and hence the failure to solve the racial divisions. There would be no cohesion as most of the primary items of concern of the respective races were not contained in the agenda. Therefore, the British attitude towards the conference created more mistrust than harmony among the racial groups in Kenya. Instead it devised methods of creating an environment where all races would live together.

To achieve his objectives, the Secretary of State displayed the faces of power, particularly non-decision-making (setting and control of the agenda) and manipulating the delegates' views (influencing). At that point in time he had no option but to bring the three of the four parties at the conference to accede to the agreement.²⁴³ The three delegations (Africans, Blundell's moderates and the Asians) were in broad agreement that the proposals

²⁴³ Lord Hastings, Parliamentary Debates, HL Deb 28 March 1960 vol 222 cc305-420.

formed the basis of the next constitution and that they were committed to making the proposals work. Although the United Party objected, its views were not entirely ignored and were to be the subject matter of discussions on safeguards.

Macleod's multiracial set-up was at the heart of opposition from Africans implying that the constitution would not be sustainable. Moreover, whilst the delegates had gone for the conference united along racial lines with no clear winner, the intensity of division escalated as respective groups fought for space in prospective independent nation. However, with the groups committed to implementing Macleod's arrangement, the stage was set for the next phases of constitutional advance and another round of negotiations.

CHAPTER FOUR

THE SECOND CONFERENCE, 1962: PROCESS AND OUTCOME

4.1 Introduction

The First Lancaster House Conference paved the way for the second conference, which was held from 14 February to 6 April 1962 followed by the formation of a coalition government. Thereafter, the constitutional dynamics changed as this study will show.

The parties to the First Lancaster House conference were in general agreement that its outcome laid the base for the next phase in constitutional advance. The Macleod Constitution allowed increased African participation in the Legislative Council and the Council of Ministers, but not the transfer of power.¹ The increased participation intensified the clamour for independence. Besides, by January 1962, the colony faced insecurity and dwindling confidence that threatened political and economic stability. There was fear of resurgence of Mau Mau, the influence of ex-detainees in KANU, and the possibility of outbreak of violence. External pressure was also mounting. The principles of the Atlantic Charter and Harold Macmillan's 'wind of change' speech were a confirmation that the oppressed people had to be emancipated and that those who had been deprived of self-government would have it restored. Perceived threat of Communism following the Soviet military assistance to neighbouring Somalia in 1962 intensified the Cold War Politics. The attainment of independence by the neighbouring colonies of Tanganyika and Uganda added fears to the effect that they could support a violent revolution in Kenya given that their political leaders had issued statements against colonialism. For example, Julius Nyerere of Tanganyika had

¹ Macleod, interview on the 1961 Elections, KNA: MSS 12/21.

called for action to free Portuguese colonies.² The eruption of chaos in independent Congo in 1960, which saw foreigners leave en masse, was a demonstration that the possibility of outbreak of violence in Kenya was real. This necessitated rapid constitutional advance and hence the Second Lancaster House Conference.

This chapter is based on the first study objective, to examine and analyse the negotiation process and further responds to the question on how the negotiations were conducted. It sets to demonstrate the significant role of relative power in negotiations and how actors influence the outcome as envisaged in the power theory. The chapter first examines the convening of the conference, which consists of the preparation, the agenda, memorandums, interests, actors and personalities. Then it examines the structure of the conference, including the meetings that were held on the side. Finally, it outlines the conference's outcome, which forms the basis for further negotiation as discussed in Chapter Five.

4.2 Preparation for the Conference

The conference was held between 14 February and 6 April 1962 in London. The participants were MLCs, the UK government and the Kenya government. In June 1961, KANU had impressed on the Secretary of State the need for discussions on full internal self-government. The Secretary of State stressed on all the parties holding discussions on challenges of land and property rights.³ The parties agreed to hold inclusive meetings in Nairobi under the Governor's chairmanship to consider constitutional advance. The Nairobi discussions began in September 1961, but they ended up concentrating on the issues of the Coastal Strip and the NFD on their quest for secession.

² Julius K. Nyerere, *Freedom and Unity (Uhuru na Umoja): A Selection from Writings and Speeches, 1952-65, Volume 1* (Oxford: Oxford University Press, 1967), p. 91.

³ Kenya Government Meeting in London, 27 June 1961, KNA: MSS 12/21.

After Governor Patrick Renison gave his progress report on the discussions in October 1961 the Secretary of State recommended a joint government involving all the parties to prepare a constitutional framework that offered the best chance of Kenya moving into internal self-government and ultimately into “stable independence”.⁴ This framework would be discussed at a constitutional conference to be held within the first quarter of 1962. The formation of the joint government stalled when KANU and KADU failed to agree on the distribution of ministerial positions. While Jomo Kenyatta led a KANU delegation to the Colonial Office in November 1961 to press for a constitutional conference, the KADU leadership and Governor Renison were not keen on another conference given KADU’s minority status and the Governor’s desire to protect settlers’ interests.⁵ Renison’s view was not supported by the British government, which felt that the framework as contained in the proposals was weak.⁶

In London, the KANU delegation applied pressure on the Secretary of State. It wanted the constitutional conference to be in December 1961 or at least during the first quarter of 1962 – January, February or March. KANU feared that the ‘minority’ KADU-NKG government was entrenching itself firmly in positions.⁷ Maudling kept the date for the constitutional conference “secret” only proposing a seven-week long conference similar to the first one of 1960. He attributed the secrecy to the fact that he was trying to find a constitutional adviser to help both parties work out their ideas. In response, KANU presented a list of eight possible advisers, but Maudling was not keen to consult with them.⁸ He also wanted both KANU and KADU to work out their ideas on minority rights well in advance of the conference.⁹ While KADU proposed regionalism as the most effective method of

⁴ Report of the Kenya Constitutional Conference, 1962” KNA: MAC/KEN/48/8.

⁵ Governor’s Address, Legislative Council Debates, Official Record Report (Hansard), Vol. LXXXVII, col. 16.

⁶ Oginga Odinga, *Not Yet Uhuru* (Nairobi: Heinemann, 1967), p. 214.

⁷ Notes on KANU’s Meeting in London, KNA: MAC/KEN/44/1.

⁸ Ibid.

⁹ Ibid.

safeguarding the rights of the minorities, KANU believed that the only way to protect these rights was to safeguard individual rights.¹⁰

After the meeting with Maudling, the KANU delegation consulted British MPs from all parties, members of the Commonwealth Parliamentary Association (CPA) and business people. The intent was to assure them on the future of the country especially with regard to land, economic stability and citizenship policies under an independent African government. It was also to counter false allegations made by Michael Blundell, Wilfred Havelock and KADU which gave the impression that KANU was a “Kikuyu/Luo alliance intended to dominate other tribes” and that only KADU represented the minority tribes.¹¹ KANU challenged KADU to back its claims with figures and statistics, but this was not forthcoming.¹² The two parties carried on with their disagreements to the end as will be seen during the actual negotiation process. It was due to lack of a united front that the British government was able to determine the outcome of negotiations. The role of these disagreements is discussed later in the chapter.

On 29 November 1961, Reginald Maudling had visited Kenya to learn first-hand the problems facing the country. He had met interest groups, which included the political parties and government officials,¹³ and had recognised fear as the greatest danger to constitutional development in Kenya.¹⁴ He had issued a statement announcing that the constitutional conference would be held from 14 February, 1962, involving elected members of the Legislative Council only. The main aim of the conference was to agree on the future constitution of Kenya with the specific objective of settling a constitution during the period of

¹⁰ Statement of KANU meeting with Colonial Secretary”, 10 November 1961, KNA: MAC/KEN/44/1.

¹¹ Ibid.

¹² Ibid.

¹³ Colonial Office, *Report on the Colony and Protectorate of Kenya, 1962* (London: Her Majesty’s Stationery Office, 1963), p. 130.

¹⁴ Statement of the Secretary of State for the Colonies, Press Office Handout No. 947, 29 November 1961, KNA, MSS/12/12.

internal self-government.¹⁵ Maudling also gave the specific agenda of the conference and expressed optimism that an agreement would be reached given the degree of common ground that had been realised between the parties.¹⁶

The announcement on limiting participants to MLCs presented challenges. KANU wanted its leader, Jomo Kenyatta, to participate fully. It therefore sought ways of getting him into the Legislative Council where he would participate effectively and lead the party in constitutional negotiations. It believed that Kenyatta's participation would marshal positive and progressive forces for political and economic development.¹⁷ There were three possible options. One was for a sitting member to resign and give room for his election. Secondly was, the creation of new or additional seats. Thirdly would be to persuade the Governor to nominate him into the Council. The second and third options were less attractive. With regard to the second, it could generate interest from other areas and prompt them to ask for additional seats. The third was the least attractive as it was thought that Kenyatta could be considered a government stooge since he would serve at the pleasure of the Governor.¹⁸

Even with the options there was an obstacle for Kenyatta's admission to the Legislative Council. This was the legal prohibition contained in Section 28(3)(d) of the Kenya (Constitution) Order-in-Council of 1958, which stipulated that anyone who had served a sentence of 2 years in connection with the Emergency laws could not be a member of the Legislative Council. KANU, through Kiano, had sponsored a motion immediately the Twelfth Council was inaugurated on 11 May 1961, amending the Order in Council.¹⁹ Although the motion was passed on 13 July 1961, without KADU's support, the Governor

¹⁵ Conclusions of a Meeting of the Cabinet, 8th February, 1962, CC (62) 12th Conclusions, BNA: CAB/128/36, p. 89.

¹⁶ Statement of the Secretary of State for the Colonies at the Final Plenary Session, KNA: GO/1/1/24.

¹⁷ Tom Mboya, Joint KANU/KADU Talks, 16 August 1961," KNA: MAC/KEN/44/2.

¹⁸ Minutes of the Joint Committee of the KADU and KANU held on 10 August 1961, KNA: MSS/12/21.

¹⁹ Legislative Council Debates, Official Record Report (Hansard), Vol. LXXXVII, col. 9.

was reluctant to endorse it. KANU then petitioned the Secretary of State to take the necessary steps to implement the amendment.²⁰

Another obstacle was the unwillingness of sitting MLCs to vacate seats for Kenyatta. Although KANU members in the Legislative Council had pledged to step down for Kenyatta, when the time came, they were unwilling to make such a sacrifice. Tom Mboya, for example, had made such a promise in respect of his seat in Nairobi, which was cosmopolitan, but was reluctant to keep it as this would have meant cutting short his own political career.²¹ Kariuki Njiri's offer was influenced by the long relation that Kenyatta had with his father, Chief Njiri wa Karanja, which also helped to warm Kenyatta's relations with the British government.²² On this basis, KANU announced, in its annual conference on 21 December, 1961, that Kenyatta would stand for a constituency seat in Fort Hall (Kigumo) represented by Kariuki Njiri. Kariuki vacated the seat on 28 December, 1961, prompting an election on 12 January, 1962, in which Kenyatta was unopposed.²³ He was subsequently inducted into the Council on 13 January 1962.²⁴

The conference was formally sanctioned by the British Cabinet on 8 February, 1962, in a meeting that was also attended by Iain Macleod, the Duke of Devonshire and Martin Redmayne, Treasury Parliamentary Secretary.²⁵ Maudling presented an eleven-point proposal for discussion and direction including strategy for the conference.²⁶ He hoped to encourage moderate African opinion and to "isolate the extremists in the Kenya African National Union and to persuade its more moderate members to make common cause with the Kenya African

²⁰ Notes on KANU's Meeting in London, KNA: MAC/KEN/44/1.

²¹ David Goldsworthy, *Tom Mboya: The Man Kenya Wanted to Forget* (Nairobi: Heinemann Educational Books, 1982), p. 176.

²² James Mwangi, "'Homeguards' Who Helped Kenyatta Ascend to Presidency", *The Standard*, 10 August, 2013,

²³ Gazette Notice No. 20, *The Kenya Gazette*, Vol. LXIV, No. 1, 2 January, 1962, p. 4.

²⁴ Legislative Council Debates, Official Record Report (Hansard), Vol. LXXXVIII, 17 October 1961-30 January 1962, col. 1235.

²⁵ Conclusions of a Meeting of the Cabinet, 8th February, 1962, BNA: CAB/128/36.

²⁶ Cabinet Memorandum by the Secretary of State for the Colonies, C (62) 22, 6th February, 1962, BNA: CAB/129/108, p. 103.

Democratic Union”.²⁷ Under the advice of the Governor, he divided KANU into two camps, moderates and extremists. He wanted to split off the “moderate” wing of KANU, led by Mboya, from the extreme group that consisted of Jomo Kenyatta, Jaramogi Oginga Odinga and Paul Ngei.²⁸ The British government felt that the success of the conference would depend on the emergence of a moderate African leadership. Hence, the cabinet undertook to monitor the developments at the conference and hold another meeting if need arose.²⁹

The British were aware that Kenyatta’s presence at the negotiations would be significant, especially because his release had improved the political environment. KANU’s holding onto his leadership after winning the February 1961 elections had confirmed that he was the de facto leader of the Africans. However, Governor Renison was not comfortable with him, just as he was with Oginga Odinga and Paul Ngei because their future of an independent Kenya was not clear. Although Renison had demonstrated preference for Tom Mboya and James Gichuru in the KANU camp, he had realised that they were not powerful enough to provide substitute leadership. When Kenyatta took over KANU’s leadership, it was triumph for Odinga who had feared that, in Kenyatta’s absence, the colonial government would consider either Mboya or Gichuru to lead the coalition government, which the British government was keen to see KANU join. With neither of the nationalists capable of standing independent of Kenyatta, they stood behind him amid the intensifying rivalry between Mboya and Odinga. Odinga had hidden behind Gikuyu nationalism well aware that it provided solid support for Kenyatta and hence a reliable political base. For the British government, Kenyatta’s inclusion in the negotiations would provide the crucial prospects of a stable government.

²⁷ Ibid.

²⁸ Ibid

²⁹ Conclusions of a Meeting of the Cabinet, 8th February, 1962, BNA: CAB/128/36.

4.3 Agenda, Memorandums and Interests

The Secretary of State had made it clear that constitutional development in Kenya was the responsibility of the British government.³⁰ Building on the first conference, he predetermined the agenda, which focused on four issues: the nature and composition of the central government; the nature and composition of other governing authorities; the protection of individual rights, specifically land titles, property rights and individual rights; and, the means of securing the stability of the constitution, law and order.³¹ With a number of issues being regarded as “work in progress”, he moved to consolidate what had already been agreed upon. Various interest groups based their positions on these agenda items.

KANU prepared a comprehensive memorandum. It had approached the Government of India to help in identifying a constitutional lawyer to draft its proposals. Jawaharlal Nehru’s government suggested Dr B. Malik who helped in the preparation of a constitutional blueprint, which was intended to give a general guidance in the framing and construction of the independence constitution.³² Dr Malik was retired Chief Justice of the Allahabad High Court in India with vast constitutional experience having been involved in the drafting of the Malayan federal constitution between 1956 and 1957 as a member of an independent constitutional commission of jurists from the Commonwealth.³³ This indicates a desire by the British government to formulate for Kenya a parliamentary system that drew from the basic principles of English constitutionalism as had happened in India and Malaya.³⁴

KANU’s proposals were guided by the principles of the nationalist struggle encompassing freedom and independence based on democratic rights. It called for one nation

³⁰ “Statement by the Secretary of State for the Colonies,” Press Office Handout No. 947, 29 November 1961, KNA, MSS 12/12.

³¹ Ibid.

³² Odinga *Not Yet Uhuru*, p. 222.

³³ Joseph M. Fernando and Ho Hui Ling, “British and Commonwealth Legacies in the Framing of the Malayan Constitution, 1956–1957”, *Britain and the World*, Vol 8 No. 2 (2015): 182.

³⁴ Das Basu, quoted in *ibid.*

whose various elements integrate for the good of the whole.³⁵ The party proposed the following: that the constitution be written in full for the citizens to read; that the constitution includes a properly drafted Bill of Rights with provision for property rights, individual freedoms, rule of law, guarantee against discrimination, right to education and economic opportunities; that the constitution emphasises democratic right of majority rule where the minority should be heard without suppression; that the constitution includes provisions on local government and on entrenchment and procedure on how the constitution would be amended; and, that the constitution portrays a Westminster model of democracy, based on majority rule with the majority party running the government. KANU preferred the Westminster model because the entire experience, training and administrative machinery had been geared to the Westminster system. It felt that any departure from the model would delay independence.³⁶

On the executive, KANU proposed a head of state in the form of a governor-general or president, and a cabinet to be headed by a prime minister who would be a leader of the majority party. On legislature, it proposed a unicameral parliament with full legislative powers consisting of elected members and any additional members as may be nominated by the Prime Minister to represent various interests and to take ex-officio positions in parliament. On the judiciary, it proposed a system that would be independent of the executive and the legislature, and where judges would be appointed by the head of state in consultation with the cabinet as long as not less than 25 per cent of the MPs would object to their appointment. On franchise, it proposed that all adults of 21 years and above should have the right to vote and offer themselves for election, and that there would be no reserved seats for immigrant communities. On local government, it proposed that the system should be based

³⁵ KANU Memorandum: Constitutional and other Related Matter, October 1961, KNA: MAC/KEN/44/3.

³⁶ Ibid.

on the county council principle with district and urban councils, and that they should adopt the universal franchise and one-man-one vote.³⁷

KANU felt that the fears expressed by various leaders at the pre-conference stage were not all true and genuine, but had been deliberately created by the negative and selfish desire of some of the leaders to secure their personal future.³⁸ KANU wanted a constitution that would steer the country into self-government and eventually full independence. It held that Kenya's peoples could not be left behind in constitutional progress and sought an overhaul of the Macleod's constitution, which it considered out of date and its inherent arrangement as a subtle form of colonialism.³⁹ KANU delegation planned to adopt a conciliatory approach, address the feelings of its constituents, and listen carefully to what others had to say. It did not anticipate a deadlock, a breakdown or a walk-out as it felt that no party stood to gain by such tactics.⁴⁰

KADU prepared proposals for a federal government set-up, which were published in October 1961, whose purpose was to ensure that the democratic process would continue to operate in Kenya after independence.⁴¹ It wanted to create a system with no domination of one over the other. Among its key concerns was the issue of land, as the areas where the party drew the highest support were adjacent to the White Highlands. It had the following proposals in respect of land: that land tenure be implemented within the ambit of the regional set-up; that security of tenure be guaranteed by instituting an independent responsible government and through legal titles and procedure; that there be a legal framework to provide for the acquisition of private land for approved public purposes; that there be individual land tenure to facilitate meaningful development; that regional land boards take control and

³⁷ Ibid.

³⁸ Record of the First Meeting, KCC(62) 14 February 1962, KNA: MAC/KEN/45/3.

³⁹ Mboya, Press Conference, 28 April 1961, KNA, MSS 12/21.

⁴⁰ Record of the First Meeting, between the Maasai Delegation and a Representative Group of the Conference, K.C.C. (62) 36, 22nd March 1962, KNA:GO/1/1/7.

⁴¹ Proposals for Regional Governments and a Federal Constitution, October 1961, KNA, MSS 12/12.

ownership of land with the constitution entrenching the land in the hands of the communities with the right to allocate it accordingly; that every region determine the size and the number of holdings for an individual; and that land rights for Europeans and Asians be respected.

To achieve the regional set-up, KADU proposed the creation of four regions. These were: Eastern Region comprising Coast Province and southern part of the Northern Frontier District (NFD); the Northern Region comprising Northern Province except Samburu District; Central Region comprising Central Province and Ukambani; and, Western Region comprising Kalenjin and Samburu, Maasai, Nyanza Province and Trans Nzoia. Nairobi Area would be a special region.⁴² Key components of these regions were that they were to be economically viable, enjoy political amity and be ethnically amiable.

KADU's concept of regionalism was motivated by the need for entrenching personal liberties, regional harmony, domestic tranquillity and peace. The rationale was to ensure that excessive political ambitions of men would not "drag the young country down the dungeons of tyranny".⁴³ KADU was basing its argument on what had been observed of other countries in Africa that had drawn their independence constitutions after the 'Westminster democratic model' of undiluted democracy, but their elite had prioritised the consolidation of the colonial state and the central government inherited at independence.⁴⁴ The re-modelled structures had moved them from a "colonial frying pan into the hellfire of dictatorship under an individual or military junta".⁴⁵ This had been witnessed in Ghana where Kwame Nkrumah got a unitary constitution" in 1960 and was "trying to overcome any threat of aggressive regionalism".⁴⁶ Developments in Sudan and Belgian Congo were also gravitating into dictatorships.⁴⁷ KADU's federal model encompassed the Swiss canton, American federalism and African

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Ali Mazrui (ed), *Africa Since 1935* (London: James Currey, 1999), p. 451.

⁴⁵ Proposals for Regional Governments and a Federal Constitution, October 1961, KNA, MSS 12/12.

⁴⁶ Mazrui, *Africa Since 1935*, p. 450.

⁴⁷ Ibid, pp. 456-61.

traditions with the structure designed to reflect the projected 'Federal State of Africa'. Each region was to have an assembly while the national Parliament would be bicameral, with Senate being rebranded 'Council of Elders' in America-type of Parliament.

European parties tended to defer to others. The New Kenya Group (NKG) aligned itself to the KADU parliamentary group. It only issued a statement pledging support for openings that would provide for Africans participation in the establishment of responsible government when the conditions warranted. It opposed development that might lead to nepotism and tribal and racial despotism. It also opposed amending the constitution to provide for dominance of one race.⁴⁸ Kenya Coalition (KC) felt that the basis for constitutional discussions would have to come from the African parties. Recognising the main role in the negotiations would be played by Africans, it simply prepared a general memorandum in response to KANU and KADU proposals. It focused mainly on KANU because it considered KADU proposals to be scanty and devoid of detail. It did not believe that KANU's unitary-type constitution could provide the requisite safeguards, as the constitution could be amended by a parliamentary majority. It also did not accept that national unity could only be achieved through a unitary form of government. It believed that it was not in the country's interests for the European population, which had vital economic interests and had contributed massively to the economy to be denied a voice in the country's councils.⁴⁹ It considered stating clearly that it could not support a constitution that would lead to dictatorship, break down of government and internal violence. It enumerated eight essential conditions to be fully addressed. These were security of persons and property, adequate representation, fair consideration and options of citizenship, guarantees against discrimination, properly financed system to provide for property transfer, trained and effective civil service, options for those

⁴⁸ Statement by NKG, KNA: MAC/KEN/47/6.

⁴⁹ Memorandum by Kenya Coalition, KCC (62) 10 – 16 February 1962, KNA: MAC/KEN/47/6.

who wished to stay, and maintenance of the rule of law.⁵⁰ Finally, it sought an internal self-government where the Her Majesty's Government could intervene if the arrangements proved unworkable.⁵¹

KC also went to the conference believing that it represented the interests of the British people who had "made their homes in Kenya".⁵² It viewed its role as twofold: one, to act as a catalyst and unifying factor in bringing about agreement; and two, to consider particularly the interests of the British people, the men and women who took the lead in building the agriculture, the transport and the commerce of Kenya. The party approached the conference with comfort that Her Majesty's Government would bring about stability and restore confidence in the people of Kenya.⁵³

Asians were caught between the settlers and the Africans and appeared to sit on the fence politically.⁵⁴ Arthur Culwick, the United Party Chairman, had warned them of serious consequences if they did not come out openly to support European interests.⁵⁵ He predicted that the exit of the European settler would diminish their sources of wealth leaving them "to eke out an impoverished livelihood from a downtrodden, intimidated, persecuted community".⁵⁶ Similar sentiments were expressed by Africans who saw them as "fence-sitters who drained the economy of Kenya".⁵⁷ Their entry in land transactions as speculators following the opening up of the White Highlands in 1959 further intensified the tension with Africans.⁵⁸

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Record of the First Meeting, KCC(62) 14 February 1962, KNA: MAC/KEN/45/3.

⁵³ Ibid.

⁵⁴ Tom Mboya, *Freedom and After* (Nairobi: Heinemann Kenya, 1986), p. 113.

⁵⁵ Mary L. Dudziak, *Exporting American Dreams: Thurgood Marshall's African Journey* (Princeton, NJ: Princeton University Press, 2012), p. 118.

⁵⁶ Ibid.

⁵⁷ Ibid., p. 119.

⁵⁸ Ibid.

The Asians had started withdrawing from active politics. In the 1961 elections, the Kenya Indian Congress managed to win only 3 seats, which added to the 3 national members, and did not constitute a parliamentary group. They were absorbed in either KANU or KADU on coalition arrangements when the two parties opened their membership to other races. Those who joined KADU, like Arvind Jamidar and Somabhai Patel, attracted hostilities from KANU followers who dominated urban politics where Asian population was concentrated.⁵⁹ Africans called for the reduction of Asian economic power. Pio Gama Pinto teamed up with Chanan Singh and Kantilal P. Shah to found Kenya Freedom Party to marshal support of Kenyan Asians to KANU. As part of the minorities, and being one of the groups on whom the prosperity of the country was mainly due, they sought safeguards for their properties.⁶⁰

There were two interest groups claiming to represent the coast. First, the Arab members formed a lean parliamentary group under the Mwambao United Front consisting of Omar Bassadiq and Sheikh Abdillahi Nassir. Their memorandum expressed aspiration for separate treatment of the Coastal Strip from the rest of the country. They were concerned that the Protectorate would be integrated with the Colony despite a pledge by the Secretary of State during the closing of the first Lancaster House Conference that the existing treaty between Her Majesty's Government and the Sultan of Zanzibar would be honoured.⁶¹ They felt that integration with the Colony would eclipse any Arab authority, influence and reputation within the Protectorate, and feared being swamped by the up-country people. They wanted separation to be done early enough before independence to allow the territory to enter into autonomous negotiations with other nations, especially with regard to the formation of the East African Federation.⁶² Second, the Coastal League (Wenyeji wa Mwambao) aimed to establish a state of Azania on the East African coast and was therefore working for coastal

⁵⁹ Odinga, *Not Yet Uhuru*, p. 217.

⁶⁰ Marquess of Salisbury, Parliamentary Debates, House of Lords, 28 March 1960 vol 222 cc305-420.

⁶¹ Memorandum on the Protectorate of Kenya. KNA: MSS 13/54.

⁶² *Ibid.*

autonomy.⁶³ They went to the conference confident that the Coastal Strip issue would be settled.

There were other memorandums that expressed communal interests and carried elements of secession and autonomy from the Somali, the Maasai and the Abaluyia. Tribal chiefs and elders of the Somali population in the Northern Frontier District (NFD) prepared a memorandum demanding autonomy from HMG to be free to join in an act of Union with the Somali Republic.⁶⁴ Early colonial Governor, Sir Charles Eliot, had observed that the Somali territories were better off detached to form a separate government.⁶⁵ The Kenya ethnic Somali felt that neither KANU nor KADU offered adequate proposals that could make them feel confident with an independent African government. The Maasai United Front also prepared a memorandum seeking reversionary land rights once the British government relinquished its control over Kenya and the reservation of certain areas, including the White Highlands, which were to be closed for migration by other communities.⁶⁶ The Maasai held that if the British government did not accede to their demands, then they would join with the Maasai in Tanganyika to seek a Maasai state from where they would negotiate on how to join the East African Federation as an autonomous region.⁶⁷

The Abaluyia's search for autonomy was spearheaded by the Buluyia Political Union, a party that had been formed to unify the Abaluyia community. They demanded re-unification, to include communities in Uganda, by removing or altering the 'artificial' inter-district as well as international boundaries.⁶⁸ They held that the treaties that had been signed between their chiefs (Chiefs Mumia, Wakholi, Namajanja and Sakwa) and the British government

⁶³ Memorandum of the Coastal League, KNA: MSS 13/54.

⁶⁴ Constitutional Proposals for the Somali Districts of the Northern Frontier Province of Kenya, KCC (62) 24, 14 March 1962, KNA: MAC/KEN/48/2.

⁶⁵ Charles Eliot, *The East African Protectorate* (London: Frank Cass, 1905), p. 180-8.

⁶⁶ Report of the Kenya Constitutional Conference 1962, KNA: MAC/KEN/48/8.

⁶⁷ Mboya to Murumbi, 22 March 1960, KNA: MAC/KEN/70/3.

⁶⁸ Memorandum by Abaluyia Members, KCC (62) 30 - 20 March 1962, KNA: MAC/KEN/48/5.

(through IBEAC) in 1890 would expire at independence and they did not wish their sovereignty to be handed to the Government of Kenya run by “terrorists”.⁶⁹ Jomo Kenyatta assured them that an African government did not imply domination by one ethnic group or one party, but they went ahead to agitate for their ethnic cause.⁷⁰ If they failed to achieve unification, then they would work to secede.⁷¹

The issue of land was central to the interests of all groups, as it touched on individual rights, property rights, economic development and citizenship. Africans resented the land alienation for white settlement and the subsequent laws enacted to drive them out of their land and to control their access to and use of land. They wanted the “lost” lands returned at independence. While Asians were resentful on account of being excluded from the White Highlands, the Europeans were anxious over their investment on the land, regarding it as “a cherished privilege long regarded as a political and economic safeguard”.⁷² The colonial government’s land reforms carried out since 1954 had seen some of the issues addressed such as removal of all racial and political barriers inhibiting access to the White Highlands, and the surveying and registration of all high-quality native land to facilitate recognition of private interests in land, hence the policy of land consolidation, which resulted in increased agricultural productivity.⁷³ European settlers opposed these reforms and viewed their implementation to imply that the government was abandoning all past pledges and assurances given by the British government.⁷⁴ They also held that the government had an obligation to make provision for the maintenance of land values and arrangement to compensate those who felt they no longer wanted to be in the colony.⁷⁵

⁶⁹ Ibid.

⁷⁰ Report of visit to Jomo Kenyatta at Maralal, 11 July 1961, KNA: MSS/12/21.

⁷¹ Ibid.

⁷² New Kenya Groups’ Response to Sessional Paper No. 10 of 1958/59 on Land Tenure and Control Outside the Native Lands, KNA: MSS/13/54.

⁷³ Report on East African Standard, 19 October 1959, KNA, MSS/13/51.

⁷⁴ L.R. Briggs, “Statement to the Press by the United Party”, 11 November 1959, KNA: MSS/13/54.

⁷⁵ Ibid.

The policy of land consolidation, especially as carried out in Central Kenya, produced a fragile political settlement. It established a conservative middle class, mainly based on loyalists, and confirmed the landlessness of the Mau Mau activists.⁷⁶ This landlessness ‘society’, around one-third of the population, had been left with no kin, no ancestral land and no marginal marshlands in the reserves to go to. They were left to face an uncertain future in the politics of independence.⁷⁷ With promises to resettle the landless upon independence, there was considerable anxiety, mainly among the European settlers, that the land on which resettlement was to take place would be expropriated arbitrarily.

The government’s attitude towards the land issues was in opposition to both the demands advanced by the various African interests and the European settlers’ view. It was opposed to the position of reversionary interest claims because such claims would be inspired by political whims. Instead it recommended that the reversionary rights and ownership of unalienated land would be transferred to a responsible national government with ability to guarantee titles. Contrary to KADU’s proposals, the government opposed the dealing with regional boards given that land was a national asset whose registration process had to be central and revenues received centrally.⁷⁸ Thus, the future of land rights and the nature of safeguards that would guarantee these rights was a source of anxiety among all the parties at the conference.

The Secretary of State considered his primary task as to seek “agreement on a constitution with strong safeguards for African minorities and for the European settlers”.⁷⁹ That constitution was to be anchored on four main features. First was a stable and competent central government that would give the country a national outlook. Secondly, it had to

⁷⁶ D. Anderson, *Histories of the Hanged* (New York: W.W. Norton, 2005), p. 294.

⁷⁷ E.S. Atieno-Odhiambo, “The Formative Years” in *Decolonization and independence in Kenya, 1940-93*, edited by B.A. Ogot and W.R. Ochieng’ (Nairobi: East African Educational Publishers), pp. 25 - 47.

⁷⁸ Ag C/Lands to Arthur, 16 September 1961, KNA: MSS 12/1.

⁷⁹ Conclusions of a Meeting of the Cabinet, 8th February, 1962, BNA: CAB/128/36.

contain safeguards of individual rights capable of instilling confidence. The safeguards could be achieved through the establishment of additional governing authorities with their own defined rights not derived from the central government. These entities and rights would be written and entrenched in the constitution. Thirdly, the constitution had to be protected from mutilation and changes that would frustrate the purposes agreed at the conference. Fourthly, it had to create and promote an independent judiciary.⁸⁰

The British government approached the conference determined to reach agreement and take the right decisions. Failure would mean the country would “drift into political and social chaos just as it had already drifted rapidly into economic and financial chaos”. The outcome of the conference was bound to determine the well-being, livelihood and physical safety of all citizens of Kenya.⁸¹ It had responsibility to ensure that independence was handed over to a stable regime, free from oppression and from violence and free from racial discrimination, and through a suitable constitution.⁸² Aware that differences between KANU and KADU posed the danger of “over-rigidity”, the Secretary of State indicated that the British government was ready to apply all in its power to achieve its objective.⁸³

The European settlers did not prepare a memorandum for the conference because they took refuge in the Bill of Rights, which had already published in the Macleod Constitution. Asians also took comfort in the Bill of Rights, which had worked in India since the promulgation of the Constitution of India in 1951.⁸⁴ The British government has assured both immigrant groups that their individual and group rights would be protected and realised in the constitutional negotiations; hence, they did not present group memorandums as was the case

⁸⁰ “Statement of the Secretary of State for the Colonies,” Press Office Handout No. 947, 29 November 1961, KNA: MSS/12/12.

⁸¹ *Ibid.*

⁸² “Statement of the Secretary of State at the Final Plenary Session, KNA: GO/1/1/24.

⁸³ Report of the Kenya Constitutional Conference, 1962. KNA: MAC/KEN/45/3.

⁸⁴ G. B. Singh, “‘Bill of Rights’ in the Constitution of India”, *New English Review* (August 2009), available at: http://www.newenglishreview.org/G._B._Singh/%22Bill_of_Rights%22_in_the_Constitution_of_India/. Accessed on 15 December 2014.

in the first conference of 1960. Their participation at the conference was no longer driven by desire for leadership but to protect property and individual rights. As they did not want to be uninvolved in politics, they joined the two African parties. From their knowledge of what the British government wanted, they hoped to influence the party leaders. By their membership in the parties, the British government, through the Secretary of State, had representation and therefore established channels of communication that provided access to the thinking of African leaders. The Europeans were also able to sneak the British government agenda into the intraparty discussions and messages thereby influencing their outcomes. This way the British government gained control of the negotiation process. Group Captain Briggs and other United Party members like Arthur T. Culwick had refused to be used by the British government in this manner and abandoned the negotiations altogether at the initial stages with the latter relocating to South Africa.

4.4 Actors and Personalities

Political development in both Kenya and Britain brought in changes in the respective governments. Notably there was an expanded Legislative Council in Kenya, implying a widened political opinion. There was also a realignment of interest groups as new political parties were formed after the first Lancaster House Conference. The 1961 election ushered in a new crop of nationalists to press for African demands, but it also exacerbated the rivalry between the two main African camps (KANU and KADU). While during the 1960 conference the African delegations had attended as a single front led by Ronald Ngala and Tom Mboya, the two leaders were in different camps in 1962 having been elected to the Legislative Council in different parties. Ngala retained his leadership role when KADU came into existence. He had portrayed a dependable personality, which made him the natural party leader. He had however demonstrated that he was susceptible to the intimidation and

manipulative tactics of the white settlers and seemed suspect on the nationalist cause.⁸⁵ He stood out among the leaders who leaned on settler support, perhaps with the belief that they would prolong their tenure and that “settler cooperation would make for greater stability on government”.⁸⁶ He also had deep-rooted political ambition having shunned a leadership role in KANU at its inception.⁸⁷ Even when Kenyatta was released and eventually became the head of KANU, he did not show any enthusiasm for unity in forming a common front in the struggle for independence.⁸⁸

Jomo Kenyatta led KANU and came to play a significant role in the conference. At the age of 71, he was the oldest among the African nationalists and his political experience and exposure made him the most suitable bridge between the divergent groups of nationalists. His personality was one of patriarchy, which not only elicited a high level of command, but also endeared respect from the young crop of nationalists.⁸⁹ To the public, he was “larger-than-life”, his booming mesmerising voice and hypnotic eyes completed the charismatic picture.⁹⁰

With Jomo Kenyatta’s release from prison in August 1961, there was a growing anxiety among the Europeans and the loyalists on the future of the country given that he had taken the leadership in the majority African party. Kenyatta adopted a conciliatory attitude towards the constitutional negotiations, avoiding a confrontation or domineering approach. Although flanked by political rivals, Tom Mboya and Jaramogi Oginga Odinga, he was able to present a unified and firm front to the conference.

Reginald Maudling was a new face as the Secretary of State for the Colonies. He chaired the conference. A lawyer turned politician, Maudling thought that there always needed to be a balance in society; as a politician, he thought that ideas and occasional action

⁸⁵ Odinga, *Not Yet Uhuru*, p. 197.

⁸⁶ *Ibid.*

⁸⁷ Blundell, *A Love Affair*, p. 122.

⁸⁸ Odinga, *Not Yet Uhuru*, p. 210.

⁸⁹ Jeremy Murray-Brown, *Kenyatta* (New York: E.P. Dutton & Co. Inc., 1973), p. 367.

⁹⁰ Yusuf K. Dawood, *Nothing but the Truth: An Autobiography* (Nairobi: Kenway Publications, 2002), p. 183.

were more important than spin and short-term needs.⁹¹ He put his views across in humorous fashion an attribute that was duly complimented by Jomo Kenyatta at the conclusion of the conference.⁹² His attitude at the conference was to see it succeed, especially because his predecessor, Iain Macleod, with whom he had a rivalry, had succeeded in the first conference.⁹³

Maudling's assistant and alternate chair, the Earl of Perth, had attended the first conference and was at hand to provide the needed experience. A Scottish peer, banker and politician, he had been appointed Minister of State for Colonial Affairs in 1956, subsequently serving under several Secretaries of State. He had distinguished himself as knowledgeable in the British colonial matters, taking time off to visit various colonies. Thus, he not only provided stability in the decolonisation process, but he was also available for the much needed advice on constitutional development, especially for tropical African countries for which he was to develop long-term policies.⁹⁴

There was also Sir Patrick Renison, the Governor, who attended the previous conference and had been charged with the responsibility of implementing Macleod's constitutional proposals. As a person, Renison "had a dry humourless face ..." and belonged to the upper crust of society which believed that the sun would never set on the British Empire, and that any attempt to liquid it was sacrilegious.⁹⁵ As Michael Blundell observed, during his nearly three years' service in Kenya, he "was never able to cast off the magisterial outlook of a colonial administrator, which made all the new African leaders uneasy".⁹⁶ With his perception of the British Empire, which was at variance with the government's

⁹¹ Lewis Baston, *Reggie: The Life of Reginald Maudling* (Stroud: Sutton Publishing, 2004), p. 174.

⁹² Kenyatta, Report of the Kenya Constitutional Conference 1962, KNA: MAC/KEN/48/8.

⁹³ Baston, *Reggie*, p. 174.

⁹⁴ "British and American Policies in Tropical Africa", Press Release by Provost of Ditchley, 16 June, 1962.

⁹⁵ Dawood, p. 181.

⁹⁶ Blundell, *A Love Affair*, p. 126.

decolonisation policy, his attitude towards the conference was that of indifference; hence, his contribution was minimal.

4.5 Venue, Participants and Logistics

The British government decided the venue for the conference and summoned the MLCs in a manner George Nthenge, one of the participants, felt was like father calling the sons: “When father summons you to a meeting to discuss an issue, you have to oblige. It cannot be the vice versa. You do whatever you are told to do as his children. We behaved the same way.”⁹⁷ This depicted a paternalistic approach to the negotiation process that gave the British government ‘home advantage’. While most of the European participants had their kith and kin in Britain, the venue was a strange environment for African delegates. Success or failure of negotiation is determined by such factors as “the place of negotiation, whether at home or away from home, language and cultural barriers”.⁹⁸ Lancaster House disoriented the African members; its physical grandeur and reputation for providing the “rite of passage” for colonies preparing for independence had the potential of mesmerising delegates and placing them in a subservient position.⁹⁹ The weather was also unpleasant during this period of the year, but the discomfort was overshadowed by the strong aspiration for independence.¹⁰⁰

A total of 98 participants took part in the conference, all of whom were determined by the British government. KANU had expressed the wish to have all the members of the Legislative Council attend the constitutional conference, but the British government invited only the elected members of the Legislative Council leaving out the nominated.¹⁰¹ As John Keen, one of the participants, observed, it was akin to transplanting the Council from Nairobi

⁹⁷ Ibid.

⁹⁸ Patrick M. Maluki, “Negotiation and Dialogue in Global Politics”, Paper presented on Global Politics, Diplomacy and Foreign Policy, Centre for Disaster Management and Humanitarian Assistance, Masinde Muliro University of Science and Technology, May 2009.

⁹⁹ James Franks, *Scram from Kenya: From Colony to Republic, 1946-1963* (Sussex: Promegranate Press, 2004), p. 314.

¹⁰⁰ Tom Mboya to Joseph Murumbi, 22 March 1960, KNA, MAC/KEN/70/3.

¹⁰¹ Notes on KANU’s Meeting in London, KNA: MAC/KEN/44/1.

to London.¹⁰² The participants were placed into categories, with Members of the Legislative Council appearing as parliamentary groups. The two main groups comprised KANU and KADU, both of which absorbed members from NKG, Kenya Indian Congress, Kenya Freedom Party and Shungwaya Freedom Party. Members from the Mwambao United Front and Kenya Coalition attended as separate parliamentary groups, and so did the two Independents who were referred to as Cross Benchers who had not aligned themselves to either of the African parties. Anantprasad Pandya had been elected as an independent candidate to represent Mombasa Liwatoni, while Abdi Rashid Khalif, the leader of Northern Province People's Progressive Party (NPPPP), had been selected as a special representative for Northern Province East following the death of the elected representative, Ali Aden Lord, on 20 December 1961, and no election had been conducted at the time of the conference. Khalif had stressed that he neither supported KANU nor KADU and that he was a secessionist advocating the separation of NFD to unite with Somalia.¹⁰³ He was inaugurated in the Council after the conference on 8 May, 1962.¹⁰⁴ The other categories were the UK Government, Kenya Government and the Secretariat. Specific delegations were also received at the conference to present views of their respective ethnic interests. These were the Maasai and the Northern Frontier District delegations. Some of members of parliamentary groups joined in the respective delegations.

Each group had its leader who also acted as the spokesman, conveying the group's points of view in plenary sessions. They also led their groups in negotiations held with the various ethnic communities. KANU was led by Jomo Kenyatta, KADU by Ronald Ngala, Kenya Coalition by Laurance R. Maconochie Welwood, and Mwambao United Front by Omar Salim Basaddiq. KANU, KADU and KC had their own constitutional advisers.

¹⁰² John Keen, Personal Interview, 17 March 2011.

¹⁰³ Ibrahim A Rashid, "Kenya's Third Referendum Shows Promise of Delivering", *The Standard*, Friday, 30 July, 2010, p. 13.

¹⁰⁴ Legislative Council Debates, Official Report, 12th Council, Vol. LXXXIX, col. 1.

KANU's adviser was Dr B. Malik requested by Kenyatta.¹⁰⁵ KADU had Edward Zellweger, a Swiss constitutional expert, and Frederic E.M. Bennett, a Conservative member of the House of Commons with interest in African colonial affairs.¹⁰⁶ KC's Parliamentary Group adviser was H. B. W. Macallan. The advisers were not allowed to take part in the plenary discussions, but they could contribute in committee meetings.¹⁰⁷

The overall constitutional adviser was Sir Ralph Hone, a British army officer, barrister and colonial administrator, who had served in Uganda as Attorney General and as legal advisor in the conquered Italian territories during the Second World War. He also served in Malaya where he oversaw the government handover to civilian rule. He had been instrumental in preparing a bill of Rights for Southern Rhodesia's constitutional conference in February 1961.¹⁰⁸ At the time of the conference, he had retired as head of the legal division of the Commonwealth Relations Office having served in many important advisory positions both in Britain and overseas.¹⁰⁹ The Colonial Office picked Sir Hone over Professor Mackenzie because the latter had demonstrated opposition for federalism during the first conference, a concept that had accumulated support from former members of the Federal Independence Party (FIP) and who formed the backbone of United Party and Kenya Coalition.¹¹⁰ However, the proponent of the system, KADU, only consulted him once preferring its own set of advisers.¹¹¹

¹⁰⁵ Keith Kyle, "Congo Report", *The Spectator*, 20 September 1961, available at: <http://archive.spectator.co.uk/article/21st-september-1962/8/congo-report>. Accessed on 10 October 2014; F.R.S. De Souza, "Building on the Lancaster House Experience", *Report of the Constitution of Kenya Review Commission, Vol. V Technical Appendices* (Nairobi: CKRC, 2003), p. 244.

¹⁰⁶ John Barnes "Sir Frederic Bennett", available at: <http://barneshistorian.com/vm-bennettf.php>. Accessed on 30 September 2014.

¹⁰⁷ Administrative Arrangement, K.C.C. (62) 1, 12 February 1962, KNA/MAC/KEN/45/1.

¹⁰⁸ Charles Parkinson, *Bills of Rights and Decolonization: The Emergence of Domestic Human Rights Instruments in Britain's Overseas Territories* (Oxford: Oxford University Press, 2007), p. 239.

¹⁰⁹ Obituary in the *Daily Telegraph*, 7 December 1992.

¹¹⁰ Robert Maxon, "Constitution-Making in Contemporary Kenya: Lessons from the Twentieth Century", *Kenya Studies Review*, Vol. 1, No. 1 (December 2009), p. 18.

¹¹¹ *Ibid.*

Governor Renison's delegation of the Kenya Government consisted of legal and administrative officers. It also included Priscilla I. Abwao, a nominated Member of the Legislative Council and the only African woman at the conference. She was a social worker and gender rights activist recommended for nomination to the Council by the Kenya African Women's League in May 1961.¹¹² As part of the Governor's retinue of advisers, she was not allowed to speak at the plenary sessions and she did not sit in any of the technical committees which would have accorded her an opportunity for formal contribution. There was no indication that she made significant input.¹¹³ There was no indication that gender issues were brought before the conference. Another woman, Alice Shaw, MLC for Kericho and Parliamentary Secretary for Health and Social Affairs, was attending the conference on the KADU side. Therefore, the significance of Abwao's participation was only known to the Governor. The *Kenya (Constitution) Order in Council 1960* did not specifically provide for the nomination of women into the legislature or other representative institution. Subsequent constitutional development did not contain such provision and the trend continued after independence changing only after the promulgation of the *Constitution of Kenya 2010*.

Apart from Kenyatta no other ex-detainee attended the conference. The presence of ex-detainees, including the Kapenguria Six, would have been an obstacle to the realisation of British interests. Such agreements as land and property rights would have been difficult to arrive at and hence the possibility of outbreak of another war, which would have delayed independence. The exclusion of the other ex-detainees was a reflection of the divergent views that they held over property with Kenyatta opposing the populist policy of seizure and acquisition of "free things".¹¹⁴

¹¹² "Lady Adviser to Kenya Government Delegation", *Kenya News Service*, 22 February 1962.

¹¹³ Report of the Kenya Constitutional Conference 1962, KNA: MAC/KEN/48/8.

¹¹⁴ Marshall S. Clough, *Mau Mau Memoirs: History, Memory, and Politics* (Boulder: Lynne Rienner, 1998), pp. 48-49.

The secretariat for the conference was provided by the British Cabinet Office under A.M. MacKintosh who was retained from the previous conference. It was not only responsible for travel and accommodation arrangements, but it also provided support services that included document handling, press liaison, library and conference facilitation. It prepared the administrative arrangements for the conference, which were largely similar to the first conference and were designed to ensure an organised environment for deliberations with elaborate procedure and facilities for consultation. Elaborate security at the Lancaster House was put in place with admission restricted to conference participants who were issued with numbered passes. Any other persons who wished to access Lancaster House had to seek a pass from the secretariat with clearance from the Secretary of State. Each room had a locking steel cupboard for safety of the conference documents. Library facilities, with a librarian, were made available to the delegates. Sir Ralph Hone was also made available to the various parliamentary groups for consultation. Other facilities that were availed to the delegates included pigeon holes for convenient dispatch of messages and documents, document processing, press liaison and a press centre for briefing and interviews. Arrangements to issue brief factual press communiqué were made to avert any speculation which would cause confusion.¹¹⁵

The composition of the parliamentary groups reflected a representation of British government's and European settlers' thoughts. After 1960, the thinking of the British government and the settlers converged when the Europeans realised that they wanted the same things: economic development and property rights. The KADU parliamentary group had such membership as Michael Blundell and Wilfrid Havelock, while KANU had Bruce Mackenzie and Peter Marrian all of whom were European farmers. Membership of committees formed during the conference consisted of similar structures. This was further reinforced by the

¹¹⁵ Administrative Arrangement, K.C.C. (62) 1, 12 February 1962, KNA/MAC/KEN/45/1.

advisers who were sourced externally with an eye on the protection of human and property rights. Left to their designs, the leaders of KANU and KADU would have united and merged their interests resulting in a possible nationalisation of land. The presence of the Europeans and Asians in the African parties therefore served to moderate opinion in line with the thinking of the British government.

4.6 Structure of the Conference

The conference formally opened on the morning of Wednesday 14 February, 1962. A reception was held on the eve of the conference on 13 February 1962. The proceedings consisted of plenary, committee and informal discussions. At the end of the conference, there were 52 (fifty-two) days of sessions of which 20 were plenary making it “the longest colonial conference on record”.¹¹⁶ It was also attended by the largest number of participants after the Nigeria’s constitutional conference.¹¹⁷ A total of 49 (forty-nine) memorandums were received and three conferences were held on the side bringing together delegations from the Maasai, the NFD and Coastal Strip and Zanzibar.

4.6.1 Plenary meetings

The first plenary meeting was the opening session and was held in the Long Gallery. The session was open to the press and the public. Maudling chaired the session and opened the conference stating the expectations and responsibility of the British government: “Political leaders should agree on a constitution for Kenya that will give to individuals freedom from fear, freedom from oppression and an assurance of equality before an impartial law. UK’s great responsibility is to hand over authority to a stable regime, free from oppression and from violence and racial discrimination.”¹¹⁸ Then came Governor Renison’s remarks

¹¹⁶ Report of the Kenya Constitutional Conference 1962, KNA: MAC/KEN/48/8.

¹¹⁷ Ibid.

¹¹⁸ Record of the First Meeting, op. cit.

observing many viewpoints and a big area of common ground.¹¹⁹ The delegates then retreated to the Music Room where Maudling asked each parliamentary group to nominate one person to serve as the liaison with the Secretariat.

In the afternoon, Maudling invited the heads of delegations to introduce their memorandums. Ronald Ngala came in first for KADU's memorandums circulated earlier as K.C.C, (62) 4 and K.C.C (62) 5 detailing the structure of the federal system of government. Both documents comprised a one-page memorandum and a short statement by Ngala.¹²⁰ The brevity of KADU's memorandum left time for the introduction of KANU's memorandum by Jomo Kenyatta, which had also been circulated as K.C.C. (62) 3. The memorandum comprised a comprehensive presentation of its view on the appropriate constitution and a draft Bill of Rights. Kenyatta said that KANU would take away land that was underdeveloped or kept idle for distribution "to the landless and poor Africans", but stressed that the owners would be compensated through the responsibility should be on the British government, as it is the one that induced Europeans to settle in Kenya and it "alienated the African land without payment".¹²¹ Laurance Maconochie Welwood for Kenya Coalition said that he reserved his position until he had studied the memorandums presented by KANU and KADU. Omar Basaddiq was the last in line appearing for the Mwambao United Front. Basaddiq said that he could not present a memorandum until after the conference on the Protectorate.¹²² This implied that only KANU and KADU had memorandums for consideration. Maudling adjourned the meetings for two days to enable members to study the two groups' memorandums thoroughly and to consider his remarks. Sir Ralph Hone also

¹¹⁹ Ibid.

¹²⁰ KANU's memorandum was circulated as KCC (62) 3, while KADU's were circulated as KCC (62) 4 & 5.

¹²¹ Record of the Second Meeting K.C.C (62) 2nd Meeting, KNA:MAC/KEN/45/3.

¹²² Ibid.

circulated a proposal on the organisation of the public service under federal or regional constitution for consideration.¹²³

Before the third meeting on Friday, 16 February, KADU circulated another memorandum aimed at “expanding the preliminary view of KADU”.¹²⁴ Maudling invited Ngala to introduce it whereby Ngala said that KADU felt strongly that the “principle of the setting up of other governing authorities” should be settled before any other discussions were undertaken.¹²⁵ Maudling adjourned the meeting to give time to members to study the memorandum. Ngala was invited to continue introducing the memorandum after the adjournment, but Kenyatta disagreed with the procedure arguing that KANU’s paper had been submitted first and therefore “should be discussed before KADU’s”.¹²⁶ Maudling expressed frustration that KADU and KANU had begun by insisting upon acceptance of each side’s views in principle.¹²⁷ He adjourned the meeting with hope that during the break, parties would give all possible information about their views and show more cooperation.

When the conference resumed the fourth meeting there was discussion on whether to continue with the KADU paper or proceed on KANU’s memorandum. KANU maintained that there was nothing in KADU’s proposals which KANU could reply to and observed that KADU had not put “all their cards on the table”; instead of circulating one full memorandum at the outset, KADU had circulated five within three days and at short notice.¹²⁸ The main question in KANU’s memorandum was “whether the proposals were capable of creating the safeguards necessary to resolve the fears which existed in Kenya”. With regard to KADU, Mboya observed that the question was “whether the complicated machinery of government

¹²³ K.C.C. (62) 27, KNA:MAC/KEN/45/3..

¹²⁴ K.C.C. (62) 8, KNA:MAC/KEN/45/3.

¹²⁵ Record the Third Meeting K.C.C(62) 3rd Meeting, KNA:MAC/KEN/45/3.

¹²⁶ Ibid.

¹²⁷ Ibid.

¹²⁸ K.C.C (62) 12, KNA:MAC/KEN/45/3.

was really necessary for those safeguards”.¹²⁹ KC circulated a commentary based on the KANU paper, which was read by Maconochie Welwood, setting out the main elements of the constitution that would be acceptable to its European constituency.¹³⁰ At this point, Jeremiah Nyagah of KANU suggested that the conference appoints a steering committee, comprising heads of delegations, to deal with such matters as the agenda. Maudling undertook to consider the proposal.

In the fifth meeting, Ngala did not attend because his son had died in a hospital in Kenya. The conference expressed deep sympathy for him, Maudling opened up commentaries to all the delegates, inviting the KANU side to respond to KC’s concern over “independent judiciary and relationship between citizens and ownership of land”.¹³¹ He restricted responses to matters of principles and asked delegates to leave out details to be deliberated in committees. First the delegates commented on KADU’s memorandum and then went to KANU’s. From the presentations, Maudling drew some common ground. One was that there would be a central government in Kenya together with other “governing bodies” with certain defined powers. Two, that the constitution should be one that could not easily be changed.¹³² Delegates felt that KADU was not clear on what form of federal system they were proposing and took issue with its tactic of bringing in memorandums and new papers at short notice. They also observed that some of KADU’s new introductions had been formulated after a detailed cross examination during the sessions. KANU felt that KADU’s tactic was an inconvenience to the conference.¹³³

From the sixth meeting on Monday, 19 February, 1962, to the thirteenth meeting on Friday, 23 February, 1962, the conference received individual comments on the KANU and

¹²⁹ Record the Fourth Meeting K.C.C(62) 4th Meeting, KNA:MAC/KEN/45/3.

¹³⁰ K.C.C. (62)10, KNA:MAC/KEN/45/3.

¹³¹ Record of the Fifth Meeting K.C.C(62) 5th Meeting KNA:MAC/KEN/45/3.

¹³² Ibid.

¹³³ Ibid.

KADU memorandums, and the statement by the Secretary of State. KADU speakers criticised KANU's proposals and held that they were based on political expediency as they were not sufficient to safeguard democracy. KANU, however, maintained that it had drafted its proposals in accordance with the aspiration of majority of Kenyans. On the form of government, they held that KANU was not bringing anything new, as it was similar to what was being supervised by the Colonial Office in Kenya. They argued that the country was inexperienced in the Westminster model of parliamentary democracy as proposed by KANU, since colony-wide political parties only came into existence in 1960 and had tended to draw membership from certain areas. KANU therefore needed to come out convincingly with a system that KADU would inspire confidence and allay fears to replace colonial one that provided common protection. Marie Seroney (KADU) stated that, "the Kalenjin had made it clear that they would be satisfied with nothing short of a federal form of government; otherwise they wanted their freedom returned to them by the same British government that took it away".¹³⁴ Charles Murgo (KADU) said that the Kalenjin nation trusted all communities other than the Kikuyu and that the Kalenjin wished to govern themselves under a government nearer their home areas and not from Nairobi.¹³⁵

KADU speakers also criticised KANU's structure of the constitution viewing its proposed safeguards as superficial. KANU had not acknowledged that "Kenya belonged to the people of the various tribes and not to the government of Kenya". They held that KANU's unitary system sought the transfer of power from the Governor to the Prime Minister, which was hazardous in view of Kenya's background of racial and tribal strife.¹³⁶ Michael Blundell (KADU) expressed pessimism, especially in view of what was happening in other African countries such as Ghana, where the two-thirds majority required to bring

¹³⁴ Record of the Sixth Meeting, K.C.C. (62)-Sixth Meeting, KNA: MAC/KEN/45/3.

¹³⁵ Record of the Eighth Meeting K.C.C. (62) 8th Meeting KNA:MAC/KEN/45/3.

¹³⁶ Record of the Fifth Meeting, K.C.C. (62)-Fifth Meeting, KNA: MAC/KEN/45/3.

about a constitutional change was not adequate defence against the violation of the rights of the individual.¹³⁷ John Konchella observed that KANU's memorandum had avoided dealing with pertinent issues including the Somali problem, the Maasai treaties, the future of the Coastal Strip, and the land problems. With regard to the latter, it had not defined who the landless and unemployment were yet it wished to address their urgent needs. It had failed to state whether the landless and unemployment were only in KANU areas. While summing up KADU's side of commentary to KANU's paper, Ngala observed that KANU had deliberately ignored the country's problems in the hope that whatever constitution was decided upon could be reshaped after independence. He declined to comment on the KANU document in details since at this stage he was interested only in the acceptance of KADU's general principle arguing that until the issue of the form that "the other governing authorities" would take was settled there was no useful purpose in a detailed examination of any proposals. He suggested that the British government play the role of "an active third party to help the conference to shape a constitution", which would meet its every point of view.¹³⁸ But other groups expressed disappointment in the inadequacy of the KADU proposals.

When Maudling invited KANU to comment on the points made by KADU on its proposals, Jaramogi Oginga Odinga and George Nthenge (KANU) said that all what was wanted was "a date for independence and all other things would be settled as they went along."¹³⁹ Maudling ignored discussion along these lines and continued to receive individual commentaries. On KADU's concept of regionalism KANU members noted that, in its objective to protect the minorities, KADU had failed to recognise that there would be

¹³⁷ Record of the Sixth Meeting, K.C.C. (62)-Sixth Meeting, KNA: MAC/KEN/45/3.

¹³⁸ Record of the Eighth Meeting, K.C.C. (62) 8th Meeting KNA:MAC/KEN/45/3.

¹³⁹ Ibid.

minorities in the regions that they sought to create. This therefore crowned a unitary system with a better degree of protection.¹⁴⁰

After the general speeches by KANU speakers, Maudling proposed that the delegates discuss points of detail to see how far there was “agreement on practical issues”.¹⁴¹ Three items for discussion were derived from KANU’s memorandum despite KADU’s protests and reserved position. These were Bill of Rights and independent judiciary, local government authorities, and transfer of land.¹⁴² In certain cases however Maudling suggested that “matters of detail should be considered in committees”.¹⁴³ Kenyatta began discussion with a protest that a KADU member had given a press conference outside Lancaster House contrary to the stipulated arrangements, and which portrayed Odinga “as a Communist”, but Maudling downplayed it advising the delegates to leave such matters to the press officer.¹⁴⁴

The conference completed detailed examination of the KANU paper during the eleventh plenary meeting. Thereafter, Lord Perth, sitting in for Maudling, suggested that the conference proceed to give detailed consideration to KADU’s paper, which it had just been submitted as K.C.C. (62) 16, during the next meeting. The paper had been prepared out of cross-examination in the earlier sessions and it set out the nature and powers of the “other governing authorities” in the federal constitution and government. The meeting was delayed to give the delegates time to study the paper. When Ngala came up to introduce the paper, he suggested that the conference goes into committee to discuss first “the fundamental problems of ‘other governing authorities’”.¹⁴⁵ KANU’s Tom Mboya objected to this and held that there was no reason for KADU’s proposals to be dealt with differently from its own.¹⁴⁶ KADU’s

¹⁴⁰ Record of the Ninth Meeting K.C.C. (62) 9th Meeting KNA:MAC/KEN/45/3.

¹⁴¹ Ibid.

¹⁴² Ibid.

¹⁴³ Record of the Eleventh Meeting, K.C.C. (62) 8th Meeting KNA:MAC/KEN/45/3.

¹⁴⁴ Ibid.

¹⁴⁵ Record of the Twelfth Meeting, K.C.C. (62) 12th Meeting KNA:MAC/KEN/45/3.

¹⁴⁶ Ibid.

Ngala, Muliro, Seroney, Alexander and Blundell insisted that they wanted the question of the nature, composition and powers of “other governing councils” resolved first despite Maudling’s advice on the order of discussion. This resulted in a stalemate and the conference was even unable to agree on the press communiqué. Upon consultation, Maudling ruled that none would be issued that day.¹⁴⁷

During the thirteenth plenary meeting, detailed discussion of KADU paper did not proceed smoothly at which point Maconochie Welwood (KC) suggested that the conference forms committees in which the constitutional advisers would speak. Maudling agreed with the suggestion. Subsequently, the Steering Committee was formed to deal with “future procedure of the conference and the daily press communiqué”.¹⁴⁸ The “future procedure of the conference” also included the plenary, committee and any other meetings, all of whose schedules were to be decided by the Steering Committee. Maudling chaired the committee.

In the fourteenth plenary meeting, the Steering Committee proposed the formation of four committees, which the conference approved. These were the Committee on Structure of Government, the Committee on Bill of Rights, the Committee on the Judiciary and Public Service, and the Committee on Land and Citizenship. The committees reported to the conference in plenary session and Maudling undertook “to make suitable arrangements for the chairmanship of the four committees”.¹⁴⁹ The conference however agreed on the composition of all the committees where KANU and KADU would have equal number of members. For example, they had five members each in the Committee on Bill of Rights and twelve members each in the Committee on Structure of Government. This latter committee

¹⁴⁷ Ibid.

¹⁴⁸ Record of the Thirteenth Meeting, K.C.C. (62) 13th Meeting, KNA: MAC/KEN/45/3.

¹⁴⁹ Record of the Fourteenth Meetings, K.C.C. (62) 14th Meeting, KNA:MAC/KEN/45/3.

was to “get to work at once” because the “shape of its proposals” would determine the progress of other committees.¹⁵⁰

The comprehensive round of general speeches on memorandums presented by both KANU and KADU indicated that their proposals had fallen short in respect of meeting the needs arising from tribal differences and safeguards against dictatorship of majority. However, Salter (KC) was of the view that there was common ground to enable the gulf to be bridged; for example, both parties had expressed their wishes to have some form of other governing structures outside the central government, but the question was, what powers would they have and how entrenched would they be?¹⁵¹ It was on this basis that Maudling suggested that the conference discusses points of detail and establishes agreement on practical issues. However, neither party wanted the others “matters of detail” to form the basis for discussion. Mboya (KANU) felt that KADU’s document did not provide “enough material to go on” while Ngala was of the view that KANU’s document did not “include the essential features which KADU required in Kenya’s new constitution”.¹⁵² Maudling determined that discussion would proceed and documents from both parties would be examined in detail. Wherever necessary, he would pose specific questions and seek clarification. He also directed the Secretariat to prepare “a purely factual comparative analysis of the main constitutional proposal”, which it would circulate to the members.¹⁵³

Discussions on the specific details turned into a contest between KANU and KADU with the latter seeking to discredit the proposals of former at the slightest opportunity. When it came to explaining their concept of regionalism, Ngala (KADU) appeared to be still confused over the term “other governing authorities”, which seemed to irritate Maudling as Ngala had attended a meeting in which the definition of “other governing authorities” had

¹⁵⁰ Ibid.

¹⁵¹ Ibid.

¹⁵² Ibid.

¹⁵³ Record of the Fourteenth Meetings, K.C.C (62) 14th Meeting, KNA:MAC/KEN/45/3.

been taken. The term had been chosen because it was neutral when it came to refer to regionalism and local government; hence, it neither supported KADU's nor KANU's proposals.¹⁵⁴ KADU's approach was that their view on regionalism was of utmost importance and ought to be the first item for discussion on the conference agenda. In effect, KADU presented another document insisting that its idea be discussed as a separate issue, and it tried to avoid discussing anything else in the constitution until its point of view was approved. KADU members would discuss regionalism or nothing.

In response, KANU presented further documents for perusal by the conference on the issue of regionalism. The party raised concern over KADU's tendency to create disagreement at every opportunity, such as the issue of land on which its members had asserted that land resettlement schemes designed by KANU were largely meant to benefit the Gikuyu tribe. KADU had disregarded KANU's clarification that the land to be made available for the settlement schemes would be Crown land in areas adjudged to be idle by the land utilisation survey and would be put up for sale. KANU also felt that KADU was swamping the conference with innuendos; for example, its delegates had insinuated that the unemployed and landless were only in KANU areas and that KANU was not only thinking of land owned by Europeans in Nyeri and Kiambu with regard to resettlement plans.¹⁵⁵

In the fifteenth plenary meeting, Maudling mentioned that the difference of opinion between KANU and KADU on procedure had not been resolved. KADU's insistence on discussing its idea of regionalism first created a difficult moment for the conference. Odinga (KANU) attacked KADU's attitude, accusing the KADU delegates of acting to please the Secretary of State with the belief that African opinion could be persuaded to shift to their favour, yet they portrayed the African background as backward and primitive such that it could not be entrusted to run a government. He felt that KADU's attitude was meant to

¹⁵⁴ Ibid.

¹⁵⁵ Ibid.

condition the African thinking so that KADU delegates could be the political leaders, but reminded them that “the mood of people in Kenya was that they were tired of the British government and wanted independence”. He reiterated that all that was needed was a date for independence and all others would fit in.

After this meeting, the plenary meetings took a nineteen-day break to give room to committee and informal meetings. Four weeks into the conference, arguments and counterarguments had produced no progress. Maudling was concerned that KADU was determined to wreck the conference and, being his responsibility to help the conference shape a constitution that met every point of view, he was forced to intervene. During the informal discussions, the Colonial Office came up with proposals, which were not always acceptable to all the groups. It was left to the Secretary of State to ‘persuade’ the groups, through the application of pressure, to see his point of view. As John Keen observes,

... the British would listen to KANU and say, “KANU we have heard you”, then listen to KADU and say, “We have heard what you want” and listen to settlers and say, “We have heard what you want, then we have thought about it and we have decided this is what we shall give you”.¹⁵⁶

In “purely a decision of procedure” Maudling determined the timetable for the meeting of the Committee on the Bill of Rights and also determined that the programme for the other committees would be guided by the Steering Committee after the Committee on Structure of Government had made progress. Kenyatta accepted Maudling’s decision, while Ngala did so reluctantly. He accepted only when he was convinced that Maudling had not leaned on any point of view and that it was best for the conference.¹⁵⁷

¹⁵⁶ John Keen, Personal Interview, 17 March 2011.

¹⁵⁷ Record of the Fifteenth Meetings, K.C.C (62) 15th Meeting, KNA/GO/1/1/26.

In addition to expressing his disappointment over the progress made thus far, Maudling issued a memorandum setting out the impression he had formed and giving directions into which the conference should proceed. The memorandum read in part:

I think it is fundamental that this conference will never succeed if we try to produce a constitution which will avoid any conceivable danger that may arise from the possible malevolence of any group or party... broadly the argument is between those who believe in a more centralised and those who believe in a less centralised form of government... it was the duty of those who stressed the need of strong central government to be prepared to concede the decentralisation of such functions of government as are not vital to the sound governing of a Kenyan nation, and it is the duty of those who propound regionalism to limit their claims for the devolution of powers to the minimum necessary to safeguard legitimate local interests from unfair neglect or oppression by the central government.¹⁵⁸

Both KANU and KADU reacted to the memorandum with KADU appearing to place more obstacles on agreement. One obstacle was based on the honesty and integrity of KANU's delegates insinuating that KANU's membership, which consisted mainly of the Gikuyu and Luo, had engaged in violence, terrorism and lawlessness. This was an indicator that the possibility of perverting the independence constitution was a reality and hence a likelihood of imposing a dictatorship of groups or person. An agreement could not therefore be reached without mutual trust. Another KADU obstacle was its obstinate view that a united Kenyan nation after independence was a myth. KADU encouraged Kenya's component parts to voluntarily come together to make a united Kenya a reality. It also did not envisage an independent judiciary being preserved in a unitary system of government with a non-party executive machine. Finally, it envisaged other governing authorities being larger than the existing local government authorities. With these points of departure, KADU stalled movement towards agreement.¹⁵⁹ KANU was in general agreement with Maudling's

¹⁵⁸ "Memorandum by the Secretary of State," KCC (62) 19, KNA, MAC/KEN/45/2.

¹⁵⁹ "KADU's Initial Reaction to the Secretary of State's Paper," 13 March 1962, KNA: MAC/KEN/45/2.

memorandum and intentions, especially on the Bill of Rights and the independence of the judiciary. The party noted that most of his proposals were in conformity with KANU's concept of central government, which would be responsible for the major functions. It also proposed to accept a second chamber in the legislature as an added safeguard whose powers would be established in the constitution.¹⁶⁰

When the conference re-convened for its sixteenth plenary meeting on Monday, 19 March, 1962, it was to consider the Report of the Working Party, which had been commissioned by the Steering Committee and which generally summarised what had been agreed on or not agreed on. The summary of the report is contained in Appendix 5. Kenya's Minister for Defence and Internal Security, Sir Anthony Swann, attended on the side of Kenya Government as an adviser. Maudling invited the parties to comment on the report as a fair "epitome of the Working Party's deliberations". Marie Seroney (KADU), while agreeing that it was fair, remarked that KADU could only take it as "an accurate record of the Working Committee meeting".¹⁶¹ Kenyatta (KANU) generally agreed with the report, but observed that it did not reflect KANU's views accurately in all respects. He said that the party would present a short paper on points of disagreement. Welwood (KC) agreed that it was fair, but said it revealed "more disagreement than agreement".¹⁶² This was an indication that Maudling had not derived comprehensive agreements before issuing the report.

Maudling expressed more disappointment, observing that after five weeks of discussion there was "still more disagreement recorded than agreement".¹⁶³ He reminded the delegates that the aim of the conference was to reach agreement between the parties and said that he would place his views before the conference on Wednesday, 21 March.¹⁶⁴ Musa Amalemba

¹⁶⁰ "Observations on the Statement by the Secretary of State," 13 March 1962, KNA: MAC/KEN/45/2.

¹⁶¹ Record of the Sixteenth Meetings, K.C.C (62) 16th Meeting, KNA:MAC/KEN/45/3.

¹⁶² Ibid.

¹⁶³ Ibid

¹⁶⁴ Ibid.

(KADU) was apprehensive about Maudling giving his proposals to the plenary before being considered by the respective party leaders as this would result in more disagreement.¹⁶⁵ Nevertheless, Maudling went ahead to issue his statement during the eighteenth plenary meeting in the form of a memorandum in which he reminded the delegates that the conference was only advisory, and said that he had restrained himself from expressing his opinion on issues under disagreement. He re-emphasised that the object of the expected constitution was “a united Kenyan nation able to make progress – economic and social – in the modern world” after which he adjourned the meetings to consider the proposals contained in his statements.¹⁶⁶

On the progress made so far, Kenyatta (KANU) said that the conference had failed to pay sufficient attention to what the people of Kenya wanted freedom. He reiterated that “people wanted to know when independence would be obtained”.¹⁶⁷ Maudling however maintained that people did not just want freedom, but “freedom coupled with prosperity and stability” as it would be “a betrayal of faith if freedom was granted in [unstable] conditions”.¹⁶⁸ Kenyatta also observed that KADU had not budged “an inch in its demand for regionalism, while KANU had given in on various points to facilitate discussions”.¹⁶⁹ He felt that agreement should be reached at the conference failure to which an election should be called on the basis of federalism and unitary government to break the stalemate. However, Odinga took issue with Maudling’s style of leading the negotiations arguing that, left alone, “KANU and KADU could easily have reached agreement”.¹⁷⁰ Eric Khasakhala (KADU) said that if agreement could not be reached then “it was desirable to keep the areas which were

¹⁶⁵ Ibid.

¹⁶⁶ Record of the Eighteenth Meeting, KCC (62) 18th Meeting, KNA: GO/1/1/13.

¹⁶⁷ Record of the Sixteenth Meetings, K.C.C (62) 16th Meeting, KNA:MAC/KEN/45/3.

¹⁶⁸ Ibid.

¹⁶⁹ Ibid.

¹⁷⁰ Ibid.

peaceful separate from areas where murder and gangsterism were rife” and John Konchella (KADU) said that “the only alternative to federalism would be partitioning” of the country.¹⁷¹

During the seventeenth plenary meeting Sir Anthony Swann was invited to give an overview of the security situation in Kenya with the aim of impressing on the delegates the precarious situation in the country. He impressed on the delegates that “all sections of the population were waiting eagerly for the results of the conference”.¹⁷² Michael Blundell (KADU) who was also Minister for Agriculture, Animal Husbandry and Water Resources, informed the conference that the government had negotiated for the settlement of 21,000 Gikuyu families in Tanganyika with 1,000 already settled.¹⁷³ This however neither deterred KANU from pursuing its aim nor Maudling having his statement discussed. KANU worked against a deadlock, as it could widen the rift between the parties, which could result to “disorder and chaos”.¹⁷⁴

The conference took another sixteen-day break to reconvene on the morning of Friday, 6 April, 1962, for the nineteenth plenary meeting, which considered the signing of the Framework of the Kenya Constitution and the Report of the Conference. During the break, committee and informal meetings were held to reach agreement on the form of the envisaged constitution, which was circulated a day earlier.¹⁷⁵ The twentieth plenary meeting was convened the same day in the afternoon to mark the closing of the conference in which the respective party leaders were invited to give their closing remarks.

4.6.2 Committee meetings

Committee meetings began under Maudling’s direction starting with the **Steering Committee**. Considered the driver of the conference, the committee comprised seven

¹⁷¹ Record of the Seventeenth Meeting, K.C.C. (62) 17th Meeting, KNA: GO/1/1/13.

¹⁷² Ibid.

¹⁷³ Ibid.

¹⁷⁴ Ibid.

¹⁷⁵ K.C.C. (62) 45, 5 April 1962, KNA: MAC/KEN/45/3.

members; there were two members each from KANU and KADU, and one each from KC and MUF. Jaramogi Oginga Odinga and Bruce Mackenzie, and Daniel arap Moi and Wilfrid Havelock were nominated by KANU and KADU respectively. It held its meetings in the Secretary of State's Room at Lancaster House. Others who attended the meetings were the advisers, the Governor of Kenya, the Press Officer (R.W. Francis) and the secretariat as the Secretary of State determined.

The committee's first meeting was in the afternoon of Friday, 23 February, 1962. The Committee held that the most important committee was the one that dealt with the nature and composition of "other governing authorities".¹⁷⁶ It agreed on the formation of four committees whose composition was to be kept as small as possible in order to "secure rapid progress", and to meet daily to determine arrangements for the future business of the conference and to approve conference press communiqués.¹⁷⁷ Its first report to the conference was during the fourteenth plenary session on 26 February, 1962, regarding the formation of committees.

Stalemate threatened progress in this committee as KADU continued to fuel disagreements over procedure. The proposal that the Committees on the Structure of Government and the Bill of Rights should meet was not agreed upon, prompting Maudling to co-opt Ngala and Kenyatta in the Committee's fourth meeting.¹⁷⁸ Ngala was obstinate that the issue of "the structure of government" should be resolved first", while Kenyatta "saw no reason" why the committees should not proceed with their work and went on to invite Maudling to determine "what he considered to be the proper procedure" in case the stalemate

¹⁷⁶ Record of the First Meeting of the Steering Committee, K.C.C. (SC) (62) 1st Meeting, KNA: MAC/KEN/45/4.

¹⁷⁷ Ibid.

¹⁷⁸ Report of the Fourth Meeting of the Steering Committee, K.C.C. (SC) (62) 4th Meeting, KNA: MAC/KEN/45/4.

continued.¹⁷⁹ Maudling came up with two possible courses of action. One was for the two parties agree between themselves on the procedure, and two, as the chairman of the conference, he could give a ruling, which had to be accepted by everyone. In the event the ruling was not accepted, then “the conference could make no further progress”.¹⁸⁰ Ngala said that KADU was not prepared to accept the chairman’s ruling, but Kenyatta said KANU would accept.¹⁸¹ Maudling gave both parties an opportunity to reach agreement on procedure. Despite the intervention of KC, KANU and KADU failed to reach agreement. Hugh Fraser, Parliamentary Under-secretary in the Colonial Office, impressed upon the two parties that the breaking down of the conference on “a narrow procedural issue” could create a bad impression of the “capacity of Kenya for self-government”.¹⁸² It was only after the sixth meeting that the Committee reported the start of the meetings of the Committee on the Structure of Government.¹⁸³

In addition to organising meetings of committees and plenary sessions, the Steering Committee closely monitored progress of all meetings and gave directions with regard to agenda and made arrangement for delegations at the conference. It determined the timing of the meetings and the composition of the group to meet with the delegations from the Northern Frontier District and the Maasai.¹⁸⁴ It also determined the timing and composition of the KADU and KANU representatives to the Conference on the Coastal Strip.¹⁸⁵ When

¹⁷⁹ Ibid.

¹⁸⁰ Ibid.

¹⁸¹ Ibid.

¹⁸² Record of the Fifth Meeting of the Steering Committee, K.C.C. (SC) (62) 5th Meeting, KNA: MAC/KEN/45/4.

¹⁸³ Record of the Sixth Meeting of the Steering Committee, K.C.C. (SC) 6th Meeting, KNA: MAC/KEN/45/4.

¹⁸⁴ Record of the Eight Meeting of the Steering Committee, K.C.C. (SC) (62) 8th Meeting, KNA: MAC/KEN/45/4.

¹⁸⁵ Record of the Eleventh Meeting of the Steering Committee, K.C.C. (SC) (62) 11th Meeting, KNA: MAC/KEN/45/4.

deadlock threatened progress, the committee proposed the formation of a small informal working party “to discuss the main problems before the conference”.¹⁸⁶

The Committee held a total of twenty-two (22) meetings with the last meeting being on the evening of Thursday, 22 March, 1962. A proposed meeting the following Monday, 26 March, 1962, did not materialise, which indicates the intensity of the informal discussions and the increasing importance of the Working Party, as the Secretary of State adopted a more direct and informal strategy to secure agreement on the constitution.

The subject of “governing authorities” was considered the most important yet controversial at the conference. The **Committee on the Structure of Government** was set up to “... consider and report to the conference on the nature, composition and powers of governing authorities”.¹⁸⁷ It was composed of a total of 29 (twenty-nine) members consisting of 12 (twelve) members each from KADU and KANU, 2 (two) from KC, 1 (one) from the Cross Benchers and 1 (one) from MUF as shown in Appendix 5.5b. The parties were allowed to bring in their advisers, which included officials from the Colonial Office, the constitutional advisers, and advisers from the Kenya Government. The Committee was chaired by the Secretary of State.

In its first meeting on the afternoon of Wednesday, 28 February, 1962, chaired by Lord Perth, the Committee considered a comparative analysis of KANU’s and KADU’s proposals on the power of the authorities as had been circulated by the Secretariat.¹⁸⁸ Lord Perth made it clear that the proposals were neither the committee’s paper nor the agenda of the meeting and proposed that discussion falls under two parts, namely legislation and administration. Ngala objected to the proposal and said the committee should follow the order as laid down

¹⁸⁶ Record of the Fifteenth Meeting of the Steering Committee, K.C.C. (SC)(62) 15th Meeting, KNA: MAC/KEN/45/4.

¹⁸⁷ “Composition of the Committee on the Structure of Government”, K.C.C. (SG)(62)1, 27 February 1962, KNA: MAC/KEN/46/1.

¹⁸⁸ “The power of the authorities”, K.C.C. (SG) (62)3, KNA: MAC/KEN/43/1.

in the terms of reference – “nature, composition and powers”. The ensuing disagreement on the agenda created a possible deadlock.¹⁸⁹ Lord Perth asked the Secretariat to prepare a list of “powers to be vested in the local government” for consideration in the following meeting.¹⁹⁰

Maudling took over the chair in the second meeting and opened discussions between KANU and KADU on subjects that could be divided between the central and local authorities, beginning with education.¹⁹¹ The discussions were inconclusive with KADU in disagreement over KANU’s proposed central agency to deal with education as it would sweep away any safeguards.¹⁹² KADU still insisted that the Committee should first decide on the fundamental issue of the structure of government with Ngala criticising the manner in which the conference was being conducted terming it “one of the weaknesses of the conference” where Maudling constantly embarked on the subject of the structure of government only to move away to something else.¹⁹³ He said that further discussion or work of the committee would depend on the decision of the Steering Committee, which prompted the meeting to adjourn.¹⁹⁴

The Steering Committee determined that the next agenda for the Committee on the Structure of Government would be “the number of governing authorities; the areas they cover, the legislative powers (entrenched) and relations of the authorities with the central government”.¹⁹⁵ KADU subsequently circulated a map showing the boundaries of the six regions in its proposal based on population (people) that could easily live together to avoid strife, and hence reduce cost of maintaining law and order, and regions with equal population

¹⁸⁹ Record of the First Meeting of the Committee on the Structure of Government, K.C.C. (SG)(62) 1st Meeting, KNA:MAC/KEN/46/1.

¹⁹⁰ Ibid.

¹⁹¹ Record of the Second Meeting of the Committee on the Structure of Government, K.C.C. (SG)(62) 2nd Meeting, KNA:MAC/KEN/46/1.

¹⁹² Ibid.

¹⁹³ Record of the Fourth Meeting of the Committee on the Structure of Government, K.C.C. (SG)(62) 4th Meeting, KNA:MAC/KEN/46/1.

¹⁹⁴ Ibid.

¹⁹⁵ Record of the Eight Meeting of the Steering Committee, K.C.C. (SC) (62) 8th Meeting, KNA:MAC/KEN/45/4.

and wealth. The six regions were: Coastal with Mombasa as the proposed headquarters; Central with Kitui as the proposed headquarters; Kikuyu with Fort Hall or Nyeri as the proposed headquarters; Middle with Nakuru as the proposed headquarters; Western with Kitale as the proposed headquarters; and, Nyanza with Kisumu as the proposed headquarters. The federal capital was proposed as Nairobi.¹⁹⁶

Kenyatta disagreed with KADU's proposed boundaries, instead preferring the existing provincial boundaries. He stated that "the Kikuyu and Luo would not accept to be 'bottled up in small areas'", and observed that the boundaries would act "as a device to entrench European settlement".¹⁹⁷ Odinga (KANU) observed the inconsistency in KADU's proposals and criticised it for accepting a unitary system of government at the regional level, but not at the centre, which implied that its interests were not decentralisation or satisfying local minority fears.¹⁹⁸

Relationships between the federal government and the regional governments were explored in the committee based on KADU's paper.¹⁹⁹ Issues of medical and health services, public service, loan facilities and economic planning were used to evaluate regionalism, and the possibilities of amalgamation and of leaving the federation were discussed. Other issues discussed included legislation, especially uniformity of laws and their application, such as in cases where one region passed laws that made something an offence while it was not in another.²⁰⁰

The Secretary of State guided the committee in the discussion on unicameral or bicameral legislature, and the composition and powers of the executive. Owing to the

¹⁹⁶ K.C.C. (SG)(62) 6, KNA: MAC/KEN/43/1.

¹⁹⁷ Record of the Sixth Meeting of the Committee on the Structure of Government, K.C.C. (SG)(62) 6th Meeting, KNA:MAC/KEN/46/1.

¹⁹⁸ Record of the Fifth Meeting of the Committee on the Structure of Government, K.C.C. (SG)(62) 5th Meeting, KNA:MAC/KEN/46/1.

¹⁹⁹ K.C.C (62)16, KNA: MAC/KEN/43/1.

²⁰⁰ Record of the Sixth Meeting of the Committee on the Structure of Government, K.C.C. (SG)(62) 6th Meeting, KNA:MAC/KEN/46/1.

divisions between KANU and KADU, Maudling formed two sub-committees from the Committee on the Structure of Government to reach agreement and make recommendations on the number, size and powers on the governing authorities, and on whether the central government should be unicameral and bicameral, as well as on the nature of the executive.²⁰¹ The resulting committees were Sub-committee on Central Government and Sub-committee on Governing Authorities respectively.

The **Sub-committee on Central Government** held four meetings. Its terms of reference were: “To consider and make recommendation to the Committee [on the Structure of Government] on whether the central legislature should be unicameral or bicameral, and on the executive”.²⁰² It consisted of 13 (thirteen) members 5 (five) each from KADU and KANU, 1 (one) from KC and 1 (one) from MUF. The sub-committee was chaired by Sir Hilton Poynton, Permanent Under-Secretary of State for the Colonies.

Poynton directed the sub-committee to answer the following questions: Should the central government be unicameral or bicameral? What could be achieved by a second chamber which was not gained by a single chamber?²⁰³ Thereafter, he suggested a discussion on the relationship between the proposed Lower House and the Upper House of the Central Government.²⁰⁴ Discussion produced no agreement prompting Lord Perth to chair the third meeting and to guide discussion by urging delegates to look at the second chamber as an “integral part of the central government”.²⁰⁵ A deadlock was reached in respect of how the financial measures were to be passed through a bicameral legislature. Poynton determined the way forward by suggesting a paper be prepared based on the committee’s discussions, which

²⁰¹ Report of the Tenth Meeting of the Steering Committee, K.C.C. (SC) (62) 10th Meeting, KNA: MAC/KEN/45/4.

²⁰² K.C.C (SG)(62) 10th Meeting, KNA: MAC/KEN/45/4.

²⁰³ Record of the First Meeting of the Sub-committee on the Central Government, K.C.C. (SG)(CG)(62) 1st Meeting, KNA: MAC/KEN/46/2.

²⁰⁴ Record of the Second Meeting of the Sub-committee on the Central Government, K.C.C. (SG)(CG)(62) 2nd Meeting, KNA: MAC/KEN/46/2.

²⁰⁵ Record of the Third Meeting of the Sub-committee on the Central Government, K.C.C. (SG)(CG)(62) 3rd Meeting, KNA: MAC/KEN/46/2.

would form a basis for the analysis with a view to finding a way of bridging the gaps between the parties and in line with the Secretary of State's memorandum.²⁰⁶ No further sub-committee meetings were held.

The **Sub-committee on Governing Authorities** held three meetings. Its terms of reference were: "To consider and make recommendations to the committee on the numbers, size, composition and powers of governing authorities".²⁰⁷ It consisted of 14 (fourteen) members, 5 (five) representatives each from KADU and KANU, 1 (one) from KC and 1 (one) from MUF. It was chaired by Sir John Martin, Deputy Under-Secretary of State for the Colonies. Sir Martin guided the discussion in the Sub-committee by asking KANU to comment on two criticisms; one, that the districts that they had proposed "were too small and too weak to carry out their functions effectively without the guidance and control from the centre", and two that the districts corresponded with tribal areas such that tribal jealousies would be encouraged and a parochial atmosphere would be created".²⁰⁸ KADU was also required to comment on why it had departed sharply from the provincial boundaries when they were coming up with their regions.²⁰⁹

During the discussion, Sir Ralph Hone, the Constitutional Adviser, isolated areas of convergence, the most visible one being that local government authorities would be given some powers.²¹⁰ Sir Martin asked him to prepare a paper setting out of his proposals for the Sub-committee to consider. Sir Hone's paper, titled "Constitutional Provisions to Confer Powers on Local Government Authorities", was discussed during the third meeting of the sub-committee. Ngala termed the paper as "basically unacceptable" and could not even form

²⁰⁶ Record of the Fourth Meeting of the Sub-committee on the Central Government, K.C.C. (SG)(CG)(62) 4th Meeting, KNA: MAC/KEN/46/2; K.C.C. (62) 19, 12th March 1962, KNA: MAC/KEN/45/4.

²⁰⁷ K.C.C. (SG) (GA) (62) 1, 7th March 1962, KNA: MAC/KEN/45/4; K.C.C (SG)(62) 10th Meeting, KNA: MAC/KEN/45/4..

²⁰⁸ Record of the First Meeting of the Sub-committee on Governing Authorities, K.C.C. (SG)(GA)(62) 1st Meeting, KNA: MAC/KEN/46/3.

²⁰⁹ Ibid.

²¹⁰ Record of the Second Meeting of the Sub-committee on Governing Authorities, K.C.C. (SG)(GA)(62) 2nd Meeting, KNA: MAC/KEN/46/3.

a basis for discussion, as the fundamental tenets of the party's proposals "had not been appreciated".²¹¹ He said that he preferred discussion to centre on the Secretary of State's memorandum, but Sir Martin reminded him that Sir Hone's proposal were not inconsistent with those of the Secretary of State.²¹² KANU's and KC's reaction to Sir Hone's paper was more positive, with KANU appreciating both memorandums, but regretted that KADU was placing obstacles on the way and appreciated KC's willingness to cooperate. KANU was ready to cooperate in a bid to find "a way out" in cases where the conference was threatened with a procedural deadlock. KANU also observed that KADU was not supplying "all the promised information" and it invited the Secretary of State to decide how best "KADU could be made to cooperate more fully".²¹³ Upon Sir Martin presenting a report on the proceedings to the Secretary of State no further meetings of the sub-committee were convened.²¹⁴

The **Committee on Bill Rights** held a total of five meetings with Sir John Martin chairing.²¹⁵ The terms of reference for the committee were: "To consider and report to the conference on the provisions to be included in a Bill of Rights". The Committee was made up of 14 (fourteen) members comprising 5 (five) members with 1 (one) representatives each from KADU and KANU, 1 representative from the Kenya Government, 1 representative from KC, and 1 representative from the Cross Benchers. MUF had no representative.

Prior to the Committee's meetings, the Secretariat prepared and circulated a factual memorandum providing background information.²¹⁶ Copies of the memorandum were produced for members of the committee only, but other delegates could access it in the library. The memorandum attached sample (model) Bills of Rights from Uganda

²¹¹ Record of the Third Meeting of the Sub-committee on Governing Authorities, K.C.C. (SG)(GA)(62) 3rd Meeting, KNA: MAC/KEN/46/3.

²¹² "Memorandum by the Secretary of State", K.C.C. (62)19, KNA: MAC/KEN/45/4.

²¹³ "Observations on Conference Papers: Secretary of State's and Hone's", KNA: MAC/KEN/46/3.

²¹⁴ Record of the Third Meeting of the Sub-committee on Governing Authorities, K.C.C. (SG)(GA)(62) 3rd Meeting, KNA: MAC/KEN/46/3.

²¹⁵ K.C.C. (BR) (62) 1, 28 February, 1962, MAC/KEN/46/5.

²¹⁶ "Bill of Rights", K.C.C. (BR) (62) 2, MAC/KEN/46/5.

(Constitution) Orders in Council, 1962, and Sierra Leone (Constitution) Order in Council, 1961. The committee however noted that the existing Bill of Rights, as published in the Kenya (Constitution) (Amendment No.2) Order in Council, 1960, had been modelled along the chapter on the fundamental rights of the Constitution of the Federation of Nigeria, but provision had been adjusted to reflect Kenya's special circumstances.

All the political groups were agreed that it was necessary to entrench a Bill of Rights in the constitution. The main task of the committee was therefore to make recommendations for substantive provisions to be included in the Bill of Rights and provisions for the enforcement of those rights. However, part of enforcement provisions could not be dealt with until the Committee on Structure of Government had made progress.²¹⁷ The Secretariat was requested to prepare another paper describing the human rights provisions in various constitutions, especially the Uganda Bill of Rights as circumstances were likely to be similar to those of Kenya. The provisions would have reference to the "present Kenya's Bill of Rights, the Sierra Leonean Bill of Rights and the proposed KANU Bill of Rights."²¹⁸ Discussions proceeded by examining the Uganda Bill of Rights from which some recommendations were made for modification with emphasis on the provisions on protection. In the final meeting, the Draft Report was considered and approved subject to certain textual amendments.²¹⁹ There was agreement in the committee to submit the report to the conference for approval.²²⁰

The **Committee on the Judiciary and Public Service** held two meetings only. Its terms of reference were: "To consider and report to the conference on the judiciary and public service". The Committee was composed of 16 (sixteen) members comprising 6 (six) representatives each from KADU and KANU, 1 representative from the Kenya Government,

²¹⁷ Record of the First Meeting of the Committee on a Bill of Rights, K.C.C. (BR) (62) 1st Meeting, KNA: MAC/KEN/46/5.

²¹⁸ Ibid.

²¹⁹ Draft Report of the Committee on the Bill of Rights, K.C.C. (BR) (62) 5, 29 March 1962, MAC/KEN/46/5.

²²⁰ Record of the Fifth Meeting of the Committee on a Bill of Rights, K.C.C. (BR) (62) 5th Meeting, KNA: MAC/KEN/46/5.

1 representative from KC, and 1 representative from the Cross Benchers (MUF had no representative). It was chaired by Sir Hilton Poynton. In its first Meeting held on Wednesday, 7 March, 1962, Poynton proposed that the committee discusses the question of the judiciary first, but the KADU said it did not “feel able to discuss either the judiciary or the public service until, in their view, substantial progress had been made by the Committee on the Structure of Government” and as such there would be no progress unless its federal principle was accepted.²²¹ KADU representatives said that they had attended the meeting merely to inform the committee of their stand, a mandate they could not depart from.²²² KANU’s representatives were opposed to KADU’s stand and maintained that the decision of whether or not Kenya should have a unitary or federal system of government could not prevent discussion on the judiciary.²²³ Poynton did not support adjournment as requested by KADU went ahead with discussions “whether or not KADU participated”.²²⁴ He however reported the development to Maudling and to seek further guidance from the Steering Committee.

A second meeting was convened the following day as KADU had indicated that it was prepared to discuss “certain aspects of the judiciary”.²²⁵ Discussion was held on the proposals by KADU and KANU on the qualification of the Supreme Court judges, a discussion that was initiated by Mr McPetrie, an adviser to the Secretary of State. Agreement was reached on the modalities of computing the years of qualification and on the qualification of judges from other Commonwealth countries, details of which would be included in the report.²²⁶ During

²²¹ Record of the First Meeting of the Committee on the Judiciary and Public Service, K.C.C. (JP) (62) 1st Meeting, KNA: MAC/KEN/46/6.

²²² Ibid.

²²³ Ibid.

²²⁴ Ibid.

²²⁵ Record of the Second Meeting of the Committee on the Judiciary and Public Service, K.C.C. (JP) (62) 2nd Meeting, KNA: MAC/KEN/46/6.

²²⁶ Ibid.

the discussion, a memorandum titled, “Independence of Judiciary” was circulated to members.²²⁷ No further committee meetings were convened.

The **Committee on Land and Citizenship** held a singular meeting. Its terms of reference were: “To consider and report to the conference on questions relating to land and citizenship”. The Committee was made up of 17 (seventeen) members comprising 6 (six) each from KADU and KANU, 1 representative from the Kenya Government, 2 representatives from KC, and 1 representative from the Cross Benchers. MUF had no representative. It was chaired by the Secretary of State. Its first meeting was on Wednesday, 7 March, 1962, chaired by Sir John Martin, whose purpose was to “decide on what materials to be prepared for future consideration” as guided by the Steering Committee.²²⁸ Sir Martin wanted ‘land’ and ‘citizenship’ to be considered separately, although they had been linked in the conference proposals. During the meeting, KADU argued that the two issues were linked to the structure of government; therefore, it could only discuss them substantively when the Committee on Structure of Government had made progress. On its part, KANU held that it was possible for the committee to commence work without waiting for the outcome of the Committee on Structure of Government, especially with regard to considering the documentation to be used.

Having failed to agree on procedure, the Secretariat was tasked to prepare and circulate the relevant material for the committee to consider, which included legislation, background information, commission reports, maps, royal instructions, model constitutions, and details on Commonwealth citizenship. Sir Michael Blundell (KADU) offered to give a background paper on European settlement schemes after World War II. Accordingly, the Secretariat

²²⁷ “Independence of Judiciary”, MAC/KEN/46/6.

²²⁸ Record of the First Meeting of the Committee on Land and Citizenship, K.C.C (LC)(62) 1st Meeting, KNA:MAC/KEN/46/7

circulated the following memorandums: “Commonwealth Citizenship”,²²⁹ “Zanzibar Nationality”,²³⁰ and, “Types of Land Tenure”.²³¹ Whereas future meetings of the committee would be decided by the Steering Committee, no further meetings were convened, implying that the outstanding issues were decided in informal discussions.

The **Working Party**, an informal group set up by the Steering Committee during its fifteenth meeting, consisted of the leaders of the main parties and their advisers. It was chaired by the Secretary of State. The purpose of the group was to discuss the main problems that came before the conference.²³² The working party did not keep a formal record of its meetings, but its deliberations were reflected in memorandums and statements. In its first meeting on Wednesday, 14 March, 1962, it discussed areas and powers of other governing authorities. In another meeting on Friday, 16 March, 1962, it discussed the memorandum by the Secretary of State alongside the comments made by KADU and observations by KANU.²³³ From these meetings was derived the report that mapped out areas of agreement and disagreement.²³⁴ A meeting of the Working Party summoned on 29 March, 1962, considered the issue of other governing authorities further. Another meeting of 31st March, 1962, considered responsibility for law and order.²³⁵ The Working Party was also responsible for the final touches on the conference report and the constitutional framework. It was the tool that Maudling used to achieve a measure of agreement when there appeared to be a deadlock.

²²⁹ K.C.C. (LC) (62)2, 12th March 1962, KNA: MAC/KEN/46/7.

²³⁰ K.C.C. (LC) (62) 3, 14th March 1962, KNA: MAC/KEN/46/7.

²³¹ K.C.C. (LC) (62) 4, 15th March, 1962, KNA: MAC/KEN/46/7.

²³² Record of the Fifteenth Meeting of the Steering Committee, K.C.C. (SC)(62) 15th Meeting, KNA: MAC/KEN/45/4

²³³ K.C.C. (62) 19, 12th March 1962, KNA: MAC/KEN/45/3; K.C.C. (62) 22, KNA: MAC/KEN/45/3; K.C.C. (62) 23, KNA: MAC/KEN/45/3.

²³⁴ K.C.C. (62) 28, 18th March, 1962, KNA: MAC/KEN/45/3.

²³⁵ See Colonial Office press communiqué of 31 March 1962.

4.6.3 Meetings held on the side of the conference

Maudling also convened meetings for three delegations outside the main conference to discuss outstanding issues that were not in the agenda, but which had implications on independence. These delegations were for the Kenya Coastal Strip, the Maasai and the Northern Frontier District. Maudling determined the composition of delegates and timing of the meetings through the Steering Committee.

The **Kenya Coastal Strip Conference** had four meetings. The first meeting was held in the afternoon of Thursday, 8 March, 1962, in the Long Gallery of Lancaster House. The aim of the conference was “to consider whether any changes that ought to be made in the treaty of 1895 under which the Coastal Strip came to be administered by Her Majesty’s Government under certain conditions”.²³⁶ Plenary sessions took place in private in the Music Room. Participants at the conference were drawn from all those who had a clear interest in the arrangement arising from the 1895 Treaty and included representatives from the government and opposition in Zanzibar, ministers and officials of the Sultan of Zanzibar, the Governor of Kenya and his officials, representatives of the Government and opposition from Kenya, observers from Uganda, representatives of people who lived at the Coastal Strip, and advisers of all the groups. The Sultan of Zanzibar was in London at the time, but he sent representation.²³⁷ Accommodation and travel arrangements for the delegates were organised by the Kenya Office and Colonial Office for delegations from Kenya and Zanzibar respectively. Requisite logistical and administrative facilities were made available for the delegates at the Lancaster House, which were similar to those of the Kenya Constitutional Conference.²³⁸

²³⁶ “Statement of the Secretary of State”, Record of the First Meeting of the Kenya Coastal Strip Conference, C.S.C. (62) 1st Meeting, K.N.A: GO/1/1/10.

²³⁷ Ibid.

²³⁸ “Administrative Arrangements” C.S.C (62)1 16th March 1962, KNA: GO/1/1/10.

The first session was open to the television and press correspondents, and was devoted to introductory speeches by the leaders of the interested parties. Maudling introduced the conference and said that it had been occasioned by the constitutional developments in Kenya. He described the conference as advisory and one that was expected to produce the “best possible advice” for the Sultan of Zanzibar and Her Majesty’s Government and said that Sir James Robertson’s report would form a key reference to the consultation at the conference.²³⁹

The Colonial government and the Sultan of Zanzibar had jointly constituted a commission under Sir James Robertson, former Governor-General of Nigeria, in October 1961 to seek views on the future of the Coastal Strip, which issued its report in December 1961.²⁴⁰ The commission presented five key recommendations, which were ratified by the British Parliament. First, was the incorporation of Muslim law, religion and education in the Kenya constitution, and this became the basis of establishing Kadhi’s courts. Second, was the integration of the Coastal Strip with Kenya before independence and the abrogation of the 1895 agreement. Third, was the retention of Arab administrative officers (the Liwalis and Mudirs) at the coast to ensure continued observance of Muslim traditions. Fourth, were the acknowledgement and guaranteeing of land titles to be safeguarded by creating Coast Land Board with executive and advisory roles to handle land disputes and disposal, and transfer of titles. Fifth, was the payment of compensation of £675,000 by the British government to the Sultan of Zanzibar for agreeing to forfeit his claim over the Coastal Strip and a further £400,000 for the £200,000, plus interest loaned by the sultan after the Germans bought their section of the Coastal Strip from the Sultan but the money was banked in London.²⁴¹ Omar

²³⁹ Record of the First Meeting of the Kenya Coastal Strip Conference, C.S.C. (62) 1st Meeting, K.N.A: GO/1/1/10.

²⁴⁰ James W. Robertson, *The Kenya Coastal Strip: Report of the Commissioner [Sir James W. Robertson, appointed jointly by the Sultan of Zanzibar and the Secretary of the State for the Colonies]* (London: HMSO, 1961).

²⁴¹ John M. Mwaruvie, “The Ten Miles Coastal Strip: An Examination of the Intricate Nature of Land Question at Kenyan Coast”, *International Journal of Humanities and Social Science*, Vol. 1 No. 20 (December 2011), p. 180.

Basaddiq (MUF) was opposed to strict adherence to the report as it was unclear what view would prevail if the advice given at the conference was diametrically opposed to Sir Robertson's recommendations.²⁴² However, the Secretary of State was insistent that delegates confine themselves to recommendations in the report, particularly in relation to the problems that were before the Kenya Constitutional Conference and the upcoming conference for Zanzibar in their aim of self-government.²⁴³

The predominant attitude towards the future of the Coastal Strip was in agreement with the Robertson's recommendations. KANU and KADU saw it as an integral part of Kenya with Kenyatta saying that it ought to be logically regarded as a geographical and historical unit of Kenya; otherwise removing it would encroach seriously in the aspirations of a united nation.²⁴⁴ Ngala stressed KADU's position that the coast should be joined together in one region.²⁴⁵ The Zanzibar delegation, both government and opposition, did not voice any radical opinion, but appealed for an objective discussion. They had attended the conference with an open mind and with a view to reaching a "successful conclusion".²⁴⁶ However, MUF saw the Coastal Strip as a separate entity, with Omar Basaddiq calling for the abrogation of the 1895 treaty and reverting the territory to "the rightful owners" when the British left.²⁴⁷ According to him the Coastal Strip was not part of Kenya.²⁴⁸

Maudling steered the discussion away from such issues as who were the rightful owners of the "Coastal Strip" and the nature of the authority to whom the Sultan of Zanzibar would

²⁴² Record of the Second Meeting of the Kenya Coastal Strip Conference, C.S.C. (62) 2nd Meeting, K.N.A: GO/1/1/10.

²⁴³ Ibid.

²⁴⁴ Record of the First Meeting of the Kenya Coastal Strip Conference, C.S.C. (62) 1st Meeting, K.N.A: GO/1/1/10.

²⁴⁵ Record of the First Meeting of the Kenya Coastal Strip Conference, C.S.C. (62) 1st Meeting, K.N.A: GO/1/1/10.

²⁴⁶ Ibid.

²⁴⁷ Record of the Second Meeting of the Kenya Coastal Strip Conference, C.S.C. (62) 2nd Meeting, K.N.A: GO/1/1/10.

²⁴⁸ Record of the First Meeting of the Kenya Coastal Strip Conference, C.S.C. (62) 1st Meeting, K.N.A: GO/1/1/10.

be expected to surrender his sovereignty to safeguarding “the position of the minorities”. This safeguarding would go beyond the Robertson Report, given that both the British government and the Sultan had “real concern” for the people of the Coastal Strip.²⁴⁹ During the third meeting held on 12 March, 1962, Dingle Foot, the Sultan’s Legal Adviser, stated the safeguards that would satisfy the Sultan in respect of his subjects, which involved institutions and way of life. These were “a code of human rights, the protection of the Muslim religion and of Sharia law, and the continued employment of Arab Administrative officers, the preservation of land titles, with setting up of a Coast Land Board and provision of Arab education”.²⁵⁰ Maudling adjourned the meetings pending substantial progress in the Kenya Constitutional Conference, especially in view of the safeguards envisaged in the constitutional framework. The Secretariat circulated petitions by the Shungwaya Freedom Party and the Kenya African Muslim Conference for perusal ahead of the next meeting. Both parties, which articulated views of non-Arabs, opposed autonomy.²⁵¹ They expressed fears over the future of the residents of the Coastal Strip and sought expanded political protection.²⁵²

The final meeting of the Coastal Strip was held on Saturday, 7 April, 1962, after the conclusion of the Kenya Constitutional Conference chaired by Lord Perth. He wanted the delegates to look at the issue of the Coastal Strip in the light of the provisions on the Bill of Rights and on Regional authorities with the possibility of further guidance from the British government. Richard Cleansby (KADU), elected member for Mombasa East, wanted the wishes of all the people at the Coastal Strip sought, but Lord Perth said that the British government would not commit to a referendum, as it felt that the Robertson report had

²⁴⁹ Record of the Second Meeting of the Kenya Coastal Strip Conference, C.S.C. (62) 2nd Meeting, K.N.A: GO/1/1/10.

²⁵⁰ Record of the Third Meeting of the Kenya Coastal Strip Conference, C.S.C. (62) 3rd Meeting, K.N.A: GO/1/1/10.

²⁵¹ “Memorandum on the Coastal Strip”, C.S.C (62)8, 20th March 1962, KNA: GO/1/1/10.

²⁵² Thomas O. Eisemon, *Benefiting from Basic Education, School Quality and Functional Literacy in Kenya* (Oxford: Pergamon Press, 1988), p. 49.

collected adequate views.²⁵³ He was also in agreement with the common view that the “Framework of the Constitution of Kenya” provided satisfactory basis for safeguards, and that the future of the Coastal Strip would be decided in a consultation between the Sultan, the British government, and the Kenya government.²⁵⁴ It was on this basis that the final report on the Coastal Strip was approved.²⁵⁵

The conference with the **Maasai Delegation** comprised three meetings the first of which was held in the afternoon of Wednesday, 21 March, 1962. The Maasai had hoped to use the forum to address their land claim.²⁵⁶ A special representative group of the constitutional conference was constituted to receive the delegation whose composition consisted of 6 (six) representatives from KADU and KANU, and 1 (one) from KC. Cross Benchers and MUF were not represented. In the first meeting, a procedural hitch threatened to cause a stalemate when Justus ole Tipis protested the Secretary of State’s refusal to admit Paulo Rurumban, a nominated MLC, to the meeting maintaining that he was Samburu not Maasai, so that the Maasai land issue under discussion would be out of his scope. However, he admitted when Ngala and Kenyatta raised no objection to him attending and he was allowed in as an observer.²⁵⁷ Thereafter, delegates were invited to comment on Tipis’ “Memorandum on the Maasai Lands in Kenya” and John Keen’s “Memorandum on Maasai Treaties of 1904 and 1911”.²⁵⁸ While the Anglo-Maasai Treaty of 1904 removed the Maasai from “the whole of the Rift Valley” into two reserves north and south of the Uganda Railway line, “and away from any land that may be thrown open to European settlement”, the 1911

²⁵³ Record of the Final Meeting of the Kenya Coastal Strip Conference, C.S.C (62)4th Meeting, KNA: GO/1/1/12.

²⁵⁴ Ibid.

²⁵⁵ “Report of the Conference on the Kenya Coastal Strip”, C.S.C. (62)10, 6th April 1962, KNA: GO/1/1/12.

²⁵⁶ Ben Ole Koissaba, “A Case of Historical and Contemporary Injustices: A Memorandum by the Maa Civil Society Forum”, December, 2006, available at: <http://equalinrights.pbworks.com/f/Memo+to+SR.pdf>, Accessed on 15 October 2014.

²⁵⁷ Record of the First Meeting between the Maasai Delegation and a Representative Group of the Conference, K.C.C. (62) 36, 22nd March 1962, KNA:GO/1/1/7.

²⁵⁸ “Memorandum on Maasai Treaties of 1904 and 1911”, K.C.C. (62)39, 23rd March 1962, KNA:GO/1/1/7.

treaty removed the Maasai in the Northern Reserve to the Southern Reserve. In return, the British government reserved the area for the exclusive use of the Maasai tribe and provided an additional area of 3,100 square miles.²⁵⁹

Maasai's concerns were twofold. One, they had not received satisfactory assurances regarding the future of the areas guaranteed to them by the treaties. Secondly, certain lands formerly occupied by them were being alienated to people with no conceivable claim to the land. They held that "no African who was not a member of the Maasai should be resettled on lands which traditionally belonged to the Maasai".²⁶⁰ KADU's and KANU's attitudes were sympathetic towards these concerns, but KADU felt that the end of British rule did not qualify to end the tenure of "good farmers [such that they] would not be allowed to keep their land".²⁶¹ KANU held that the Maasai question was solely between two parties, the Maasai and the British government, and that its view on the "Maasai claims" was contained in its land policy, which the Maasai delegation found unsatisfactory. KC supported the honouring of the 1904 and 1911 agreements as Maasai land had contributed much to the country's progress.²⁶²

British government's reaction to the Maasai land question was communicated in the meeting by Hon. Hugh Fraser, Parliamentary Under-secretary of State for the Colonies. HMG regarded the 1904 and 1911 as binding and would honour their part of the obligation by securing for the Maasai the continuation of enjoying their right through appropriate provisions in the constitution, in particular through the Bill of Rights so that no compulsory acquisition of land would be done except for public purposes accompanied by full compensation, and by ensuring that transfer of land would be through the consent of the

²⁵⁹ "Agreement, dated 10th August, 1904, between His Majesty's Commissioner for the East Africa Protectorate and the Chiefs of the Masai Tribe", Annex, K.C.C. (62)39, 23rd March 1962, KNA:GO/1/1/7.

²⁶⁰ "Memorandum on Maasai Treaties of 1904 and 1911", K.C.C. (62)39, 23rd March 1962, KNA:GO/1/1/7.

²⁶¹ Record of the Second Meeting between the Maasai Delegation and a Representative Group of the Conference, K.C.C. (62) 36, 22nd March 1962, KNA:GO/1/1/7.

²⁶² Ibid.

Maasai themselves. This would ensure that the security of tenure gained from the agreements was preserved. HMG however objected to Maasai's claim of land outside their reserves; according to the agreements, they had surrendered "for all time" any claims to the land they might have had after they vacated. It also objected to claims on land occupied by the Samburu, Mukogodo and Njemps, as they fell outside the scope of the agreements, and advised the Maasai to use the Settlement Board like other ethnic groups. This prompted John Keen to walk out of the meeting.²⁶³ The Maasai delegation expressed disappointment in the way the case was handled, especially the hard-line position taken by HMG and the laxity of KANU and KADU to recognise and support their cause.²⁶⁴ They resolved to keep on fighting for their right to the land despite assurances from KANU and KADU that they would be protected after independence.²⁶⁵

The **NFD Delegation** had two meetings with the special representative group of the constitutional conference consisting of 6 representatives each from KANU and KADU and 1 (one) from KC.²⁶⁶ The Somali government had an interest in the issue and had a delegation led by then Minister of Education, Mohammed Ibrahim Egal, go to London to monitor the deliberations. The delegation even addressed the press on the need to re-unite Somalia.²⁶⁷ The first meeting was held in the afternoon of Wednesday, 16 March, 1962, and was chaired by Maudling who invited members of the delegation to comment on their memorandum titled "Constitutional Proposals for the Somali Districts of the Northern Frontier Districts of Kenya", which had been circulated earlier.²⁶⁸ The memorandum proposed that, before any

²⁶³ Record of the Third Meeting between the Maasai Delegation and a Representative Group of the Conference, K.C.C. (62) 36, 22nd March 1962, KNA:GO/1/1/12.

²⁶⁴ Koissaba, "A Case of Historical and Contemporary Injustices", op cit.

²⁶⁵ Record of the Third Meeting between the Maasai Delegation and a Representative Group of the Conference, K.C.C. (62) 36, 22nd March 1962, KNA:GO/1/1/12.

²⁶⁶ K.C.C. (62)20, 13th March 1962, KNA: GO/1/1/7.

²⁶⁷ "The Somali Government Funded Shifta War in Kenya's North Secession", *Alshahid* 9 November, 2010.

²⁶⁸ "Constitutional Proposals for the Somali Districts of the Northern Frontier Districts of Kenya", K.C.C. (62) 24, 13 March 1962, KNA: GO/1/1/7.

constitutional changes took place in Kenya, autonomy should be given to the Somali districts of the Northern Province to be a territory wholly independent of Kenya.

In the ensuing discussion, every member of the NFD delegation supported the memorandum. The delegates said that the people of NFD were united in their “determination to secede to a neighbouring friendly power which would support them” and that they would not “bargain or compromise” on this issue.²⁶⁹ Chief Dida held that the people of NFD were “separate from Kenya’s”.²⁷⁰ KANU’s and KADU’s were not supportive of the delegation’s demands. Kenyatta said that secession was “absolutely unacceptable” and took issue with the selection of delegates, who consisted of people who had previously served the government as chiefs or civil servants, viewing them as bent to perpetuate the British policy of divide and rule.²⁷¹ Ngala said that, while KADU recognised the delegation’s demand for secession, it felt that the problems faced by the people in NFD would be solved by adopting a federal type of government because “the local people would be able to solve their day-to-day problems”.²⁷² Governor Renison and Maudling urged KADU and KANU to hold informal discussions on the problems of NFD with the delegates and communicate to them their proposals on the future constitution for Kenya.²⁷³

During the second meeting, convened a week later and chaired by Hon. Hugh Fraser, the NFD delegation was provided with an opportunity to express its views through Lawson QC, legal adviser to the delegation, in the light of the previous meeting and in the private discussions from which they had prepared a memorandum.²⁷⁴ Lawson reported that from discussions with KADU, the delegates had agreed that the region would be autonomous

²⁶⁹ Record of the First Meeting between the NFD Delegation and a Representative Group of the Conference, K.C.C. (62) 29, 19th March 1962, KNA: GO/1/1/7.

²⁷⁰ Ibid.

²⁷¹ Ibid.

²⁷² Ibid.

²⁷³ Ibid.

²⁷⁴ K.C.C. (62) 38, KNA: GO/1/1/7.

enjoying “constitutionally entrenched guarantees with regard to finance for administration and development”, and also have the right of self-determination.²⁷⁵ However, discussions with KANU had not been very fruitful, as the party had not offered any proposals or propose any meeting. He said that the only proposal that KANU had made was that “anybody who wanted to leave the area after independence could do so”.²⁷⁶ Abdi Rashid Khalif and Chief Dida, both members of the NFD delegation, criticised KANU for its stand regarding their right for self-determination.

Discussions did not offer any new undertaking to the NFD delegation with Ngala making it clear that KADU did not support secession or favour any special treatment of the NFD. KANU assured the delegation that it had no ill-will on the people of NFD and invited the delegates to discuss their “fears for the future and the questions of safeguards, economic development and degree of responsibility for their own affairs”.²⁷⁷ Lawson summed up the NFD delegation’s view that they would consider discussing with KANU on the basis of a ‘truly representative’ delegation, but if the discussions failed, they would seek direct audience with HMG. The British government’s attitude was to suggest “further discussions”. No more meetings were convened in respect of the delegation.

4.6.4 Conference report

The conference reconvened on the morning of Friday, 6 April 1962, to consider the conference report and signature to the “Framework of the Kenya Constitution”.²⁷⁸ Maudling mentioned that the NFD issue was not in the report because “an independent investigation” needed to be carried out to ascertain public opinion” before a report could be written.²⁷⁹

²⁷⁵ Record of the Second Meeting between the NFD Delegation and a Representative Group of the Conference, K.C.C. (62) 29, 24th March 1962, KNA: GO/1/1/7.

²⁷⁶ Ibid; “KANU’s Proposal on the NFD”, K.C.C. (62) (37), , KNA: GO/1/1/7.

²⁷⁷ Record of the Second Meeting between the NFD Delegation and a Representative Group of the Conference, K.C.C. (62) 29, 24th March 1962, KNA: GO/1/1/7.

²⁷⁸ K.C.C. (62) 45, 5 April 1962, MAC /KEN/48/8.

²⁷⁹ Record of the Nineteenth Meetings, K.C.C. (62) 19th Meeting, KNA: MAC/KEN/48/8.

Agreement on the “Framework of the Kenya Constitution” was placed before the delegates for signature. Of the 86 (eighty-six) delegates who made up the parliamentary groups 11 (eleven) did not sign the framework because they refused outright, absented themselves or abstained altogether. Those who refused to sign outright were Reggie S. Alexander (KADU), Omar S. Basaddiq (MUF), Robert Cleasby (KADU), John Keen (KANU), Abdi Rashid Khalif (Cross Bencher), John Konchellah (KADU), Sheikh Nassir (MUF), and Justus ole Tipis (KADU). Some of those who refused to sign were leaders of delegations and commanded substantial public opinion in their constituencies. John Keen, John Konchellah and Justus ole Tipis refused to sign because HMG refused to recognise the claim of the Maasai delegation that the land in Rift Valley should revert to them after the departure of the European settlers. Ole Tipis also observed that the report did not accurately reflect the representation of the Maasai delegation and that the Working Party had not reached an agreement on mining rights though Maudling insisted that what was recorded reflected HMG attitude.²⁸⁰ Basaddiq did not sign because MUF was not invited to participate in the deliberations of the Working Party, which had compiled both the report and the agreement, and the deliberations of the Coastal Strip had not been concluded.²⁸¹

Sheikh Mohammed Aziz Alamoody, Laurance Maconochie Welwood, William Murgu and George Nthenge signed the document with reservations. Maconochie Welwood signed the framework as a way of accepting the achievement of agreement on a federal type of constitution with an upper chamber. He also signed after receiving a written assurance by the Secretary of State and the Governor that “in all future consultations about the new constitution, the Kenya Coalition would have full right of access to the relevant documents and the right of audience when so desire.”²⁸² The conference approved the draft report,

²⁸⁰ Ibid

²⁸¹ Ibid.

²⁸² Record of the Nineteenth Meetings, K.C.C. (62) 19th Meeting, KNA: MAC/KEN/48/8.

subject to inclusion of “a passage about the future of the Northern Frontier District” (NFD). The final report was published as a White Paper.²⁸³

Maudling’s view of the conference was that it did not solve Kenya’s problems, but the agreement on the “Framework of the Constitution” made it possible to find a solution to the problems”.²⁸⁴ He expressed confidence that the agreed framework could formulate a complete constitution and said that details of the constitution would be worked out and embodied in legal documents and asked the political leaders to find and learn a way in which people in Kenya could live together, against the backdrop of fear and suspicions.²⁸⁵

Both KADU and KANU felt that the conference was a success. MUF was positive with Basaddiq observing that it had achieved a substantial measure of success. Ngala said that KADU’s two main objectives of safeguarding civil and political rights in a free society and building a county free from dictatorship had been achieved. It felt that its idea of regionalism had triumphed through it had to concede considerable ground as the regions would conform to the existing provincial boundaries and not the four units that they had proposed. In addition, the regional authorities would not have the powers that they had wanted, but they would have powers similar to the county councils in Britain. Nevertheless, it was apprehensive about the fact that the deliberation of the secessionists were not finalised.²⁸⁶ As a party, it would pursue the most suitable ‘course’ to obtain a suitable constitution for Kenya.

KANU felt that its desire for a strong central government had been realised, though it had conceded some details by accepting “provincial” rather than “regional” units, with limited powers entrenched in the constitution. It also conceded the inclusion of an upper house with powers similar to the British House of Lords. Kenyatta was concerned that the

²⁸³ Colonial Office, *Report of the Kenya Constitutional Conference, 1962, Cmd 1700* (London: HMSO, 1962).

²⁸⁴ Record of the Closing Ceremony, K.C.C. (62) 20th Meeting, KNA, MAC /KEN/48/8.

²⁸⁵ Ibid.

²⁸⁶ Ibid.

conference had failed to realise what Kenyans wanted most, independence. He stated that KANU would not rest until independence had been won, and that people were impatient for the day it would be realised.²⁸⁷ He further said that KANU was prepared to cooperate in the task ahead that would ensure independence at the earliest, expectedly in 1962.²⁸⁸

Maconochie Welwood noted that “very little had been achieved” at the conference and the confidence of the European community could not be encouraged by anything that came out of it, especially because matters of security and citizenship had remained unsettled.²⁸⁹

4.7 Outcome of the Conference

The conference had two immediate outcomes, the “Framework on the Kenya Constitution” and the coalition government. The framework was Maudling’s compromise plan, as it did not meet the objectives of the respective groups at the conference, especially KANU and KADU. It not only bore little semblance to KANU’s centralist ideas, but it also barely featured the principle of regionalism as envisaged by KADU.²⁹⁰ It detailed the structure and nature of the central government and other governing authorities, the means for securing the stability of the constitution, and how law and order would be framed in the constitution. The objective of the proposed constitution was stated as: “... a united Kenya nation, capable of social and economic progress in the modern world, and a Kenya in which men and women have confidence in the sanctity of individual rights and liberties and in the proper safeguarding of the interests of the minorities.”²⁹¹ This objective was to inform the drafting of the self-government constitution and the antecedent negotiation process.

The idea of a coalition government had been mooted by Ian Macleod in October 1961 after being presented with a report of progress on the joint KADU-KANU discussions. He

²⁸⁷ Ibid.

²⁸⁸ Ibid.

²⁸⁹ Ibid.

²⁹⁰ Goldsworthy, *Tom Mboya*, p. 193.

²⁹¹ “Framework of the Kenya Constitution”, KCC (62) 45, KNA: MAC/KEN/45/3.

had expressed his preference for a joint government involving all the parties in which “members could work harmoniously together. The aim of such a government would be to prepare a constitution to move Kenya into internal self-government and ultimately into “a stable independence”.²⁹² A coalition approach to government was necessary in order to complete the constitution successfully and expeditiously. Maudling had revisited the idea during the conference, which Oginga Odinga (KANU) opposed by accusing the British government of working to divide the African people.²⁹³

As the conference came to a close, Maudling issued an ultimatum to KADU and KANU to submit the names of those to be included in the coalition government, which had to be formed before leaving London. He insisted on KADU being an equal partner in government despite its weakened position, a practice that had been manifested in the formation of committees at the conference. Each party was allocated 7 (seven) ministerial positions and the nine Parliamentary Secretaries. Both parties submitted the names with KANU now not keen on being left out of government not only because they believed this would delay independence, but it would also mean that the conference had failed.²⁹⁴ KANU was also confident that it would eventually form the majority government under the new constitution and therefore change the constitution accordingly.²⁹⁵ With a perception of victory over the constitutional negotiations, KADU demanded the strategic ministries of Constitutional Affairs, Administration, and Information and Broadcasting, which they eventually got. KANU’s list comprised its top leadership and especially those who were genuine representatives of the peoples’ cause. However, the inclusion of Oginga Odinga’s name was vetoed by both Maudling and Renison, without giving any reason. When the inclusion threatened to delay the progress in forming the government, Jomo Kenyatta

²⁹² Report of the Kenya Constitutional Conference, 1962” KNA: MAC/KEN/48/8.

²⁹³ Record of the Sixteenth Meetings, K.C.C (62) 16th Meeting, KNA:MAC/KEN/45/3.

²⁹⁴ Odinga, *Not Yet Uhuru*, p. 200.

²⁹⁵ *Ibid.*

dropped it altogether with a promise to Odinga that he would be included in the independence government.²⁹⁶ Odinga was not in support of the Bill of Rights. Therefore, his presence in the Council of Ministers, which was entrusted with the next stage of constitutional development, would have delayed or derailed progress.

Upon agreement of the final list, the Acting Governor, Sir Eric Griffith-Jones, issued the appointment letters to the new ministers on 7 April 1962 providing the details of their responsibilities.²⁹⁷ All serving unofficial Ministers resigned their positions to pave way for the formation of the new government.²⁹⁸

The question of the leadership of the coalition government arose, with both Kenyatta and Ngala refusing to serve under the other. The British government decided that both leaders would have equal status in the coalition government and were designated joint Ministers of State for Constitutional Affairs in charge of development and finalising the constitution. In addition to the position, Ngala would be in charge of Administration, while Kenyatta would be in charge of Development (Economic) Planning. Kenyatta's portfolio was insignificant at the time as all planning was being carried out by Treasury, which was almost entirely run by European staff, but it would accord him more time in his hands to organise politically. The Governor headed the coalition government.²⁹⁹

The coalition government was tasked with constitutional development that would lead to responsible self-government that would pave way for a final conference to work out the details for full independence. A coalition arrangement was significant as it enabled parties that were in disagreement to work together under the supervision of the Governor and government discipline, which ensured unauthorised parties were not privy to the discussions.

²⁹⁶ Ibid.

²⁹⁷ Ag. Governor, "Appointment letter to ministers", 7 April 1962, KNA: OP/DEP 1/133; Gazette Notice No. 1791, *The Kenya Gazette*, Vol. LXIV, No. 16, 17 April 1962, p. 418.

²⁹⁸ Gazette Notice No. 1790, *The Kenya Gazette*, Vol. LXIV, No. 16, 17 April 1962, p. 418.

²⁹⁹ Kenya Constitutional Conference 1962, KNA: MAC/KEN/48/8.

Such discipline also kept the constitution making process within the stipulated schedule. Therefore, it was British government's strategy to control the negotiation process, and hence saved constitution making.

Coalition arrangements appeared to be the most expedient solutions to political crises. Since the country was split ethnically after the 1960 conference and politics going regional, there has been persistent lack of cohesiveness and this has made it difficult for a single political party to garner enough support to govern the country. This reality came to the fore after the 2007 elections when the incumbent President Mwai Kibaki was forced into a coalition arrangement with opposition leader, Raila Odinga.

CHAPTER FIVE

THE LAST INDEPENDENCE CONFERENCE, 1963: PROCESS AND OUTCOME

5.1 Introduction

The final push for constitutional advancement and independence was from April 1962 to December 1963. In between were discussions for the draft constitution, national elections, self-government (*Madaraka*), a constitutional conference, and independence. This chapter is the last to address the first objective of the study, to examine and analyse the nature of the negotiation process. It also responds to the question on how the negotiation was conducted and demonstrates how the British used their dominant position to control the process in line with the power theory.

The chapter examines the discussions on the “Framework of the Kenya Constitution” in the Council of Ministers from May 1962 to March 1963, the general election of May 1963, the implementation of the self-government constitution, and convening of the Third Lancaster House conference held from 15 September to 19 October 1963, which produced the final independence constitution. This constitution became the instrument that shaped post-colonial governance and foreign relations, but also became the subject of immediate amendment as discussed in the next chapter.

5.2 Discussions on Framework of the Kenya Constitution

The “Framework of the Kenya Constitution” was designed to provide for the drafting of a constitution that would facilitate an election to move the country to internal self-government. The new government would introduce the constitution and engage in further negotiations

with the British government for arrangements for full independence.¹ The coalition government was vested with the responsibility of concluding the negotiations for an independence constitution and accordingly set to work to agree on the details of the constitution under the supervision of the British government.

The constitutional discussions that were undertaken by the coalition government in Nairobi took three forms. One, were the Special Council of Ministers meetings, which took place between April and October 1962, and went hand-in-hand with drafting the constitution. Secondly, there were the constitutional meetings that were held between January and March 1963 resulting in the isolation of areas of disagreement. And thirdly, there were the constitutional discussions with the Secretary of State that were held between February and March 1963 culminating in the self-government constitution.

5.2.1 Special Council of Ministers meetings

The coalition government got down to work on the constitution as soon as it was constituted in April 1962. The agreement signed on the “Framework of the Kenya Constitution” tasked the Council of Ministers with “filling in the framework” of the constitution, or what the Governor termed as “clothing the Framework in flesh”.² The Special Council of Ministers meetings to discuss the constitution opened in Nairobi during the Eleventh Meeting of the Council on 9 May 1962, and were held in the Council Room at Government House, chaired by the Governor. Other than the Ministers appointed from KADU and KANU, the meetings were attended by representatives of KC, who had won the right to participation, as well as the Liwali for the Coast. KC was represented by Clive Salter, the elected Member for Nairobi West. There was also the Secretariat comprising the Secretary to the Council of Ministers and the Assistant Secretary in the Cabinet Office. Henry Steel, a member of the Legal Division of

¹ “Framework of the Kenya Constitution”, KCC (62) 45, KNA: MAC/KEN/45/3.

² Patrick Renison, Speech by the H.E. Governor at the United Kenya Club Dinner, 26 August 1962, KNA: GH/29/3.

the Colonial Office, was invited to attend as the representative of the Secretary of State and for the purpose of “absorbing the background” to the process of discussion up to agreement.³ As he was responsible for drafting the new constitution, he was tasked with noting points after agreement had been reached in the Council.⁴

All the meetings were restricted to Ministers. Only those Parliamentary Secretaries whose issues concerning their ministries were being discussed were invited to attend. Even the accredited advisers to the Parliamentary Groups were not invited, but the Ministers were free to consult them to facilitate discussions.⁵ Memorandums, reports of working parties and reports of commissions were also allowed to assist the Ministers in their work.⁶ These documents formed the main basis of discussions aimed at providing adequate details for the drafting of the constitution. Overreliance on the documents however gave room for the control and manipulation of discussion by the British government. For example, papers on public service and the judiciary were submitted by the Colonial Office and those on Regional Assemblies were prepared and submitted by the Governor’s Office and the Minister for Legal Affairs for which they only sought agreement at the meetings other than discussion. Among the issues discussed early in the meetings were franchise and the legislature.⁷ Discussions were held on the representations in the Lower House, electoral areas and election to the Upper House. The emphasis on the Bill of Rights was eclipsing the importance of this second chamber and the bicameral system was losing support among its erstwhile proponents. As expressed by The Earl of Listowel in the British Parliament after the 1962 constitutional conference:

... most countries of the size and population of Kenya have a unicameral Legislature... two Chambers in a small country is expensive and wasteful of political talent. But, after

³ The Marquess of Lansdowne, Parliamentary debates, House of Lords, Deb 15 May 1962 vol 240 cc530-618.

⁴ Minute 187, Fourteenth (Special) Meeting, C.M. (62) 14, KNA: GO/3/2/65.

⁵ Minute 160, Eleventh (Special) Meeting, C.M. (62) 11, KNA: GO/3/2/65.

⁶ Ibid.

⁷ Minute 161, Eleventh (Special) Meeting, C.M. (62) 11, KNA: GO/3/2/65.

all, in a federation it is normal practice that one Chamber represents the Federal Union while the other represents the people on a majority basis; and Kenya, though it will not be a federation, will, at any rate, be a semi-federal or quasi-federal, in the sense that the regions will be very much more than local authorities.⁸

The procedure at the Council of Ministers meetings was for the respective parties to submit proposals on a given constitutional issue, such as franchise for the Lower House, for discussion or fine-tuning from earlier discussions. Any issue whose concurrence was not reached was deferred and a memorandum prepared by the respective Ministry to clarify it, with a view to revisiting it at a later date. However, most of these points of disagreement ended up being settled by the Secretary of State when the constitution reached the draft stage.⁹ Information to the public concerning the meetings was kept under strict control and at the minimum; personal disclosures, communiqués and guidance to the press were disallowed. Any statement to the public had to be agreed during the talks. Copies of meeting records and constitutional material used in the Council of Ministers were not allowed out of the premises even for discussion with PGs and advisers.¹⁰ These restrictions, together with the fact that the Ministers were serving during Her Majesty's pleasure, placed the process directly under the control of the British government.

The Coalition Council of Ministers served the British government appropriately for this phase of constitutional development because the Governor could take personal responsibility over the process by enforcing the principles of "collective responsibility" and secrecy. This implied that any arguments in the Council did not go beyond cabinet wars and hence avoid politicising the process. Any politicisation would have meant delay in concluding the constitution. The lack of political connotation was disadvantageous to KADU, which wanted to sell its federalist policies to the public. Eventually, KADU's patience wore out as

⁸ The Earl of Listowel, Parliamentary debates, House of Lords, Deb 15 May 1962 vol 240 cc530-618.

⁹ Ibid.

¹⁰ Minute 254, Twenty-first (Special) Meeting, C.M. (62) 21, KNA: GO/3/2/65.

demonstrated by its limited participation in the constitutional discussions. KANU took advantage of the arrangements to intensify demand for independence.

The principle of “collective responsibility” also restricted the extent to which the Ministers articulated their point of view. This principle held that a Minister (and Parliamentary Secretary) was to share responsibility for the policy and administration of the government. They could therefore not advocate change of any policies outside the immediate circles of government, either publicly or privately. The undertaking proved difficult to observe as the Ministers and Parliamentary Secretaries went out and abused one another “with unfailing regularity”.¹¹ The Secretaries particularly went against government policy in their parliamentary contributions prompting Sir Griffith Jones to issue a circular reminding them that they were in government and that their freedom of action was controlled.¹²

Matters and incidents involving breach of ‘collective responsibility’ as well as indiscipline, found their way into the cabinet meetings for arbitration by the Governor.¹³ An example was where Ngala declined to sign a press statement protesting a derogatory expression used by KANU leaders against KADU leaders during a meeting in Nakuru on 20 May 1962. Ngala accused Kenyatta of referring to them as ‘idiots’. The ensuing confrontation between Ngala and Kenyatta in the Council of Ministers prompted the Governor to intervene. Kenyatta denied the accusation blaming the media for misreporting. The Acting Governor, Griffith-Jones, resolved that the statement would be issued in the name of Council of Ministers instead of the two leaders. He also offered to persuade the media to provide balanced coverage.¹⁴ After the confrontation in the Council of Ministers, KANU leaders issued a press statement clarifying their utterances at the Nakuru rally. Kenyatta said that he meant to say “KADU had behaved in a silly manner at the Lancaster House

¹¹ Lord Colyton, Parliamentary debates, House of Lords, Deb 15 May 1962 vol 240 cc530-618.

¹² Minute 165, Eleventh (Special) Meeting, C.M. (62) 11, KNA: GO/3/2/65.

¹³ Minute 251, Twenty-first (Special) Meeting, C.M. (62) 21, KNA: GO/3/2/65.

¹⁴ Minute 186, Fourteenth (Special) Meeting, C.M. (62) 14, KNA: GO/3/2/65.

Conference under the chairmanship of Reginald Maudling”, which had the effect of delaying independence.¹⁵ Kenyatta also wished Maudling left out of the KANU-KADU political arguments.¹⁶ Such conflicts in the Coalition Council of Ministers were responsible for the British government stepping in to impose a solution whenever there was disagreement.

The indiscipline in the Council of Ministers split the supporters of KANU and KADU throughout the country, as they started to focus on the forthcoming elections.¹⁷ Local discourses and concerns were influenced by regional inequalities, uncertainties of rapid political changes, considerable in-migration into the Rift Valley, expectations that the White Highlands would soon be opened up to African ownership, memories of Mau Mau, rumours of the Kenya Land Freedom Army (KLFA) activities, dominance of Luo trade unionists, discourses of ‘loyalism’ and ‘subversion’, competing claims to land outside the reserves, and combative statements from Luo and Kikuyu politicians. All these concerns lent substance to “‘us’ verses ‘them’ mentality”.¹⁸

In August 1962, Governor Maudling announced that the British government would finance by grant and loan the transfer of a million acres of European farmland to some 25,000 African families, consisting those who were landless and unemployed, in a five-year resettlement programme. The acreage was part of the 3.5 million acres under European mixed farming, and which the Africans most ‘coveted’, which was about half of the White Highland’s 7.5 million acres. The other half was under plantations and ranches.¹⁹ The transfer was as advocated by Harold MacMillan in 1942 while he was Undersecretary of State for the

¹⁵ “Kenyatta: I did not Say It”, *Daily Nation*, 24 May 1962, p. 1

¹⁶ *Ibid.*

¹⁷ Lord Colyton, Parliamentary debates, House of Lords, Deb 15 May 1962 vol 240 cc530-618.

¹⁸ Gabrielle Lynch, *I Say to You: Ethnic Politics and the Kalenjin in Kenya* (Chicago: University of Chicago Press, 2011), p. 81.

¹⁹ Colonial Office, “The Future of European Farming Land in Kenya”, C.P. (63) 18, 19th November, 1963, CAB 129-115.

Colonies in Winston Churchill's government.²⁰ It involved a programme of purchasing 200,000 acres of land annually over a period of five years (1962-67) to provide settlement schemes. The programme, known as the Million-Acre-Scheme, was launched in October 1962. This phase of resettlement was aimed at ensuring an orderly transition to independence without disrupting economic progress and deterioration of security, especially a recurrence of an emergency.²¹ The Scheme was expected to involve about 1,250 European mixed farmers at the end of which they were to be reduced to 850.²² Already an average of four hundred European farmers was leaving Kenya every month.²³

KADU went against the Council of Ministers' decision to open up all areas and make them accessible to political leaders by zoning some regions. Under the 1961 Kalenjin-Maasai United Front Declaration, Kenyatta and KANU were especially not allowed to hold political meetings in Kalenjin and Maasai areas, which necessitated the intervention of the Council of Ministers.²⁴ There were also isolated reports of the re-emergence of oath-taking associated with the Land Freedom Army in parts of the Rift Valley, activities that were reminiscent of the Mau Mau days.²⁵ These developments intensified tribal hostility and fears such that many Europeans, civil servants and the experienced settlers regarded them as the greatest of all the dangers facing Kenya.²⁶ They not only served to erode confidence and undermine stability, but they also weighed heavily on the provincial administration, already sagging under the demands of implementing the new and untried constitution, to be the keeper of the peace.²⁷

²⁰ Michael Blundell, *A Love Affair with the Sun: A Memoir of Seventy Years in Kenya* (Nairobi: Kenway Publications, 1994), p. 95.

²¹ Charles Hornsby, *Kenya: A History since Independence* (London: I.B. Tauris and Co., 2013), p. 74.

²² Colonial Office, "The Future of European Farming Land in Kenya", C.P. (63) 18, 19th November, 1963, CAB 129-115.

²³ Clyde Sanger, *Malcolm MacDonald: Bringing an End to Empire* (Montreal: McGill-Queen's Press, 1995), p. 392.

²⁴ Minute 251, Twenty-first (Special) Meeting, C.M. (62) 21, KNA: GO/3/2/65.

²⁵ Colonial Office, *Report on the Colony and Protectorate of Kenya for the Year 1962* (London: HMSO, 1963), p. 131.

²⁶ *Ibid.*

²⁷ *Ibid.*

Constitutional discussions in the Council of Ministers were adversely affected by the split and rivalry. They were also affected by the interruptions occasioned by the presentation of the Financial Statements for the Year 1962/63 and the formation of the Economy Commission, which KADU opposed fearing that it would interfere with its regionalist policies.²⁸ Progress was slow so much that the Governor increased the frequency of meetings from the normal schedules of Wednesdays to include Tuesdays and Thursdays. Normal Council meetings were rescheduled to take place fortnightly on Wednesdays. On 20 June 1962, Michael Blundell, the Minister of Agriculture and Animal Husbandry, retired from the Council of Ministers having served since 1954.²⁹ Despite having participated in the 1960 and 1962 Lancaster House conferences and being a regular at the Colonial Office, he felt that he no longer had authority on any views on constitutional development.³⁰ Blundell's exit nevertheless confirms that now the European settler community clearly understood the intention and strategy of the British government to protect their property rights, which they were seeking.

When Maudling visited Kenya in July 1962 to review the constitutional talks, he noted that enough progress had been made as to commence the drafting of the new constitution and he subsequently instructed Steel to begin the drafting in the UK.³¹ He also made proposals in some of the areas that had been left unsettled in the negotiations, which included health, education, the civil service and judiciary. On 13 July 1962, he was appointed Chancellor of Exchequer during a major Cabinet reshuffle by Harold Macmillan that came to be referred to as "Night of the Long Knives". This effectively ended Maudling's tenure as Secretary of State for Colonies. There was concern that his departure would sever links that had been built up at the Lancaster House Conference. The anxiety was, however, reduced by the hope that

²⁸ Minute 216, Eighteenth (Special) Meeting, C.M. (62) 18, KNA: GO/3/2/65.

²⁹ Minute 245, Twenty-first (Special) Meeting, C.M. (62) 21, KNA: GO/3/2/65.

³⁰ Blundell, *A Love Affair*, p. 107.

³¹ "Progress Report on Constitutional Discussions", 19th June, 1962, KNA: GO/3/2/66.

his new posting at the Treasury would help Kenya tackle economic problems of which he was aware.³²

Maudling's replacement was Duncan Sandys from the Commonwealth Relations Office who proceeded to dismiss Patrick Renison as Governor. Renison was out of tune with Harold Macmillan's government with Maudling describing him as "upright but unimaginative" and insensitive.³³ He had failed to win the confidence of African leaders and to hold together the uneasy coalition of KANU and KADU. Dissatisfied over the pace of progress attributed to the rift between Sir Renison and Kenyatta, Sandys fired Renison at the end of the Special Council of Ministers meetings in October 1962.³⁴ He explained that Renison did not have enough "political experience" to see Kenya through the final stages of advance to independence.³⁵

Kenyatta's appointment to the Council of Ministers implied that he was serving the colonial government under Governor Renison. It was agonising for both Kenyatta and Renison to serve in the same Council of Ministers, especially because the latter had campaigned against Kenyatta during his detention and had later become a stumbling block towards holding a constitutional conference. By seeking the intervention of the Secretary of State in November 1961, Kenyatta and KANU had demonstrated lack of confidence in him. Nevertheless, Kenyatta continued to serve until Sandy's came to his rescue in October 1962 by dismissing Renison. With the constitutional development at a critical stage, the separation of the two personalities was significant in determining the shape that the constitutional discussions were to take. The sacking of Renison on flimsy grounds left no doubt in Kenyatta's mind that the British government was ready to work with him to finalise the

³² Minute 318, Thirty-sixth (Special) Meeting, C.M. (62) 36, KNA: GO/3/2/65.

³³ Sanger, *Malcolm MacDonald*, p. 391.

³⁴ David Throup, "Sir Patrick Muir Renison", *Oxford Dictionary of National Biography* (Oxford: Oxford University Press, 2004).

³⁵ *Ibid.*

constitution. The British had now built sufficient trust and confidence in Kenyatta as to move on with him towards independence. Moreover, with Kenyatta commanding a fanatical following, they saw him as one who could help in pushing their interests. At this point they were prepared to go to anyone who would play this role.

Renison's replacement was Malcolm MacDonald who took office in January 1963, and immediately announced his intention to "lose no time" in moving towards *Uhuru*.³⁶ MacDonald also opened conversation with Kenyatta, which touched on Kenyatta's friendly encounter with his father, Ramsay MacDonald, who had been the first ever British Labour Prime Minister in 1924 and whom Kenyatta had met during his stay in England.³⁷ Between Renison's departure and Macdonald's arrival, Sir Eric Griffith Jones, who had previously served as Attorney-General and demonstrated considerable pragmatism in dealing with the Kenyan situation, acted as Governor.

To deal with the issue of NFD, Jomo Kenyatta, as Minister of State, visited Mogadishu end of July 1962, to consult with the Government of Somalia with the aim of impressing upon Somali Government the views of the Kenya Government on secession.³⁸ The Government of Somalia was under suspicion of supporting the secessionists although it officially denied the claim. At the end of his visit on 30 July 1962, Kenyatta stressed that the Kenya government would not tolerate external interference with the affairs of the NFD, but it was still awaiting the report and determination of HMG on the issue.³⁹ Somalia's Prime Minister, Abdirashid Sharmake, said that they would respect the findings by the proposed commission of inquiry on the NFD.⁴⁰

³⁶ Sanger, *Malcolm MacDonald*, p. 389.

³⁷ Speeches: The Rt. Hon. Malcolm MacDonald, KNA: GH/29/2.

³⁸ C.M. (62)31, 1 August 1962, KNA: GO/3/2/65.

³⁹ *Ibid.*

⁴⁰ "The Somali Government Funded Shifa War in Kenya's North Secession", *Alshahid* 9 November, 2010.

Sandys also immediately formed two independent commissions in line with the provisions of the “Framework of the Kenya Constitution”, the Constituency Delimitation Commission and the Regional Boundaries Commission. Both commissions were chaired by Sir Stafford Foster-Sutton who had formerly served as Chief Justice of the Federation of Nigeria and Attorney General of Malaya.⁴¹ They were also each composed of three members from outside Kenya. The Constituency Delimitation Commission was tasked with dividing “Kenya into not substantially more or less than 100 parliamentary constituencies for the election of members of the Lower House” while taking into account, among other factors, the density of the population, communications, community of interest, boundaries of existing areas, and the need to ensure adequate representation of urban and sparsely populated rural areas.⁴² The other two members of the Commission were Sir John Fletcher-Cooke, an English aristocrat and scholar, and Charles W.S. Corry, who had served in the Malayan civil service and participated in the delineation of constituencies for the Federation of Malaysia.⁴³ The Regional Boundaries Commission’s terms of reference were: “To divide Kenya into six regions and the Nairobi Area for the purpose of giving effect to the Report of the Kenya Constitutional Conference 1962”. Its other two members were Colin H. Thornley, who had previously served as Administrative Secretary in Kenya and Governor of British Honduras,⁴⁴ and Ernest Merendyth Hyde-Clarke, a former Labour Commissioner in Kenya.

⁴¹ Richard L. Sklar, *Nigerian Political Parties: Power in an Emergent African Nation* (Trenton, NJ: Africa World Press, 2004), p. 171; Christopher A. Bayly and Timothy N. Harper, *Forgotten Wars: Freedom and Revolution in Southeast Asia* (London: Penguin Group, 2007), p. 450.

⁴² S. Foster-Sutton, “Kenya: Report of the Constituencies Delimitation Commission”, Presented to the Secretary of State for the Colonies, UK Government, 28 December 1962, p. 5.

⁴³ J. B. Ojwang, “Scholarship in National Development”, in *Issues in Resource Management and Development in Kenya: Essays in Memory of Professor Simeon H. Ominde*, edited by Robert A. Obudho, J. B. Ojwang, (Nairobi: East African Educational Publishers, 2000), p. 19; “Notes on Contributors”, *Journal of The Royal Central Asian Society*, Volume 52, Issue 3-4 (1965), available at: http://www.tandfonline.com/doi/pdf/10.1080/03068376508731910#.VIaqM2d_aZQ, accessed on 01 December 2014.

⁴⁴ Supplement to the *London Gazette*, 13 June, 1957, available at: <https://www.thegazette.co.uk/London/issue/41089/supplement/3371/data.pdf>, accessed on 08 December 2014.

Given the prominence attached to the two commissions in the “Framework of the Kenya Constitution”, they started work in August 1962. Initially, it was agreed in the Council of Ministers that the Commissions were to have an advisory role, but this was revised to equip them with an executive ability such that their decisions would be binding to ensure success in resolving controversies. For the Boundaries Commission, some room was left “for reconsideration of errors of principle”, which it could conceivably make.⁴⁵ The two commissions made two visits to Kenya, the first in August 1962 and the second in November and December 1962 for the Boundaries Commission and Constituency Commission respectively. The second visit was necessitated by the fact that the Commissions could not visit the Northern Frontier District before the Northern Frontier District Commission had visited the area as this was considered a serious security risk.⁴⁶

The Commissions visited and received submissions from all parts of the country. Delegations, groups and individuals from regions and districts consisted of government officials (including Supervisor of Elections), administrative officers, Members of the Legislative Council, members of the Municipal and District Councils, political parties (including KANU and KADU), workers unions, religious groups, and tribal and clan leaders.⁴⁷ The Boundaries Commission interviewed 233 delegations and groups in total with 13 of them received in camera. Among the submissions were from the Nyeri District Commissioner, Ezekiel Otieno Josiah, who said that the Kikuyu settlement areas west of the Aberdares should be included in the Central Region.⁴⁸ Chief Jacob Mwongo of the Meru African District Council and ex-Chief Wallace M’Mwengo of the Nchuri Ncheke submitted that the Meru should be disassociated with the Kikuyu and that they wished to be associated

⁴⁵ C.M. (62)20 – Twentieth (Special) Meeting, 9 June 1962, KNA: GO/3/2/65

⁴⁶ The Marquess of Lansdowne (Minister of State for Colonial Affairs), Parliamentary Debates, HL Deb 03 December 1962 vol 245 cc64-132).

⁴⁷ Foster-Sutton, “Kenya: Report of the Constituencies Delimitation Commission”, pp. 9-12.

⁴⁸ S. Foster-Sutton, “Kenya: Report of the Regional Boundaries Commission”, Presented to the Secretary of State for the Colonies, UK Government, 23 November 1962, p. 13.

with the Boran, Kamba and Embu as long as these tribes did not join the Kikuyu.⁴⁹ In their reports, the Regional Boundaries Commission recommended creation of seven regions and Nairobi as a special region, while the Constituencies Commission came up with 117 constituencies.⁵⁰ The reports were to be considered by the Council of Ministers where any party would have the opportunity to challenge any of the findings and try to persuade other parties and HMG to accept a variation. Variations would only be possible by agreement first within the Kenya Government, and then between the Kenya Government and HMG. This arrangement was agreed upon by KANU, KADU and HMG. Both commissions' reports were issued in December 1962, but presented them to the Council of Ministers in January 1963.⁵¹

The publication of the reports provoked numerous petitions from all over the colony. Among the first petitioners were the Wanga who opposed the transfer of some parts of their ancient kingdom to the Nyanza Region, and threatened bloodshed and chaos if their demands were not heeded.⁵² Nabongo Shitawa petitioned the Commission seeking the consolidation of the former chieftaincy under the Nabongo.⁵³ The Sabaot petitioned the British government opposing the Commissions' recommendation to be included in Bungoma District other than Trans Nzoia District with the Kalenjin in the Rift Valley Region. They threatened dire consequences if their demands were ignored.⁵⁴ The Nyanza North Luo Congress also sent a petition for those Luo who did not want to be included in the Western Region and held that Maseno Township, which had been claimed by the Luyia, had been included in the Nyanza Region and therefore they wanted it back.⁵⁵

⁴⁹ Ibid, p. 18.

⁵⁰ Foster-Sutton, "Kenya: Report of the Constituencies Delimitation Commission", p. 8.

⁵¹ Kenya Colony, *Report of the Constituency Delimitation Commission – Cmd 1921* (London: HMSO, 1963).

⁵² Memorandum to the Secretary of State, 27 December 1962, KNA: GH/8/18

⁵³ Memorandum of the Nabogo, 17 November 1962, KNA: GH/8/18

⁵⁴ Sabaot Memorandum to the Secretary of State, 17 December 1962, KNA: GH/8/18

⁵⁵ Memorandum of the Nyanza North Luo Congress to the Secretary of State, 3 April 1962, KNA: GH/8/18.

All the petitions were ignored. However, the Kitale question provoked reaction from KANU, which held that the petitions were incited by KADU in a bid to destabilise the constitutional discussions. In the Kitale issue, KADU and Nyanza Central Association wanted the Districts of Kitale and Uasin Gishu to be included in the Western Region contrary to the recommendations of the Boundaries Commission placing them in the Rift Valley Region.⁵⁶ Although KANU did not agree entirely with the Commission's recommendations, it decided to uphold its position so as not to depart from its conduct in the constitutional discussions. It felt that KADU had decided to play politics, inciting people to violence and civil disobedience and threatening the government and HMG. It therefore declared that any revisions of the decisions made so far would see an end to its effort to restrain its supporters and would henceforth resort to the same methods that KADU was applying.⁵⁷ It stated:

... Kitale is not a subject on which we accept neither your adjudication, nor one on which HMG is free to act arbitrarily. To do so would constitute a breach of all previous agreements including the Lancaster House Agreement. This would set us free to repudiate all aspects of the Lancaster House Agreement where we think mistakes were made, resign from the present coalition government and fight the elections on the issue of opposition to the entire constitution.⁵⁸

The Governor terminated further discussion on the matter in the Council of Ministers.⁵⁹ KANU recognised that continued antagonism between them with KADU would delay independence. They reaffirmed that they would stand by all the agreements reached so far with regard to the constitution as well as their acceptance of the arrangement where the Secretary of State would take decisions on all points of disagreement referred to him. KANU's conviction was that, using his discretion, Sandys would only take decisions

⁵⁶ Memorandum of the Nyanza Central Association, 20 February 1963, KNA: GH/8/18

⁵⁷ KANU's Memorandum to Sandys, 6 March 1963, KNA: GH/8/18.

⁵⁸ Ibid.

⁵⁹ Minute 33, Tenth Meeting with Secretary of State, S.S. (63)10, 7 March 1963, KNA: GO/3/2/69.

influenced by what was in the best interest of a united and viable Kenya and, which would give a practical and workable constitution.⁶⁰

The British government also formed an independent Commission of Inquiry in an attempted to resolve the NFD question as mentioned in the Report of the Kenya Constitutional Conference. The Commission was composed of G. Onyiuke of Nigeria and Maj Gen Borget of Canada, and started its work on 22 October, 1962. It carried out an informal referendum to verify the desire of the Somali community in the NFD.⁶¹ Its report was published in December 1962 and established that five (Garissa, Wajir, Mandera, Moyale and Isiolo) out of the six districts favoured secession. However, the British government declined to approve the referendum results and instead created a seventh Region out of some parts of NFD.⁶² This resulted in disgruntlement among the Somali tribes-people.⁶³ British government's subsequent consideration of the issue became secondary to Kenya's independence and post-independence relations, as it used the retention of NFD in independent Kenya to pursue its strategic interests.⁶⁴ Opposition continued to mount in the region led by the Northern Province Progressive People's Party (NPPPP).

The implications of the two boundaries commissions left a longstanding legacy on the political and administrative structure. The regional and district boundaries were entrenched in the constitution, with the district boundaries used to frame local authorities into forty county councils and one city council. They were to become the basis for retention of administrative provinces that continued in operation up to the promulgation of a new constitution in August 2010. With Parliament having responsibility to alter the boundaries, successive governments

⁶⁰ KANU's Memorandum to Sandys, 6 March 1963, KNA: GH/8/18.

⁶¹ Ibrahim A Rashid, "Kenya's Third Referendum Shows Promise of Delivering", *The Standard*, Friday, July 30 2010, p. 13.

⁶² Minute 28, Tenth Meeting with Secretary of State, S.S. (63)10, 7 March 1963, KNA: GO/3/2/69.

⁶³ Michael Brecher, *A Study of Crisis* (Ann Arbor, MI: University of Michigan Press, 1997), p. 439.

⁶⁴ John Ringquist, "Bandit or Patriot: The Kenyan Shifta War 1963-1968", *Baltic Security and Defence Review*, Vol. 13, Issue 1 (2011), pp. 100.

changed districts based on administrative and security considerations. However, the units were retained and formed the basis for defining the devolved structures under the 2010 constitution with addition of only five units (Bomet, Vihiga, Nyamira, Makueni and Tharaka-Nithi, and splitting of one (South Nyanza) into two (Migori and Homa Bay). The retention of boundaries was on the basis of Article 2 of the OAU charter, which discouraged African countries against tampering with colonial set-ups to avert international as well as internal conflicts.

In November 1962, KANU suffered a split when Paul Ngei left. One of the Kapenguria Six and a World War II veteran, Ngei quit to found the African Peoples Party (APP), a defection that caused KANU great worry fearing that if APP teamed up with KADU it could cost them election victory.⁶⁵ Ngei's action had been motivated by personal reasons primarily because he had been dissatisfied with KANU for failure to accord him the position he felt entitled to after his release.⁶⁶ He had also failed to secure a seat in the Legislative Council in the same manner as Kenyatta, as the Akamba leadership declined to vacate a seat for him.⁶⁷ In January 1962, this frustration had even seen him publicly challenge Kenyatta's right to lead KANU after he was denied the opportunity to attend the Lancaster House Conference.⁶⁸ Although KANU lost support of most of the Kamba community in the period leading to the elections, APP had little impact outside Ukambani.⁶⁹

Notes of the discussions in the Council of Ministers were sent to the Colonial Office for drafting. At the end of December, the Colonial Office had the draft ready and sent back to

⁶⁵ Myles Osborne, *Ethnicity and Empire in Kenya: Loyalty and Martial Race among the Kamba, c.1800 to the Present* (New York: Cambridge University Press, 2014), p. 231.

⁶⁶ Hornsby, *Kenya*, p. 79.

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

Nairobi.⁷⁰ The Council of Ministers discussed the draft with a view to preparing for final discussion with Sandys to settle the constitution for self-government.

5.2.2 Discussions on draft constitution by the Council of Ministers

The Council of Ministers began to discuss the draft constitution on Wednesday, 2 January, 1963 chaired by Governor Macdonald in the Council Room at the Government House, Nairobi.⁷¹ The Governor said that the government's aim was to "hold elections at the earliest possible moment", but such elections could only be possible when the self-government constitution had been finished.⁷² He also announced that prior to arriving at the final draft, a meeting would be held with the Secretary of State to discuss "outstanding areas of disagreement".⁷³

Regarding procedure at meetings, only comments of substance were recorded. Those sections of the draft that were not mentioned were accepted by the Council without comment. Decisions were taken in accordance with the established principle of general agreement as was applied in the Council of Ministers, where "a decision depended on a substantial majority and was not necessary unanimous".⁷⁴ Every Minister was expected to be loyal to that decision. For example, during discussions on the first day, KADU took issue with the use of the term "effective authorities" and the lack of reference to "Regional Government" in the "Framework of the Kenya Constitution". It was not convinced that this was a proper terminology and proposed making the distinction between "National Government" and "Regional Governments". Anthony Webb, the Governor's adviser and Minister for Legal

⁷⁰ First (Constitutional) Meeting, 2 January 1963, C.M. (63)1, KNA /GO/3/2/62.

⁷¹ Ibid.

⁷² Minute 27, Second (Constitutional) Meeting, 2 January 1963, C.M. (63)2, KNA /GO/3/2/62.

⁷³ Ibid.

⁷⁴ Minutes 140, Twenty-fifth (Constitutional) Meeting, C.M. (63)25, KNA /GO/3/2/62.

Affairs, said that ultimately the ‘National Government’ would be referred to as Government of Kenya, a decision that was taken and no further discussions were entered into.⁷⁵

By 10 January 1963, the pace of discussions on the draft constitution was not fast enough to accommodate Sandys’ planned visit. The Governor adjusted the meeting schedule such that meetings were held on Tuesdays, Wednesdays and Thursday mornings beginning 15th January 1963. The aim was to complete the discussions by the second week of February in time for Sandys’ visit.⁷⁶ Routine Council meetings were held on alternate Wednesday afternoons.⁷⁷ However, even with the expanded schedule, the pace was not enough and a further adjustment was made to include Thursday afternoons.⁷⁸ Further adjustment was made so that the meetings were held three times a day. The discussions became tedious and wearing. KADU members started skipping the meetings having sensed defeat.

During the twentieth meeting, the Governor confirmed the date of Sandys’ visit as 14 February, 1963. The Secretary of State would hold discussion with the Council of Ministers for eight days and also visit other parts of the country “to familiarise himself with the problems of Kenya”.⁷⁹ The date for Sandys’ arrival was adjusted to 15 February 1963, and he would also visit Zanzibar, Uganda and Tanganyika.⁸⁰ At the time of Sandys’ arrival, the Council was on its thirtieth meeting and was handling more preparatory issues than constitutional matters.⁸¹

The meetings were interrupted twice by Sandys’ visit. After the thirtieth meeting, discussions with the Secretary of State commenced and went on up to 23 February 1963, when there was a break as he went to consider the points of disagreement as well as consult

⁷⁵ Second (Constitutional) Meeting, 2 January 1963, C.M. (63)2, KNA /GO/3/2/62.

⁷⁶ Minutes 27, Fourth (Constitutional) Meeting, 10 January 1963, C.M. (63)4, KNA: GO/3/2/62.

⁷⁷ Ibid.

⁷⁸ Minute 45, Seventh (Constitutional) Meeting, 17 January 1963, C.M. (63)7, KNA: GO/3/2/62.

⁷⁹ Minute 99, Twentieth (Constitutional) Meeting, 5 February 1963, C.M. (63)20, KNA: GO/3/2/62.

⁸⁰ Minute 141, Twenty-sixth (Constitutional) Meeting, 12 February 1963, C.M. (63)26, KNA /GO/3/2/62.

⁸¹ Thirtieth (Constitutional) Meeting, 14 February 1963, C.M. (63)30, KNA: GO/3/2/62.

other interest groups. Among the groups was the Kenya Federation of Labour (KFL), which represented 600,000 workers in the country. KFL prepared a memorandum seeking trade union rights to be entrenched in the constitution and Bill of Rights and any amendment in the constitutional provision touching on the rights of workers to be subjected to a countrywide referendum of workers with an 80 per cent majority endorsement. KFL also wanted to be allocated a Special Seat in the legislature to represent special interests arguing that labour constituted a major economic interest.⁸²

Council meetings under the chairmanship of the Governor resumed on 24 February 1963, but were interrupted again upon Sandys' arrival on 7 March 1963, for further discussions. The discussions went on up to 8 March 1963 when he departed and the Council of Ministers' meetings resumed. These meetings were different from those with the Secretary of State because the former discussed the draft constitution in full while the latter discussed the "points of disagreement". Provision was made for the handling of disagreement for the remainder of the draft constitution such as the adjustment of rules in accordance with proposals contained in a memorandum to enable the voters in the Northern Province to vote the same day on the three elections.⁸³ Subsequent discussion made reference only to those sections and subsections of the draft on which points of substance were made or whose deletion and insertions were agreed.⁸⁴

Examination of the draft constitution was concluded on Wednesday, 27 March, 1963, during the forty-third meeting. The Governor announced that no further constitutional meetings would be held and that henceforth the Council would revert to the fortnightly routine meetings. A forty-fourth meeting was held on 3 April to confirm the minutes of the previous meetings (from the thirty-eighth to the forty-third) and to discuss matters arising

⁸² KFL Memorandum to the Secretary of State, 16 February 1963, KNA: MSS/62/1.

⁸³ Minute 208 – Thirty-fifth (Constitutional) Meeting, C.M. (63)35, KNA: GO/3/2/62; C.M.M. (63) 112.

⁸⁴ Forty-first (Constitutional) Meeting, C.M. (63)41, KNA: GO/3/2/62.

from those minutes. This meeting was chaired by Sir Griffin Jones, the Deputy Governor. Although during this meeting an issue arose concerning the Coastal Strip in respect of land law, the Ministers were merely informed of the course of action decided by the Secretary of State, their views were not sought. The decision was that the Secretary of State would seek the advice of the Chief Kadhi before the revised draft constitution was completed.⁸⁵

The open-ended approach with which the British government adopted for the solution to the Coastal Strip question was due to its covert interests in the region, which were omitted in the Robertson report. These interests were strategic, mainly military, of which the African nationalists were opposed to foreign military facilities and bases. The port of Mombasa and the coastal belt offered a suitable alternative for a base for use by Britain and Western allies for supplies across Africa and the far East in the case of an outbreak of another world war and if Ghana and South Africa failed to cooperate.⁸⁶ As setting up a base would have been futile due to the hostile nationalist environment, discussions on the future of the Strip and any cooperation would only be feasible with a political elite and not the entire conference. It is these discussions that culminated in the tripartite agreement signed between Kenyatta, Sandys and the Sultan of Zanzibar on 8 October, 1963.

5.2.3 The Nairobi Conference of March 1963

The conference in Nairobi was convened in accordance with the provision of the “Framework of the Kenya Constitution”, which stated that the constitution was a matter for discussion only between Her Majesty’s Government and the Kenya Government.⁸⁷ All the meetings were held in the Council Room at Government House, Nairobi, and were chaired by the Secretary of State and facilitated by the Governor and Deputy Governor. The participants were the Council of Ministers of the Government of Kenya, the representatives of the UK

⁸⁵ Minutes 268, C.M.(63) 44, KNA: GO/3/2/62..

⁸⁶ The Marquess of Salisbury, Parliamentary Debates,

⁸⁷ Paragraph 21, “Framework of the Kenya Constitution”, K.C.C. (62) 45, KNA: MAC/KEN/45/3.

government, and representatives of KC and the Liwali for the Coast, with the latter two having earned the right of participation at the constitutional discussions. Constitutional advisers were not allowed to attend, as their presence was deemed “embarrassing to both the Secretary of State and to the Ministers, as it would inhibit frank discussion”.⁸⁸ A deputation by the African People’s Party (APP) had sought to be brought into consultation on constitutional matters, but the Governor declined and instead undertook to give the party’s delegation an opportunity of meeting the Secretary of State during his visit.⁸⁹ Discussions pitted the representatives of the UK government led by the Secretary of State on the one hand and the Council of Ministers on the other with the aim of ensuring that “Kenya was given a constitution which would be brought rapidly into operation.”⁹⁰

The conference held a total of eleven meetings, which began with Sandys’ arrival on the morning of 15 February, 1963. In his opening remarks, Sandys expressed hope that the discussions would “narrow the areas of disagreement, but if this was not possible he would have to make necessary decisions”.⁹¹ The meetings, including group discussions, were classified “secret” in the same way the normal cabinet meetings were and no Minister was permitted to make any public reference to any of the discussions, even informal discussions. A publicity subcommittee was constituted consisting of Sir Griffith Jones (the Deputy Governor), Tom Mboya (KANU), Masinde Muliro (KADU) and Monson (Colonial Office) that was in charge of issuing a communiqué “towards the ends of each day’s deliberations”.⁹²

The first item in the meeting was to consider the points of disagreements on the draft constitution set out in papers prepared by the Colonial Office.⁹³ A total of twenty-three papers were presented. Six papers were discussed during the first meeting, six on the second

⁸⁸ Minute 27, Second (Constitutional) Meeting, 2 January 1963, C.M. (63)2, KNA /GO/3/2/62.

⁸⁹ Minute 156, Twenty-ninth (Constitutional) Meeting, 14 February 1963, C.M. (63)29, KNA /GO/3/2/62.7).

⁹⁰ First Meeting with Secretary of State, S.S. (63)1, 15 February 1963, KNA: GO/3/2/69.

⁹¹ Ibid.

⁹² Ibid.

⁹³ Minute 3, First Meeting with Secretary of State, S.S. (63)1, 15 February 1963, KNA: GO/3/2/69.

day, four on the third day, six on the fifth day and one on the fifth day. In all meetings, discussions tended to repeat arguments that had been recorded in previous Council of Ministers minutes as well as memorandums.⁹⁴ At the end of the first day's discussions, a communiqué was issued by Sir Griffith-Jones who was also authorised to answer press questions on the progress of the conference, but he was not to give details on the areas of disagreement.⁹⁵

Discussion on the last paper on the issue of public service (Paper 23) presented difficulties, as no agreement was reached. KADU had prepared a memorandum on "Public Service Arrangements for the Regions" in which it advocated a Public Service Commission for each region and with executive status.⁹⁶ When stalemate was reached, Sandys adjourned the meeting for two days to enable him give the matter further consideration by consulting with his advisers".⁹⁷ MacDonald however remarked that despite the difficulty the "whole field of disagreement had been surveyed".⁹⁸

On 19 February 1963, Sandys convened a Special Meeting of the Coastal Strip whose purpose was to "obtain the decision of the Council of Ministers" on the position of the Liwalis and Mudirs as administrators of the Protectorate ahead of his visit to Zanzibar.⁹⁹ The discussion was in view of the provision in the draft constitution on public service. According to the Secretary of State, the issue was important because the positions of Liwali and Mudir were historically significant. The Robertson Report had recommended their entrenchment in the constitution and that they should be held by Muslims, despite the fact that they were government officers employed on administrative functions.¹⁰⁰ Both KADU and KANU were

⁹⁴ First Meeting with Secretary of State, S.S. (63)1, 15 February 1963, KNA: GO/3/2/69.

⁹⁵ Second Meeting with Secretary of State, S.S. (63)2, 16 February 1963, KNA: GO/3/2/69.

⁹⁶ Appendix, Fifth Meeting with Secretary of State, S.S. (63)5, 17 February 1963, KNA: GO/3/2/69.

⁹⁷ Fifth Meeting with Secretary of State, S.S. (63)5, 17 February 1963, KNA: GO/3/2/69.

⁹⁸ Ibid.

⁹⁹ Special Meeting of the Council of Ministers with the Secretary of State, 19 February 1963, KNA: GO/3/2/69.

¹⁰⁰ Ibid.

in agreement that the positions should not be retained as this could appear to be discrimination and “in favour of one section of the community”.¹⁰¹ Differences however arose in respect of the public service structure, especially the Regional Public Service Commissions as proposed by KADU. It was left for the Secretary of State to work out the decision with the Sultan of Zanzibar.¹⁰²

When the sixth meeting resumed on Wednesday, 20 February 1963, it was to discuss various aspects of the draft constitution. Sandys, while reacting to press reports that there was likely to be a further full-scale constitutional conference before independence, gave assurance that the constitution “would in all basic respects be suitable for independence.”¹⁰³ He did not foresee a situation where basic alterations would be done between self-government and independence such that the constitution was not an interim one. After discussion, Sir Griffith-Jones was mandated to issue a statement reflecting Sandys’ remarks, preferably to be released after his visit.¹⁰⁴

Discussion was also held on the Fiscal Commission, whereby Sandys wanted the questions related to fiscal review “settled”.¹⁰⁵ KADU was opposed to the idea of the local authorities being represented on the reviewing body, but Sandys noted that there had been too much talk on the suspicion between the Central Government and the Regional Government. MacDonald expressed hope that there would be a united Kenyan nation built on the foundation of the new constitution and wished that the Council of Ministers would conduct its proceedings wholly in that spirit.¹⁰⁶

In the subsequent meeting, various outstanding issues were discussed and clarifications provided. The Minister of Finance circulated a copy of reply to questions on Public Debt and

¹⁰¹ Ibid.

¹⁰² Ibid.

¹⁰³ Sixth Meeting with Secretary of State, S.S. (63)6, 20 February 1963, KNA: GO/3/2/69.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

Pensions previously put to Professor R.C. Tress of the Department of Economics, University of Bristol (UK), by Hon. John Butter, Kenya's Permanent Secretary to the Treasury, on behalf of the government.¹⁰⁷ This question had been raised during a constitutional meeting of the Council of Minister. There was discussion on the Central Land Board in respect of a paper prepared by the Secretary of State following informal discussion with "concerned parties".¹⁰⁸ Whereas the Council of Ministers considered the new proposals in the Secretary of State's paper, Havelock (KADU) and Mackenzie (KANU) were mandated to prepare a separate paper detailing the machinery required to ensure the necessary consultations and cooperation.¹⁰⁹ The "Delegation of Executive Authority to a Region by the Central Government" was also discussed where Ngala pointed out that KADU would not accept anything that had not been agreed on, but Mboya reminded him that it had been agreed by both parties that they would accept the Secretary of State's ruling on matters of disagreement.¹¹⁰ There was mention of press reports that "elections could be held before the constitution had been completed".¹¹¹ Sir Griffith-Jones clarified that he had been replying to a technical question when he mentioned that "it was legally possible to hold elections under a Pilot Orders-in-Council" but did not imply that the election was intended.¹¹²

During the eighth meeting discussion was revisited on the Central Land Board in respect of the Havelock and Mackenzie paper.¹¹³ Sandys clarified that the paper related to the implementation of his own paper and did not "in any way imply a departure from the principles".¹¹⁴ The Ministers accepted the paper.¹¹⁵ There was also discussion on the points of

¹⁰⁷ Minutes 12, Seventh Meeting with Secretary of State, S.S. (63)7, 21 February 1963, KNA: GO/3/2/69.

¹⁰⁸ Appendix B. Seventh Meeting with Secretary of State, S.S. (63)7, 21 February 1963, KNA: GO/3/2/69.

¹⁰⁹ Seventh Meeting with Secretary of State, S.S. (63)7, 21 February 1963, KNA: GO/3/2/69.

¹¹⁰ Ibid.

¹¹¹ Minute 13, Seventh Meeting with Secretary of State, S.S. (63)7, 21 February 1963, KNA: GO/3/2/69.

¹¹² Minutes 15, Seventh Meeting with Secretary of State, S.S. (63)7, 21 February 1963, KNA: GO/3/2/69.

¹¹³ "A Memorandum on Point 9 of the Secretary of State's Revised Proposals on the Central Lands Board", KNA: GO/3/2/69.

¹¹⁴ Minutes 16, Eighth Meeting with Secretary of State, S.S. (63)8, 22 February 1963, KNA: GO/3/2/69.

¹¹⁵ Ibid.

disagreement, where it was noted that certain areas of disagreement had narrowed while other had remained unchanged. A fresh set of papers were circulated in which was included a new and final paragraph setting up the “present position”. The position of “agreement” implied that the parties were agreed on the cause of action and did not mean that they had resolved the issue in which case the Secretary of State would offer his solution to be inserted in the draft constitution.

In the ninth meeting, MacDonald reported that the Secretary of State had held a discussion with representatives of KADU and KANU on the question of Northern Frontier Province, but this was not for discussion at the meeting.¹¹⁶ Instead, the meeting discussed the issues of Local Government and Regionalism (Paper No. 3), and Control of Land Transactions (Paper No. 12). The Local Government paper was discussed with the view of determining whether the constitution should have criteria on the sort of local authority to be established, while the paper on Land Transactions was with regard to appeals as contained in a paper prepared earlier by the Attorney General, Anthony Webb. This latter issue was referred to Secretary of State for ruling.

Sandys left the country on 24 February, 1963, and was scheduled to return on 4 March, 1963, to continue talks with the Council of Ministers between 5 and 7 March 1963. Meanwhile, routine meetings of the Council of Ministers resumed on Thursday, 28 February 1963. Before leaving, Sandys emphasised the need for parties to explain to the public that the constitution was not being imposed, and that many of the original differences had been narrowed down as a result of their discussions with him. To avoid delays in elections, he urged them to refer to “any points of differences to him”.¹¹⁷ Both KADU and KANU agreed

¹¹⁶ Minute 20, Ninth Meeting with Secretary of State, S.S. (63)9, 23 February 1963, KNA: GO/3/2/69.

¹¹⁷ Ninth Meeting with Secretary of State, S.S. (63)9, 23 February 1963, KNA: GO/3/2/69.

that the constitution was not imposed “as it had been discussed between them [parties] for the last year” with Kenyatta offering to do all that was necessary to campaign for its support.¹¹⁸

Constitutional meetings of the Council of Minister resumed at the thirty-first meeting chaired and facilitated by MacDonald.¹¹⁹ Upon Sandys return in the morning of Thursday, 7 March, 1963, discussions at the tenth meeting with a report of his discussions with the Government of Zanzibar. He said that the government had been cooperative with regard to the “problem of the Coastal Strip”, but did not wish to settle the question of sovereignty before the election in the colony had been concluded. He also mentioned that the 1895 treaty on the Protectorate would be revised by the time of self-government. The concern within KADU and KANU was that the question of sovereignty had not been satisfactory finalised. Chokwe (KANU) sought to know whether the negotiations between HMG and the Sultan of Zanzibar would delay independence. Sandys gave an assurance that this would not be the case and that it would not affect Kenya’s constitutional advance. He also mentioned that after consultation with a representative delegation from the Coastal Strip, he had “found no widespread desire among them for autonomy”.¹²⁰

Sandys sought formal confirmation that the Ministers would accept his decision on the findings of the NFD Commission Report, which would include the creation of a seventh region. Both KADU and KANU accepted, but KADU was wary that this would “constitute an alteration in regional boundaries”.¹²¹ He further sought assurance from the Ministers on three areas: one, in the case of later disagreement between themselves concerning the draftsman’s interpretation of his decisions on the points of disagreement in the draft constitution, they would agree that he should make decisions on such disagreements and that

¹¹⁸ Minute 24, Ninth Meeting with Secretary of State, S.S. (63)9, 23 February 1963, KNA: GO/3/2/69.

¹¹⁹ Thirty-first (Constitutional) Meeting, 28 February 1963, C.M. (63)31, KNA: GO/3/2/62.

¹²⁰ Tenth Meeting with Secretary of State, S.S. (63)10, 7 March 1963, KNA: GO/3/2/69.

¹²¹ Minutes 28, Tenth Meeting with Secretary of State, S.S. (63)10, 7 March 1963, KNA: GO/3/2/69.

they would accept these decisions as final.¹²² Two, they would agree to leave the making of regulations under the Order in Council to the discretion of the Governor in respect of the transitional provision for bringing the constitution into effect. Three, was the provision of a mechanism where Regional boundaries could be altered without resorting to invoking the constitutional amendment process, such as in cases where two Regions were in mutual agreement. Ministers agreed on the first two, but neither KANU nor KADU endorsed the proposal for the third item.¹²³ It was agreed that Sandys would produce a paper for consideration by the Ministers and that the points of agreement would be included in the draft constitution.¹²⁴

The meeting considered a statement to the press with a view to averting arguments over interpretation. Anthony Webb, the Attorney-General, was mandated to prepare a summary of the constitution and circulate it to Ministers for endorsement.¹²⁵ At the time of the meeting, the Kitale question had not been resolved and Sandys appealed to parties to settle it by agreement as it was a “potentially dangerous issue” by becoming a source of tension in the Council of Ministers.¹²⁶ KANU was opposed to any changes against the Regions Boundaries Commission’s recommendation, while KADU pressed on Sandys that the Commission had made a mistake. KANU stated that it would not change its stand under whatever circumstances. The Kitale issue was not in the meetings’ agenda, but Sandys said that he had introduced the subject to find out whether the parties could be brought together in an effort to reach agreement.¹²⁷ After some discussion, MacDonald ruled that there would be no further discussion on the matter.¹²⁸

¹²² Minute 29, Tenth Meeting with Secretary of State, S.S. (63)10, 7 March 1963, KNA: GO/3/2/69.

¹²³ Minute 30, Tenth Meeting with Secretary of State, S.S. (63)10, 7 March 1963, KNA: GO/3/2/69.

¹²⁴ Minute 31, Tenth Meeting with Secretary of State, S.S. (63)10, 7 March 1963, KNA: GO/3/2/69.

¹²⁵ Minute 32, Tenth Meeting with Secretary of State, S.S. (63)10, 7 March 1963, KNA: GO/3/2/69.

¹²⁶ Ibid.

¹²⁷ See Minutes 33, Tenth Meeting with Secretary of State, S.S. (63)10, 7 March 1963, KNA: GO/3/2/69.

¹²⁸ Ibid.

During the final and eleventh meeting, Sandys introduced his paper on the question of Regional Boundaries in which he sought the alteration of regional borders where there was agreement between Regions. His amendment involved only a minor amendment of substituting ‘boarder’ for ‘boundary’.¹²⁹ Ministers were unable to agree on the proposal in the paper and he decided to stick to the original text with minor amendment of ‘boarder’ for ‘boundary’.¹³⁰ Sandys also presented a statement on the NFD Commission Report, which proposed the formation of the seventh Region.¹³¹ KADU felt that the British government had given the Somali question a preferential treatment and ignored the issues of the Maasai and Abaluyhia, especially with reference to the Kitale issue. After an amendment to the effect that the Region would enjoy the same status as the other Regions, the Ministers agreed with his decision.¹³²

MacDonald presented Sandys’ decision on the points of disagreement that had been referred to him for settlement by the Council of Ministers regarding the issue of Public Service. Sandys said that his decision on the Public Service had been guided by the need to ensure freedom from improper political influence, to provide efficient administration, to attract “capable men” into the public service, and to take into account the existence of tribal loyalties and fears.¹³³ Whereas the Ministers discussed and examined the issue, no agreement was required from them and Sandys only provided explanations.

MacDonald also presented the election timetable based on the desire to complete the constitution before holding elections. According to the timetable, the Colonial Office expected to have the complete revised draft of the constitution back in Kenya for consideration by the Council of Minister by 23 March 1963. The Council of Minister would

¹²⁹ Minute 34, Eleventh Meeting with Secretary of State, S.S. (63)11, 8 March 1963, KNA: GO/3/2/69.

¹³⁰ Appendix A, Eleventh Meeting with Secretary of State, S.S. (63)11, 8 March 1963, KNA: GO/3/2/69.

¹³¹ Appendix B, Eleventh Meeting with Secretary of State, S.S. (63)11, 8 March 1963, KNA: GO/3/2/69.

¹³² Minute 35, Eleventh Meeting with Secretary of State, S.S. (63)11, 8 March 1963, KNA: GO/3/2/69.

¹³³ Minute 36, *ibid.*

meet on 26 March (Tuesday) and 28 March (Thursday) 1963 to complete the examination of the revised draft. By 3 April 1963, all final comments would be received in London. The Colonial Office would then proceed with printing and submission of the text to the Privy Council for ratification and the Constitution Order-in-Council would be published by 17 April 1963, providing for a constitution to facilitate the elections. It was therefore possible to determine Nomination Day as 20 April 1963, and Polling for the Regional Assemblies as Saturday 18 May 1963 and Sunday 19 May 1963. Polling for the Upper House of the National Assembly (Senate) would be done on an appropriate day in the week, and polling for the Lower House (House of Representatives) would be Saturday and Sunday 25 and 26 May 1963. A problem, however, persisted with regard to local authority elections and it was decided that the Council of Minister would discuss the paper on elections during the next routine meeting.¹³⁴ It was also decided that it was the Secretary of State who would announce the Nomination Day.

Other topics that were raised in the last meeting were the issue of Maasai Ceremonial Area in Kinangop, the list of amendment to the summary of the constitution resulting from the meetings and discussion, and the invitation of the delegates from the NFD for the government to explain the decision by the Secretary of State.¹³⁵ All the issues were not discussed. MacDonald announced that the task of amending the draft constitution had been completed. In his closing remarks, Sandys said he had had the opportunity to get to “know the Ministers and to get a full picture of the problems and feelings of the people of Kenya”.¹³⁶ He left the country on 9 March 1963.

¹³⁴ Minutes 37, Eleventh Meeting with Secretary of State, S.S. (63)11, 8 March 1963, KNA: GO/3/2/69.

¹³⁵ Minutes 38, 39 and 40, Eleventh Meeting with Secretary of State, S.S. (63)11, 8 March 1963, KNA: GO/3/2/69.

¹³⁶ Minute 41, Eleventh Meeting with Secretary of State, S.S. (63)11, 8 March 1963, KNA: GO/3/2/69.

5.3 The May 1963 General Election and Self-government

The introduction of the self-government constitution required fulfilment of certain conditions. These were voter registration, delimitation of regional and constituency boundaries, and elections.¹³⁷ While the Regional Boundaries Commission and the Constituencies Delimitation Commission were carrying out their work, a Colony-wide census and registration of voters were going on in readiness for elections. New voters roll based on adult universal suffrage was immediately drawn, as fresh elections were expected to be held as soon as the boundaries had been drawn. The self-government constitution was promulgated through a White Paper on 17 April 1963.¹³⁸ Agreement was reached that elections would be held in May 1963.

According to the new constitutional order, the Lower House or House of Representatives consisted of 129 (one-hundred and twenty nine) seats, while the Upper House or Senate comprised 41 (forty-one) members, one from each district of the forty districts and one from Nairobi.¹³⁹ The total number of registered voters was 2,583,000. Four political parties fielded candidates, but there were also independents. The two main contestant parties were Kenya African National Union (KANU) led by Jomo Kenyatta and Kenya African Democratic Union (KADU) led Ronald Ngala. Others were African People's Party (APP), which had split from KANU under Paul Ngei, Baluhya Political Union, Coast People's Party (CPP) and Nyanza Province African Union (NPAU). The composition of these parties was patterned on tribal lines and presented an ethnic ideology in the elections. This culture re-emerged during the first multiparty election after independence in 1992 when the key parties were based on ethnic affiliations and personalities. Whereas Daniel

¹³⁷ Paragraph 22, "Framework of the Kenya Constitution", K.C.C. (62) 45, KNA: MAC/KEN/45/3.

¹³⁸ Kenya, Government of, *Summary of the Proposed Constitution for Internal Self-government, Cmd 1971* (London: HMSO, 1963).

¹³⁹ EISA, "Kenya: 1963 House of Representatives Election Results", available at <http://www.eisa.org.za/WEP/ken1963results.htm>, accessed on 25 June 2012.

arap Moi had attempted to use KANU to create a party that brought together all the ethnic groups, the effort proved futile when political leaders retreated to their ethnic cocoons upon the repeal of the law that had established Kenya as a one-party state in 1991 to found tribal-based parties. The 2013 general election was fought on party alliances that drew support from the various ethnic groups across the country. Thus, Kenya party politics have not graduated from the tribal affinities to nationalistic leadership owing to tribal interests, perennial competition for national leadership and personality rivalries. Since 1992, elections have featured big tribes conniving to take power.

KANU and KADU went to the election campaigns on a centralist and regionalist agendas respectively. KADU's campaign slogan was "Uhuru na Majimbo Sasa!"¹⁴⁰ KANU's manifesto was titled "*What a KANU Government Offers You*" and committed Kenya to an early independence within the Commonwealth and support for non-alignment, pan-Africanism and federation of East Africa.¹⁴¹ The party appealed to the masses and identified with their immediate needs – land reform, elimination of unemployment, raising the standard of living, instilling of strong democratic faith and the release of political prisoners. It also wanted the people of Kenya to be free of all foreign domination and campaigned against military bases. KADU did not come strongly on such issues.¹⁴² KANU pledged to seek substantive amendments to the constitutional framework in order to establish an independent Kenyan republic, as this was the "form of government appropriate" to the current conditions and was meaningful to the people.¹⁴³ It wanted a unitary government modelled on the British parliamentary system. It pledged to reduce the rigidity related to regionalism, and simplify the workings of the central government, and to

¹⁴⁰ KADU, *KADU Election Policy 1963: Uhuru Na Majimbo Sasa!* (Nairobi: Kenya African Democratic Union, 1963).

¹⁴¹ KANU, *What a KANU Government Offers You* (Nairobi: Kenya African National Union, 1963), p. 26.

¹⁴² Kariuki Njiiiri, KANU Calling, KNA: AHC/29/14.

¹⁴³ KANU, *What a KANU Government*, p. 17.

uphold the rule of law and guarantee the position of every citizen according to the Bill of Rights.¹⁴⁴

NPPPP led the NFD to boycott the elections accompanied by the eruption of violence with a series of attacks targeted at police facilities and polling stations. The attacks were aimed at emphasising the NFD's Somali resolve to secede by wearing down the government's ability to control the region.¹⁴⁵ The killing of senior administrators, Daudi Dabasso Wabera and Haji Galma Dida, Isiolo District Commissioner and Senior Chief respectively, at Sericho on the Isiolo-Wajir border on 28 June, 1963, carried this emphasis.¹⁴⁶ Galma had reportedly shifted from a pro-Somalia to a pro-Kenya position and the people in the region were unwilling to tolerate hostile elements canvassing policies opposed to the principles of reunion with the Republic of Somalia.¹⁴⁷

During the elections, 1,843,879 votes were validly cast implying a voter turnout of 72 per cent. KANU won 83 (eighty-three) out of the 124 seats in the House of Representatives with a popular vote of 988,311 representing 53.6 per cent. In the Senate it won 18 (eighteen) out of the 38 seats.¹⁴⁸ Five (5) seats in the Lower House and three (3) seats in the Upper House remained vacant because of the secessionist conflict in the Northern Frontier District.¹⁴⁹ In Regions where KANU was defeated like Rift Valley and Coast, it compensated through the election of National Members to fill up the vacuum (notably Eric Bomett of Rift Valley and S Sheikh Salim Mohamed Balala of Mombasa), which gave it a voice in areas dominated by KADU. It also brought in European and Asian minority interests into Parliament that included Bruce Mackenzie and Jan Mohamed respectively.

¹⁴⁴ Ibid, p. 18.

¹⁴⁵ Ringquist, "Bandit or Patriot", p. 107.

¹⁴⁶ "History Lane: Mysterious Deaths that Rocked NEP", *Peace Bulletin*, Issue No. 7 (April 2005), p. 7.

¹⁴⁷ Saadia Touval, *The Boundary Politics of Independent Africa* (New York: iUniverse, 1999), p. 110.

¹⁴⁸ EISA, "Kenya: 1963", op cit.

¹⁴⁹ D. Hartmann, "Kenya", in D. Nohlen, M. Krennerich and B. Thibaut (eds), *Elections in Africa: A Data Handbook* (Oxford: Oxford Publishers, 1999), p. 487.

KADU brought in Reggie Alexander. KANU Parliamentary Group also worked a strategy to get Timothy Muinga Chokwe picked as the first African Speaker for the Senate.¹⁵⁰ The convincing victory gave the party confidence to pursue the pledges in its election manifesto, which included demand for independence and the amendment of the constitution.

Following the election victory, Governor Malcolm MacDonald nominated Jomo Kenyatta as Prime Minister. He invited him to form a national (central) government and delegated to him “full responsibility for defence, external affairs and internal security” only excepting matters relating to the exercising of power vested in the Governor by the Emergency Powers Order in Council 1930 and the Preservation of Public Security Ordinance.¹⁵¹ Kenyatta’s internal self-government comprised KANU members and was representative of the country. It included controversial nationalists like Jaramogi Oginga Odinga, who was appointed to the Home Affairs docket, and former detainees like Achieng Ouko who became a cabinet Minister, and Bildad Kaggia and Fred Kubai who were appointed Parliamentary Secretaries. European Bruce Mackenzie was appointed to the Ministry of Agriculture and Animal Husbandry, while two Asians, Jan Mohammed and Chanan Singh, were considered for Parliamentary Secretary posts. Mohammed served in Kiano’s Ministry of Commerce and Industry, and Singh in Kenyatta’s office. Chanan Singh was renowned for his legal knowledge and writing abilities, attributed for drafting many of Kenyatta’s, Mboya’s and Chief Justice’s speeches.¹⁵²

Although Kenyatta’s government accommodated former colleagues in detention, certain freedom fighters like the veteran trade unionist and communist, Markan Singh, and Pio Gama Pinto, were not considered for position, even in the Ministry of Labour with

¹⁵⁰ O’loaskikri to Kenyatta, 11 June 1963, KNA: AHC/29/14

¹⁵¹ Gazette Notice No. 2455, *The Kenya Gazette*, Vol. LXV No. 28, 11 June 1963, p. 643; Hornsby, *Kenya*, p., 83.

¹⁵² Ibid.

Singh's longstanding involvement in labour issues.¹⁵³ Pinto was however nominated to Parliament in July 1964. The government was largely composed of those who had been involved in the freedom struggle and therefore informed by party politics. This form of reward system persisted after independence, which took precedence over meritocracy. The Constitution of Kenya 2010 provides limitations on public appointments that include consideration of gender, regional balance and meritocracy. Despite the limitations, the Jubilee government's cabinet of 2013 featured a reward system when Charity Ngilu, Najib Balala and Samuel Kazungu Kambi were appointed based on party politics. The three Cabinet Secretaries hailed from the zones where the Jubilee alliance got least support. In a nation that was politically divided, Jomo Kenyatta used the opportunity of forming the government to fight fragmentation by including politicians from non-KANU areas and from minority races.

Among the major functions of the government was to implement the new constitution in readiness for full independence. It particularly involved the fulfilment of Paragraph 23 of the Framework of the Kenya Constitution, which stated that: "Thereafter, further negotiation would be needed on arrangements for full independence, which Her Majesty's Government reaffirms to be their aim for Kenya".¹⁵⁴ Kenyatta immediately launched campaign to change the constitution and secure a date for independence.¹⁵⁵ In the middle of June 1963, a KANU delegation travelled to London to hold talks with the UK government on independence. The delegation consisted of Tom Mboya, Joseph Murumbi, Mbiyu Koinange and Charles Njonjo, as legal adviser.¹⁵⁶ It met with Duncan Sandys and his advisers after which, Sandys announced the date of full independence as 12 December

¹⁵³ Gregory, *Quest for Equality*, p. 96

¹⁵⁴ "Framework of the Kenya Constitution", K.C.C. (62) 45, KNA: MAC/KEN/45/3.

¹⁵⁵ Maxon, "Constitution-Making in Contemporary Kenya", p. 25.

¹⁵⁶ Goldsworthy, *Tom Mboya*., p. 218.

1963.¹⁵⁷ This set in motion the final steps for another conference to work out the details of independence.

As head of the internal self-government and Prime Minister, Kenyatta also set out to assure the European community of their future in an independent Kenya, given that some had opted to leave rather than witness an African government. On 12 August 1963, Kenyatta addressed a meeting of 350 European farmers in Nakuru and convinced them that they had nothing to fear from him.¹⁵⁸ His speech was a turning point in their views, having previously displayed deep hostility towards him as a person and were waiting to see what he could do.

I am a politician but I am a farmer like you. The soil joins us all and therefore we have a kind of mutual understanding. We must talk to each other... If we must live together, if we must work together, we must talk together, exchange views...Let us join hands and work for the benefit of Kenya... You are just as much Kenyan as myself.¹⁵⁹

Kenyatta stressed that his government wished European farmers to remain and farm in security assuring them that his government would respect their land titles. He also expressed the urgent need for experienced civil servants to remain and ensure a smooth transition of administration, as the newly independent nation would need the agricultural industry to drive economic development; hence, it would require the economic power and effort of the European and Asian communities in the task of rebuilding the economy.¹⁶⁰ Already the country was faced with a financial emergency on a scale that had never been met before.¹⁶¹ Kenyatta's speech had a reconciliatory impact and a significant number stayed on to

¹⁵⁷ Sandys, Parliamentary Debates, HC Deb 25 June 1963 vol 679 c126W.

¹⁵⁸ Thomas M. Leonard (ed), "Kenyatta, Jomo", *Encyclopedia of the Developing World, Vol. 1* (New York: Routledge, 2006), p. 906.

¹⁵⁹ Kenyatta speech quoted from C.S. Nicholls, *Elspeth Huxley: A Biography* (London: Harper and Collins, 2002), p 326-7.

¹⁶⁰ Ibid.

¹⁶¹ The Earl of Listowel, Parliamentary debates, House of Lords, Deb 15 May 1962 vol 240 cc530-618.

contribute to the economic development of the country with a view to making independence a reality and not an illusion.¹⁶²

As the one entrusted with running the government under a new constitution, Kenyatta realised that he needed everyone in nation building. His attitude towards the Europeans changed. He realised that the country was in a precarious situation that required cooperation other than confrontation. He became aware that European and other immigrants' rights were guaranteed by the approved constitution for the good of all people in Kenya. He had to work under it and respect it. Therefore, with this in mind, it was easy for him to convince the immigrants that he was personally committed to protect their rights. This assurance would win their confidence and hence the country's economic development would continue uninterrupted. At the same time, he had the support behind him to undertake constitution changes that would consolidate his power, which he would use to protect the constitution and empower him to guarantee the rights of immigrants. This position informed Kenyatta and KANU as they set out for the final independence conference in London.

5.4 The Third Lancaster House Conference, September to October 1963

A forum for "further negotiation" with HMG was a conference in London, the "fourth important", to consider the future of Kenya".¹⁶³ The purpose of the conference was to settle the form of Kenya's constitution on independence, while its aim was to settle the final steps to lead Kenya to full independence.¹⁶⁴ This formally styled itself as the Kenya Independence Conference. It involved a preparation phase of discussions where issues emerging from the implementation of the constitution were reduced to a minimum. Thereafter, the actual negotiation took place culminating in the independence constitution.

¹⁶² Davidson to Macmillan, 30 August 1963, KNA: GO/1/1/25.

¹⁶³ First Meeting of the Kenya Independence Conference, KNA: GO/1/1/24, Independence, 1963.

¹⁶⁴ Ibid.

5.4.1 Preparatory Talks

The election brought in a KANU government that was expected to implement the constitution and prepare for talks with the British government for full independence. The process of implementing the self-government constitution encountered practical difficulties.¹⁶⁵ The Ministry of Justice and Constitutional Affairs under Tom Mboya formulated possible solutions in the form of proposals and memorandums to be reflected on as amendments in the independence constitution.¹⁶⁶ These proposed amendments needed to be discussed with the parties to the “Framework of the Kenya Constitution” before their incorporation in the final document. This gave rise to another set of constitutional talks, which were initiated in July 1963, in preparation for the independence conference in September. The aim of these talks was to reach agreement in as many issues as possible so as to leave the smallest number of questions for settlement at the independence conference.¹⁶⁷ The amendments were as “desired” and proposed by ministries in view of the independence constitution.

The ‘Preparatory Talks’ were opened on 11th July 1963 and closed on 6th September 1963. In all, seventeen meetings were held at Government House’s Council Room and were chaired by the Governor. The participants were 10 representatives of the Government of Kenya, 5 representatives of the Opposition, and 3 representatives of the European community. While the government side was composed of predominantly KANU members, the Opposition consisted of 4 KADU and 1 APP representatives. The Secretary to the Council of Ministers provided the Secretariat services. The Europeans were represented by the Earl of Enniskillen (Capt. David Lowry Cole) formerly MLC for North Kenya, Lord Tom Delamere, and Clive Salter, formerly MLC for Nairobi West. While the Earl of

¹⁶⁵ I.C. (63)7, KNA: GO/1/1/25.

¹⁶⁶ Ibid.

¹⁶⁷ Minute 5, Second Meeting of the Preparatory Talks on the Independence Constitution, KNA: GO/1/1/25.

Enniskillen and Salter had attended the previous constitutional conference, Lord Tom Delamere was a newcomer. Delamere was sympathetic to Kenyatta and positive of Kenya's independence.¹⁶⁸ These representatives were later confirmed by the Secretary of State as the ones who were to attend the Independence Conference. Minor changes were however made to the final list when Paul Ngei, the APP representative crossed over to the Government side and the Opposition earned a sixth representative.¹⁶⁹ Initially, the meetings took place once a week every Thursday, but the frequency was later increased to meet the demands of the workload with some of the meetings ending past midnight.

The Governor provided the procedure for discussions. The normal procedure was that the government or other parties would present proposals for discussion, then comments and criticism would be offered so that agreement could be reached by all parties.¹⁷⁰ In case of disagreement on matters outside the "Framework of the Kenya Constitution", the views of the elected government prevailed provided that these views were acceptable to HMG, but HMG could make alternative suggestions which would be agreeable to the parties in the Talks.¹⁷¹ In respect of matters within the Framework, any proposals for alternation would be considered in the light of the essential workability of the independence constitution in the circumstances of independence.¹⁷² Minutes of the meetings did not record details of discussion, but the subject raised and the conclusions reached.¹⁷³ Matters that were agreed upon, together with points of disagreement, were forwarded to the Colonial Office for consideration by the Secretary of State who would send his observations to the delegates for further discussion. The role of HMG in the process was to implement the amendment of the constitution either

¹⁶⁸ Sanger, *Malcolm MacDonal*d, pp. 3-4.

¹⁶⁹ Griffith-Jones to Salter, 24 August 1963, KNA: GO/1/1/25.

¹⁷⁰ *Ibid.*

¹⁷¹ *Ibid.*

¹⁷² *Ibid.*

¹⁷³ Third Meeting of the Preparatory Talks on the Independence Constitution, KNA: GO/1/1/25.

as the independence constitution or to make the existing constitution work properly in the areas that it had demonstrated to be unworkable. It could not alter the Framework.¹⁷⁴

The preparatory talks began with the first meeting in the morning of 11 July 1963, which discussed procedures. There was a proposal that matters of controversy should be discussed early in the process. These matters included the issues of citizenship, formal amendment of the constitution, and Karasuk.¹⁷⁵ Karasuk was not a constitutional matter, but it had generated a lot of interest as it involved an effort by the Kenya Government to vary the international boundary so as to reassume administrative responsibility of an area formerly under the administrative jurisdiction of the Uganda Government since 1931 though it was legally part of Kenya. The Uganda Government had been reluctant to discuss the matter until after the elections. With the elections concluded, it was prepared to re-open negotiations.¹⁷⁶

Between the first and sixth meetings, the issues of Karasuk, Head of State, constitutional advisers and the Public Officers Agreement dominated discussions.¹⁷⁷ KADU delegates proposed the issue of alternate membership to the Talks, but it was rejected on account that the same list would be attending the independence conference and could therefore not be altered.¹⁷⁸ After these discussions, the government proposals, as contained in Mboya's memorandum, were presented. Tom Mboya was charged with the direct responsibility of leading the government side on the Talks.¹⁷⁹ The memorandum contained proposals for amendment to the independence constitution as desired by Ministries borne, out

¹⁷⁴ Minute 42, Fourteenth Meeting of the Preparatory Talks on the Independence Constitution, KNA: GO/1/1/25.

¹⁷⁵ Minute 3, First Meeting of the Preparatory Talks on the Independence Constitution, KNA: GO/1/1/25.

¹⁷⁶ Minute 16, Fifth Meeting of the Preparatory Talks on the Independence Constitution, I.C. (63)5, KNA: GO/1/1/25.

¹⁷⁷ See Minutes 1-23, First to Sixth Meetings of the Preparatory Talks on the Independence Constitution, KNA: GO/1/1/25.

¹⁷⁸ Minute 19, Sixth Meeting of the Preparatory Talks on the Independence Constitution, KNA: GO/1/1/25.

¹⁷⁹ Goldsworthy, *Tom Mboya*, p. 218.

of the Ministers' reports of the "serious difficulties in practice" they were encountering with the provisions of the constitution.¹⁸⁰

The government wished to examine these difficulties in the light of the independence constitution. From the memorandum, individual Ministries were requested to prepare papers with proposals for resolving the respective difficulties. Constitutional amendments would be effected if the proposals were accepted.¹⁸¹ The first on the line was the Ministry of Health and Housing, which was required to prepare its paper as "a test case". The Chief Medical Officer was invited to present the "difficulties arising from the constitution" and the accompanying proposals.¹⁸² With the successful piloting, other Ministries followed suit.

Attendance of meetings by the Opposition became irregular from the eighth meeting, but re-awakened during the twelfth meeting when the issue of Public Service came up for discussion. The paper, which had been prepared by the Office of the Prime Minister,¹⁸³ provoked instant reaction with KADU stating that it was "absolutely opposed in principle" to the set out proposals and prompting Muliro and Tipis to walk out of the meeting.¹⁸⁴ Mboya noted that the issue of Public Service had been a difficult one because the Framework had only established one principle, insulation from political control and patronage. While KADU had proposed seven public service commissions, the government (KANU) had proposed one with an executive Public Service Commission.¹⁸⁵

In the same meeting, the government also proposed some procedure for amending the constitution whose purpose was to make it "more practicable", but not "easier".¹⁸⁶ MacDonald cautioned that this would amount to alteration of paragraph 19 of the Framework,

¹⁸⁰ Memorandum by the Ministry of Justice and Constitutional Affairs, I.C (63)7, KNA: GO/1/1/25.

¹⁸¹ Minute 25, Seventh Meeting of the Preparatory Talks on the Independence Constitution, KNA: GO/1/1/25.

¹⁸² Minute 24, Sixth Meeting of the Preparatory Talks on the Independence Constitution, KNA: GO/1/1/25.

¹⁸³ Memorandum on Public Service, I.C. (63)12, KNA: GO/1/1/25.

¹⁸⁴ Twelfth and Thirteenth Meetings of the Preparatory Talks on the Independence Constitution, KNA: GO/1/1/25.

¹⁸⁵ Minute 38, Twelfth Meeting of the Preparatory Talks on the Independence Constitution, KNA: GO/1/1/25.

¹⁸⁶ Minute 39, Twelfth Meeting of the Preparatory Talks on the Independence Constitution, KNA: GO/1/1/25.

which had been subscribed to by all the concerned parties – KANU, KADU and HMG. Alteration to such a provision would make it difficult to secure the agreement of the British Parliament to the Independence Bill and the Independence Constitution for Kenya unless it was “fully justifiable to the satisfaction of HMG and Parliament”.¹⁸⁷

During the fourteenth meeting KADU informed the Governor that it would no longer be attending the meetings as the relevant issues were already exhausted.¹⁸⁸ The meetings went on nevertheless under the chairmanship of the Governor. The government proposed that an amendment to the provisions on fundamental rights and citizenship should require a majority of 65 per cent in each House, and a majority of 65 per cent in a referendum on a bill arguing that a constitution should not be so rigid that it cannot be amended when it was the wish of the people to do so. The European representatives’ reaction to the government proposal on amending the constitution was submitted in a paper.¹⁸⁹ They did not find the proposal acceptable and any reduction in the amendment percentages was not welcome.

The Colonial Office prepared and circulated some papers containing matters for further consideration at the Preparatory Talks. These papers were on the powers and functions of the Governor based on papers by the Governor’s constitutional advisers and the government, and on citizenship. The government expressed concern that papers from the Colonial Office were circulated before being referred to the Minister for Constitutional Affairs who was coordinating the government proposals at the Talks. It was agreed that future papers would be referred to him before circulation.¹⁹⁰

The Preparatory Talks ended with the seventeenth meeting on 6 September, 1963. KADU delegates did not attend the meeting, but Ngei attended for the Opposition. KADU’s

¹⁸⁷ Ibid.

¹⁸⁸ Minute 42, Fourteenth Meeting, of the Preparatory Talks on the Independence Constitution, KNA: GO/1/1/25.

¹⁸⁹ Memorandum on Amendment of Constitution, I.C. (63)26, 3 September 1963, KNA: GO/1/1/25.

¹⁹⁰ Minutes 48, Fifteenth and Sixteenth Meetings of the Preparatory Talks on the Independence Constitution, KNA: GO/1/1/25.

papers were not discussed, as they had not been presented by the time the talks came to an end.¹⁹¹

5.4.2 Interests and attitudes

The overriding interest of securing a constitution for an independent Kenya, through which everyone would enjoy political stability and economic progress, needed agreement and goodwill of all people. The achievement of such agreement was the principal objective of the conference.

Kenya Government, as represented by KANU, aimed at giving Kenyans a workable constitution guaranteeing stability and effective governance. It wanted to remove contentions and frictions in the machinery of government, leaving it free to pursue economic recovery and development. This called for extensive amendments to the constitution to strengthen the centre. Without physical representations or administrative image at the grassroots the Central Government was obstructed and frustrated.¹⁹² Control of the police and civil service by the Central Government was also necessary, and KANU felt that this did not require any argument as it was the Kenya Government that was ultimately responsible for the maintenance of law and order and the economic development of the country. To fulfil such a responsibility, the Central Government must have power to enforce its will.¹⁹³

KANU held that political circumstances had changed since the previous constitutional conferences and therefore it wanted HMG to recognise this fact, bear these changes in mind, and respond by helping the Kenya government to consolidate the gains already made “... towards unity and stability”.¹⁹⁴ The KANU government outlined these options for HMG. It could refuse have amendments and thus launch Kenya into independence with a constitution

¹⁹¹ Minute 46, Fifteenth and Sixteenth Meetings of the Preparatory Talks on the Independence Constitution, KNA: GO/1/1/25.

¹⁹² Kenyatta’s Closing Remarks, Report of the Kenya Constitutional Conference, 1960, KNA/MAC/KEN/42/3.

¹⁹³ Nyerere to Kenyatta, 16 October 1963, KNA: MAC/KEN/49/2.

¹⁹⁴ Ibid.

that had been rejected by the majority of the people of Kenya. Such a move would create uncertainty and conflict soon after independence, and ultimately the country would not consider itself bound by the independence constitution. Or it could recognise the changed circumstances and conditions of Kenya as well as the need for a workable constitution that would ensure certainty and stability after independence. Such recognition would require significant changes to be made on the constitution. In making the choice, HMG had to bear in mind that ultimately it was the Kenya government that would be responsible for the protection of the minority tribes or the non-indigenous people that the constitution was purporting to do.

The KANU government was particularly interested in amending three key areas: centralisation of public service, control of the police force by the Kenya government, and a reduction in the numbers required for constitutional changes. The Framework had proposed eight public service commissions, but the government sought the centralisation of the civil service under one Public Service Commission. Regarding the police force, the Framework had set out a detailed scheme for the distribution of police control between the Central Government and the Regions, but the government proposed amendments with the following objectives: to ensure that no Region could build up an excessive police force; to place the entire police under the control of a central command such as an Inspector-General; to eliminate restrictions on the movement of police reinforcements; and to establish an independent Police Service Commission. On constitutional changes, the Framework had set the threshold of any changes affecting entrenched rights of individuals, Regions, Tribal Authorities or Districts at 75 per cent of the vote in the House of Representatives and a 90 per cent vote in the Senate. The threshold for all other amendments was a 75 per cent vote in each House. The government proposals were that the categories of rights to which these criteria would be applied be closely defined while retaining high percentage requirement. It

proposed that there should be introduced an alternative procedure of obtaining either a 75 per cent vote in both Houses or two-thirds majority of votes in a referendum for certain provisions. This particular item on constitutional changes did not feature in the Preparatory Talks because it was not included in the actual self-government constitution. During the period of internal self-government the power to make any change remained solely with HMG.¹⁹⁵

KADU was out to protect the existing constitution and was therefore not keen on constitutional amendments. It was out to conserve the agreement reached in the previous conference, holding that the constitution could not be changed under any circumstances. Before any changes were to be considered, the constitution had to be tried for some time to discover weaknesses. Since the constitution was the result of agreement at a past conference, it was sacrosanct. In as far as constitutional amendments were concerned KADU had the support of the Europeans, especially those who still thought that their interests would only be protected under the framework that had been agreed upon and feared being left at the mercy of African politicians.¹⁹⁶

The Europeans were concerned with protecting their rights, primarily land and citizenship. They felt that in the negotiations with the Kenya Government, HMG should honour its responsibility towards its own people whom it “encouraged to go and contribute to the development of the country”.¹⁹⁷ Their aim was to safeguard as much as possible the interests of the European community, especially the most vulnerable, well aware that the constitutional framework did not provide for the direct representation of the Europeans in the government. Therefore, they would be unable to defend their rights when the British

¹⁹⁵ Lord Colyton, Parliamentary debates, House of Lords, Deb 15 May 1962 vol 240 cc530-618.

¹⁹⁶ Davidson to Macmillan, 30 August 1963, KNA: GO/1/1/25.

¹⁹⁷ Enniskillen to Welwood, 3 October 1963, KNA: GO/1/1/24.

government power to defend them ceased to exist after independence.¹⁹⁸ They not only sought support from HMG, but they also went further to lobby for legislation in the British Parliament where persons of British origin “may later resume their original nationality without delay upon surrendering British citizenship”.¹⁹⁹

By 1963 four classes of vulnerable Europeans in Kenya had emerged, which were considered to be in need of assistance by HMG, especially with regard to the elderly and widows, before the constitutional settlement was reached. One, there were those who owned farm properties but were unable to continue farming and were willing to sell their farms and leave. However, they did not have enough money for passage and set up a home elsewhere as they had invested almost everything in their farms. Two, there were those who owned residential property and whose income had been tied in the property so that they had no money for passage and setting up a home elsewhere. Three, there were those who had small incomes from pensions or annuities, but they had no capital leaving them with insufficient income to enable them leave and set up homes elsewhere. Four, there were the destitute, those who had no income at all or their income was even insufficient for them to live on.²⁰⁰ Another category consisted of European convicts who were serving their sentences in Kenya.²⁰¹ Such people could not be left at the mercy of the African government, especially those connected with the Mau Mau war, and hence a well-defined settlement had to be negotiated between the Kenya Government and HMG.

With regard to citizenship, a considerable proportion of the European population comprised a large number of ex-service officers who were on pension, having been invited to the colony to settle after the world wars. The officers had taken an oath of allegiance to another sovereign (Her Majesty the Queen) and most of them were subject to recall into

¹⁹⁸ Ibid.

¹⁹⁹ Ibid..

²⁰⁰ W. Urquhart, 22 February 1963, KNA: GO/1/1/24.

²⁰¹ Eric to Salter, 9 September 1963, KNA: GO/1/1/24.

service in case of an emergency. To them, it was impossible to give up their UK citizenship and become Kenyans.²⁰² As they were not interested in participating in politics or voting, they wanted to be allowed to live as law-abiding citizens without discrimination, particularly in respect of ownership of property and taxation. While they did not expect privileges from the new government, equally, they did not expect to be treated as second-class citizens or to be subjected to special pressures or humiliations.²⁰³

The British government also appeared to have interests beyond the protection of minorities. This interest extended to the consolidation of Britain's global geopolitical position and its presence in East Africa was strategic. From Kenya, it could coordinate its political, economic and military activities in the region and in Africa as a whole, especially after failing to secure rights to use local bases in other independent African countries.²⁰⁴ With Kenya headed for independence, the British government tried to avoid a condition that would provoke a head-on collision with the political leaders if it wished to negotiate for such presence.²⁰⁵

HMG was nevertheless reluctant to deviate from the agreed framework. It needed to balance, maintaining confidence among all sections of the Kenyan population on the one hand, and ensuring that the government had the means to govern on the other. Since it was unwilling to make basic changes in what had previously been agreed upon, it was bound to arouse considerable conflict with the Kenya government.

5.4.3 Participants, logistics, venue and agenda

The delegates to the conference were drawn from those attending the Preparatory Talks in Nairobi. In circumstances where a delegate was unable to attend by reason of illness or other

²⁰² Fressanges to Salter, 16 September 1963, KNA: GO/1/1/25.

²⁰³ Lord Colyton, Parliamentary debates, House of Lords, HL Deb 15 July 1963 vol 252 cc4-88.

²⁰⁴ The Earl of Listowel, Parliamentary debates, House of Lords, Deb 15 May 1962 vol 240 cc530-618.

²⁰⁵ Ibid.

valid cause, there was provision for replacement.²⁰⁶ The delegates were generally divided into two: from Kenya and from the UK government. Delegates from Kenya included the Governor, the Deputy Governor, the Attorney General and the Permanent Secretary in the Governor's Office (Secretary to the Cabinet), the Government of Kenya (also representing KANU) the Opposition and the European Representatives. Having formed the government as the majority party, KANU approved the list of its delegates. This underscores the significant role that party organs were to play in government.

The UK Government was represented by the Secretary of State and officials of the Colonial Office. The UK Government had 10 representatives, while the Kenya Government had 12 representatives, excluding 4 government officials, but including Paul Ngei who had changed positions to join the government ranks. The Opposition had 6 representatives, and the Europeans had 3 representatives. The Secretariat was provided by the Cabinet Office. All groups were entitled to have three advisers irrespective of the size of the delegation. The government paid for only one adviser and was unwilling to pay expenses for unofficial advisers.²⁰⁷ The KANU side retained Malik as adviser and accommodated Lord Tom Delamere as another adviser when Laurance Maconochie Welwood resumed attendance of the Preparatory Talks. A substantial number of delegates on both sides had participated in the previous conference.

Invitations to the conference as well as travel and accommodation arrangements were made by the Governor's Office in Nairobi in collaboration with the Colonial Office in London. These arrangements were made as early as August 1963.²⁰⁸ However, the arrangements and business of the conference were agreed upon during the first plenary meeting. All the plenary meetings took place in the Music Room of Lancaster House and the

²⁰⁶ Record of the Preparatory Talks – First Meeting, 11 July 1963, KNA: GO/1/1/25.

²⁰⁷ Griffith-Jones to Salter, 24 August 1963, KNA: GO/1/1/25.

²⁰⁸ "Travel Arrangement for the Independence Conference", 20 August 1963, KNA: GO/1/1/25.

agenda was to be drawn from proposals submitted by the participating groups. They had up to the morning of 26 September 1963 to submit them to the Secretariat.²⁰⁹ The proposals were to contain amendments or additions to the existing constitution and only if such changes were considered necessary for the adoption of the independence constitution.²¹⁰ Further proposals would not be accepted unless they arose from the discussion.²¹¹ KANU also did not want the Nairobi talks re-opened on the pretext that KADU was not present or did not represent unanimous decision, as this would suggest that KADU had veto powers and that KANU's labours of their efforts were wasted.²¹²

The procedure at meetings was that minutes of the conference would be confined to recording conclusions. Any major points would have to be submitted to the Secretary of State in writing for circulation and eventual determination of whether they would be included in the minutes. As much as possible, all meetings would be carried out in plenary. Committees would only be formed if it was deemed necessary. Restriction was placed on the flow of information to the public where a brief press communiqué would be issued after each plenary session subject to the conference's approval.²¹³

5.4.4 Structure of the conference

Of the three Lancaster House Conferences held for the negotiation of Kenya's independence constitution, this was the shortest lasting 25 days. It opened on 25 September 1963 and went on up to 19 October 1963. Meetings took place in plenary sessions and in informal discussions with separate groups. No committees were formed. The Secretary of State, Duncan Sandys, chaired all the seven plenary meetings.

²⁰⁹ Record of the Kenya Constitutional Conference – First Meeting, KNA: GO/1/1/24.

²¹⁰ Ibid.

²¹¹ Ibid.

²¹² Ibid.

²¹³ Ibid.

Plenary meetings

The first plenary meeting consisted of the opening session and discussion on the business of the conference. The session was open to the press and public. The Secretary of State, the Prime Minister, the Leader of the Opposition and the European representative gave their opening remarks and expressed their respective attitudes towards the conference and their expectations.

While recognising the difficulties that the previous conferences encountered, Sandys noted that delegates of all parties had agreed on the objective of Kenya's future as "a united Kenyan nation" and that the main task was "to establish a proper balance between the powers of the Central Government and those of the Regional Authorities".²¹⁴ He expressed hope that the conference would find solutions which on one hand maintained confidence among all sections of Kenya's population, and on the other ensured that the government had means to govern without making basic changes in what had previously been agreed upon.²¹⁵ He also stressed that the country had to have a constitution that was based upon agreement and goodwill of all sections of the people which was the task of the conference.²¹⁶

Prime Minister Jomo Kenyatta observed that the announcement of the date of independence had given Kenya "greater unity, peace and harmony" so that there was a measure of stability, compared to previous years, and the mood and spirit of people of all races was one of hope.²¹⁷ He sought recognition of "change in political circumstances" in Kenya since the previous conference" where the government was not only enjoying "increasing support and response from all sections and tribes of the country, but also the Opposition was a small minority in Parliament since it had failed to retain any real control

²¹⁴ Ibid.

²¹⁵ Ibid.

²¹⁶ Ibid.

²¹⁷ Ibid.

even in its former strongholds, as was evident from the county and municipal elections.²¹⁸ He wanted that change to be borne in mind during the discussions.

Kenyatta also noted that most of the issues discussed during the Preparatory Talks had been unanimously agreed upon between the government and the other parties. The government was therefore against the re-opening of discussion, as this would suggest that “KADU had veto powers” and that the effort put in the talks had been wasted.²¹⁹ He said that the aim of the government at the conference was to give Kenya a workable constitution that guaranteed stability and an effective government” in the years after independence. He emphasised that the constitution “was the result of agreements” at the previous conferences, which meant that it was not sacrosanct. Also the constitution did not need to be tried for many years to discover its weaknesses. Therefore, in the interest of harmony in Kenya and in recognition of the majority opinion in the country, the constitution had to be amended. Finally, he acknowledged that the European delegation had adopted a realistic and helpful attitude during the Nairobi Talks and invited the Opposition to adopt the same attitude.²²⁰

Leader of Opposition Ronald Ngala termed Kenyatta’s demands as irrelevant, misleading and even dangerous contentions. He argued that all decisions on the constitution had been taken at the second Lancaster House Conference in 1962 and recorded in the “Framework of the Kenya Constitution”.²²¹ He said that KADU was relying on HMG to maintain its obligation and complete integrity in respect of constitutional amendments and gave the scope and purpose of the conference as to “agree on such technical amendments” of the constitution as were consequential on independence. He wished to see the self-government constitution implemented before full independence without amendments even if

²¹⁸ Ibid.

²¹⁹ Ibid.

²²⁰ Record of the Kenya Constitutional Conference – First Meeting, KNA: GO/1/1/24.

²²¹ Ibid.

it meant by use of powers set out in the obligation of HMG, as this was what had been agreed by the negotiating parties.²²²

The leader of the European delegation, Laurance Maconochie Welwood, recognised the attitude taken by the Kenyatta government in recognising the contribution that the European community had made in Kenya and the pledge to continue recognising it. He said that although for any constitution to be workable it must “have some flexibility”, certain solemn agreements reached during the previous conferences needed to be honoured, singling out agreements on land policy. He also wanted HMG to honour its responsibility towards the European community.²²³ After Maconochie Welwood’s remarks, representatives of the press and public left the venue for the meeting to proceed in private.

During the seven plenary meetings that were held between 25 and 30 September, agreement was reached on a number of amendments that were required to change Kenya’s status from self-government to full independence.²²⁴ Of the 35 areas that required attention, 14 were agreed upon during these meetings. The Kenya government proposed a number of further amendments, which it hoped would make the constitution workable. The Opposition refused to discuss them arguing that they were not necessary or justified. Disagreements on the amendments discontinued in the plenary sessions and created a deadlock. This led to separate private discussions between the Secretary of State and the respective delegations in an endeavour to secure agreements. The conference reconvened for the eighth and final plenary meeting on 19 October 1963.

²²² Ibid.

²²³ Ibid.

²²⁴ Ibid.

Informal meetings and discussions

Disagreements on the amendments discontinued during the plenary sessions. This gave way to separate private discussions between the Secretary of State and the respective delegations in an endeavour to secure agreements.²²⁵ No records of private discussions were kept. The outcome of these discussions was reported in the final plenary meeting on 19 October 1963.²²⁶

Before the informal discussions began, the KANU (government) delegation discovered that Sandys was meeting with KADU delegates separately. His aim was to encourage the opposition to accept the amendment proposals that would create a stumbling block to final agreement. This would frustrate the majority of the population who supported KANU and this was not acceptable.²²⁷ Sandys was wary that if the British government imposed amendments acceptable to KANU, KADU minority tribes would resort to violent action aimed at secession. The British Parliament would then blame the government for provoking bloodshed and could refuse to pass the Independence Bill. The British government therefore resorted to forcing a KADU policy on KANU, or to threaten to postpone independence.²²⁸

On 8 October, 1963, Kenyatta signed an agreement with the Sultan of Zanzibar, the Government of Zanzibar and the British government providing that on the date when Kenya became independent the territories comprising the Kenya Coastal Strip would become part of Kenya proper.²²⁹ He gave assurances in relation to freedom of worship, the position of the Chief Kadhi and the teaching of Arabic in schools, and also undertaking to uphold other aspects of the daily life of the peoples of the Coastal Strip.²³⁰

²²⁵ Michael Smith, *The Spying Game: The Secret History of British Espionage*, (London: Politicos, 2003), pp. 378-382.

²²⁶ Statement of the Secretary of State for the Colonies at the Final Plenary Session, KNA: GO/1/1/24.

²²⁷ Odinga, *Not Yet Uhuru*, p. 239.

²²⁸ *Ibid*, p. 238.

²²⁹ Hornby, *Parliamentary Debates*, HC Deb 22 November 1963 vol 684 cc1329-400.

²³⁰ Kenyatta to Shamte, Prime Minister of Zanzibar, 5 October 1963, KNA: MAC/KEN/49/1.

While the conference was in a deadlock, the KANU Parliamentary Group cabled the KANU delegation on 16 October 1963 to return to Kenya with a view to declaring independence on 20 October 1963.²³¹ The request was made well aware that the move risked jeopardising Kenya's future relations with Britain. KANU felt that KADU, having suffered a severe defeat at the general elections, was being encouraged to create semi-autonomous units within the regions it claimed to control. KANU also felt that the reluctance of the Secretary of State to accept the implications arising from the growing support of KANU and its policy of a strong central government threatened to undermine the political and economic stability of the country. Kenyatta tried to persuade the British government to reject regionalism, but it did not trust Kenyatta and KANU. The pressure from KANU eventually helped to swing the balance in KANU's favour and it won a point in respect of the question on constitutional amendment and increased centralised control of the police and the Public Service Commission.

The European delegates failed to secure dual nationality as a way of safeguarding their property rights. They therefore pursued an alternative arrangement where the British Parliament would enact legislation to allow those of British origin who surrendered their British citizenship to resume their nationality "as of right and without delay".²³² The delegation met with Richard A. Butler, Acting Prime Minister, on 17 October 1963, to impress upon HMG its obligations to them. This meeting took place a day before change of government in the United Kingdom following the resignation of Harold Macmillan on 18 October, 1963, on the eve of the Conservative Party conference due to ill-health.²³³ It was also two days before the Independence conference ended. Macmillan was succeeded as Prime Minister by the Foreign Secretary, Alec Douglas-Home.

²³¹ Odinga, *Not Yet Uhuru*, p. 237.

²³² Maconochie Welwood to *Sunday Times*, 1 October 1963, KNA: GO/1/1/24.

²³³ John Cannon. "Macmillan, Harold" *The Oxford Companion to British History*. 2002. Encyclopedia.com. (December 16, 2014). <http://www.encyclopedia.com/doc/1O110-MacmillanHarold.html>

A British Intelligence Service and former colonial officer, Frank Steele, carried out secret talks with Jomo Kenyatta to find out what common ground there was for negotiations. Steele was renowned for having opened contacts with the Irish Republican Army (IRA) in the early 1970s.²³⁴ His engagement with Kenyatta owed to the latter's earlier status as a "terrorist". The British had promised to hand over the government to Kenyatta on condition that he held elections first, formed the government and "[took] care to establish a loyal opposition".²³⁵ As John Keen observed, a lot of 'cook work' went on behind the scenes as the British prepared Kenyatta for the transfer of power.²³⁶ However, Kenyatta was tactical in his engagement with the British and both sides took considerable precautions. While Kenyatta wanted first and foremost independence for Kenya, he was well aware that antagonising the British could lead to them closing up resulting in economic collapse, yet he had a population of poor Africans to take care of. The British were also aware that Kenyatta would be capable of nationalising their property and therefore made it difficult for him to change the Bill of Rights as well as surrounded him with their agents such as Bruce Mackenzie.

Meanwhile, Sandys suggested that the Kenya government enter into negotiations with KADU, but KANU was unwilling to negotiate any agreement with KADU. According to KANU, negotiating with KADU would be interpreted as making "nonsense of the independence elections".²³⁷ Although the British government's position was that the independence constitution had to contain effective safeguards to ensure that a proper balance between the centre and the regions was maintained, Sandys was prepared to discuss reasonable arguments that would be consistent with its position.²³⁸

²³⁴ Michael Smith, *The Spying Game: The Secret History of British Espionage*, (London: Politico's, 2003), pp. 378-382.

²³⁵ Kenyatta quoted in Walther Leisler Kiep, *Bridge Builder: An Insider's Account of Over Sixty Years in Post-war Reconstruction, International Diplomacy and German-American Relations* (West Lafayette, IN: Purdue University, 2012), p. 33.

²³⁶ John Keen, Personal Interview, 17 March 2011.

²³⁷ Odinga, *Not Yet Uhuru*, p. 239.

²³⁸ Sandys, Parliamentary Debates, HC Deb 01 August 1963 vol 682 cc150-1W.

After more than two weeks of separate discussions, a certain number of changes based on KANU's three main areas of attention were recognised as essential and the proposals for the amendments were redrafted. With regard to the police, Sandys decided that the National Security Council should be charged with fixing the actual establishments and the maximum strength of the Central and Regional police contingents. The Inspector-General of Police could post all the ranks of the police force into or from any Regional contingent without prior consent of the Regional Commissioner. Restriction on the movement of police reinforcements from one part of Kenya to another would be abolished. An independent Police Service Commission (PSC) would be responsible for the recruitment, promotion and discipline of officers both at the gazetted and the inspectorate ranks; previously it was only from gazetted ranks. On the issue of public service, the Public Service Commission was required to consult the Regional authority concerned and try as much as possible to meet the authority's wishes. The Central Government would also include a reasonable number of persons from each Region. On constitutional amendment, some proposed changes were made which were meant to provide for "some elements of flexibility" in the constitution so that it could be "corrected in the light of experience".²³⁹

The changes were accepted by the Kenya government, but they were rejected by the Opposition. On the production of the final document, it was agreed between the British Government and the Kenya Government that the Secretary of State's legal advisers would refer the draft of the independence constitution to the Kenya law officers for comment. Any points of disagreement would be decided by the Secretary of State. Kenyatta signed a written commitment to accept the Secretary of State's amendments "as a settlement of issues raised at the conference, and that it was his government's intention to seek to make further amendments to the constitution except in as far as subsequent experience showed these to be

²³⁹ Central Office of Information, Kenya Independence Conference 1963, October 1963, KNA: MAC/KEN/49/1.

absolutely necessary”.²⁴⁰ The Opposition boycotted the final plenary session all together and therefore did not endorse the final document.

5.4.5 Outcome of the conference

The immediate outcome of the conference was the finalisation of the Independence Constitution and the enactment of the Kenya Independence Bill by the British Parliament. In her speech on the opening of Parliament on 15 October 1963, Her Majesty the Queen confirmed that the government would be presenting a Bill “to provide for the independence of Kenya”.²⁴¹ Sandys presented the Kenya Independence Bill to the British Parliament on 13 November 1963, which was subsequently enacted on 3 December 1963.²⁴² The Act provided for the attainment of fully responsible status by Kenya within the Commonwealth, including the termination of financial and other assistance to the East African Common Services Organisation under the Colonial Development and Welfare Act 1959.²⁴³ The resulting enactment was published as the Kenya Independence Order in Council on 10 December 1963, to come into operation immediately before 12 December 1963.²⁴⁴ The Constitution was appended as Schedule 1 of the Order. This paved way for independence, which was granted on 12 December 1963. Independence (*Uhuru*) was achieved.

Kenya became the 34th independent state in Africa, as a member of the Commonwealth and a constitutional monarchy, with a Prime Minister and Queen Elizabeth as Head of State represented by a Governor-General. Jomo Kenyatta was Prime Minister and Sir Malcolm MacDonald Governor-General. The Colonial Office dispatch of 1954 (discussed in Chapter Two – 2.4.3) with regard to joining the Commonwealth influenced NKG memorandum and

²⁴⁰ Annex B, Report of the Kenya Independence Conference, , KNA: GO/1/1/25.

²⁴¹ “The Queens Speech on the Opening of Parliament”, CP. (63) 3, 23rd October, 1963, p. 1.

²⁴² HC Deb 13 November 1963 vol 684 cc157-9 157.

²⁴³ Ibid.

²⁴⁴ Legal Notice No. 718, Kenya Independence Order in Council, 1963, *Kenya Gazette*, Extraordinary Issue, 10 December 1963.

was conveyed through the Secretary of States's statement at the first Lancaster House conference, which coincided with KANU desire as expressed in its manifesto of 1963. This explains the importance the British government attached to the acceptance of Commonwealth membership as a condition for granting independence.

Membership to the Commonwealth did not conflict with the aspiration for independence as there was no limitation on a country's sovereignty. As a young economy, Kenya needed to improve its well-being through the facilitation of trade and investment, economic aid and technical assistance, which comprised some of the expected rewards upon joining the Commonwealth.²⁴⁵ However, membership also entailed compliance with rules and norms of the organisation, which translates to a form of indirect influence.

In securing agreement for independence, Kenyatta committed himself in writing to take personal responsibility over the constitution and not to carry out any other changes. He was compelled to sign the commitment as he had no history of constitutionalism and there was no indication that the new African leaders supported the constitution. Election slogans attributed to KANU leaders had alarmed the British and other immigrants adding to distrust that they would change some of the entrenched provisions.

The granting of independence provided the KANU government with the statutory instruments to tackle the immediate challenges identified earlier as the consolidation of the newly won independence, immediate economic reconstruction, and giving tangible meaning and definition to *uhuru*.²⁴⁶ Independence also empowered the KANU government to deliver on the election pledges some of which faced constitutional obstacles. How it handles these

²⁴⁵ John G. Stoessinger, *The Might of Nations: World Politics in Our Time, Jubilee Tenth Ed.* (New York: McGraw-Hill, 1993), pp. 331-332.

²⁴⁶ Jomo Kenyatta, Closing Remarks, Speech delivered at the Afro Asian People's Solidarity Conference held at Moshi, February 1963, KNA: MSS/62/1.

obstacles constitutes the next phase of constitution making turning Kenya into a republic and consolidating power.

5.5 Overview

The overall implications of independence was that it gave new players the leeway to implement the new form of governance as stipulated in the constitution and to establish new ties in international relations. KANU's manifesto was clear on the direction that the government was planning to take, which would have implication on both governance and foreign policy.

On governance, KANU pledged to dismantle the majimbo system and install a centralist form of government with a view to fostering national unity and cohesion. This called for establishing governance structures that would give meaning to independence such as Africanisation of the public service and the military. KANU also aspired to achieve economic development for the people, which entailed an interruption of the colonial policy such as indigenisation and redistribution of resources. To realise these changes, the KANU government spearheaded amendment to the constitution as discussed in the next chapter.

With regard to foreign policy, KANU's manifesto sought to foster pan-Africanism, non-alignment and East African cooperation. This provided a window through which the Western ideology found its footing as discussed in the next chapter.

CHAPTER SIX

KENYA'S POST-COLONIAL GOVERNANCE AND FOREIGN RELATIONS, 1963-1969

6.1 Introduction

The attainment of independence on 12 December 1963 commenced the implementation of the independence constitution and the consolidation of power under the Kenyatta regime. This chapter is based on the second and third objectives of the study concerning the outcome of the negotiation process and responds to the questions on how the outcome of the process influenced Kenya's post-colonial governance and foreign relations. The argument is that amendments to the constitution was due to failure of the Lancaster negotiations to address and secure the interests of the recipients of the constitution, and that the preservation and sustainability of a constitution largely depends on the perceptions, interpretation and the shifting hegemonic interests of the power wielders at any given time. The chapter also demonstrates the dependency structures that emerged after the negotiation process.

The chapter begins by examining three main aspects of the new nation of Kenya under the 1963 constitution. The first one is the Dominion, which redefined Kenya's relationship with Britain and marked a new era of foreign relations and diplomacy. The second aspect is the establishment of the Republican status on 12 December 1964. Thirdly is the amendment to the independence constitution, which culminated in the publication of the revised constitution of 1969. The assumption in the second and third aspects is failure of the negotiation process to address and secure the interests of the recipients of the constitution. Thereafter, the chapter evaluates the governance modes and processes that took root during this period and the foreign policy direction that created the framework for future Kenya's

foreign policy behaviour with a view to establishing how these developments were influenced by the outcomes of the independence negotiation process.

6.2 Challenges of the Dominion, 1963 to 1964

Attainment of independence on 12 December 1963 bestowed on Kenyans responsibility over their destiny as Kenya and Britain entered a new relationship.¹ Kenya remained a dominion with the Queen as sovereign. This status entailed that the territory became autonomous, free from British interference, independent in international relations and officially equal in status to Britain.² Her Majesty, Queen Elizabeth II issued a proclamation on 10 March 1964, giving effect to her Royal Style and Titles: “By the Grace of God, Queen of Kenya and of Her other Realms and Territories, Head of the Commonwealth”.³ Kenya therefore shared the Sovereign with other Commonwealth realms. The Queen’s functions were performed by the Governor-General who served as Her Majesty’s representative in Kenya, Commander-in-Chief, and exercised executive authority of the Government, which extended to the Regions.⁴ In the absence of the Governor-General, the functions of the office were to be exercised by the Chief Justice unless a person was appointed by Her Majesty. The holder of the office served during her pleasure.⁵ The Governor-General was also vested with powers to summon, prorogue and dissolve Parliament.⁶ Sir Malcolm Macdonald was appointed the Governor-General of Kenya.

By exercising executive authority, the Governor-General appointed the Prime Minister from among Members of the House of Representatives and who appeared to him likely to

¹ Felix Kiruthu, *Voices of Freedom* (Nairobi: CANA Publishing, 2001), p. 72.

² Brandon Jernigan, “British Empire”, in *Africa and the Americas: Culture, Politics, and History, Vol 1*, edited by M. Juang and N. Morrissette (Santa Barbara, Cal.: ABC-CLIO Inc, 2008), p. 204.

³ UK Government to Government of Kenya “Royal Style and Titles”, KNA: GH/6/3.

⁴ Section 72(4), Kenya Constitution (Independence Constitution), *The Kenya Independence Order in Council, 1963* (London: HMSO, 1963).

⁵ Section 31, Kenya Constitution, *ibid.*

⁶ Section 65, Kenya Constitution, *ibid.*

command the support of a majority of the Members.⁷ It was on this basis that Jomo Kenyatta was appointed the Prime Minister. The Governor-General was vested with powers to remove the Prime Minister from office on account of a “no confidence” vote on the government or when the holder of the office ceased to command the support of the majority members in House of Representatives.⁸ The Governor-General also appointed Ministers and Parliamentary Secretaries from among the members of the two Houses on the advice of the Prime Minister. The main role of the Prime Minister was to advise the Governor-General and to inform him of the day-to-day running of the government. Kenyatta served directly under Macdonald and had virtually no powers. He therefore acted as Macdonald’s foreman.

It was Commonwealth practice that independent dominions had direct representation with the British government other than the Governors-General. The practice was adopted in view of the Governors-General being more of the Monarch’s personal representatives than that of the United Kingdom government.⁹ Britain posted Sir Geoffrey de Freitas, a Labour politician and diplomat, High Commissioner as representative of the UK government and also to support the attempt to build a Federation of East Africa.¹⁰ Josephat Karanja was appointed as Kenya’s High Commissioner to London in January 1964.

Kenyatta did not immediately undertake any radical ideological or nationalistic changes after independence because his power and capacity, especially in the civil service, were limited.¹¹ When he took over, all the senior positions of government were occupied by British personnel especially in finance, armed forces, police, and agriculture and settlement.¹² Kenyatta even asked Richard Catling to stay on as Inspector-General of the newly-

⁷ Section 75, Kenya Constitution (Independence Constitution), *ibid*.

⁸ Section 75(4), *ibid*.

⁹ Lorna Lloyd, *Diplomacy with a Difference: The Commonwealth Office of High Commissioner, 1880-2006* (Leiden: Martinus Nijhoff Publishers, 2007), p. 47.

¹⁰ Clyde Sanger, *Malcolm MacDonald: Bringing an End to Empire* (Montreal: McGill-Queen's Press, 1995), p. 404.

¹¹ Jeremiah G. Kiereini, *A Daunting Journey: An Autobiography* (Nairobi: Kenway Publications, 2014), p. 147.

¹² Jeremy Murray-Brown, *Kenyatta* (New York: E.P. Dutton & Co. Inc., 1973), pp. 372-3.

independent Kenya's police force to supervise transition.¹³ John Butter also stayed on as Permanent Secretary at the Treasury.¹⁴ However, rapid Africanisation in the upper levels of the civil service started taking shape soon after independence, especially in non-technical and professional positions.¹⁵ Africanisation policy also boosted Africans' capability of taking up businesses and trades, especially in the Asian-dominated sectors.¹⁶ The replacements in the civil service were people trained by the British and who had experience in colonial administration. They were erstwhile persecutors of the Mau Mau or were sons and daughters of colonial collaborators. Their retention and inclusion in the new administration sparked disagreements among the nationalists who held that the positions should have been given to freedom fighters. Kenyatta however accepted them in the government as this presented minimal disruption of services. He also preserved what he most needed from the colonial structure, especially the law and order aspects where he took over the police and army intact. Acceptance of these personnel was a big boost for him as they served him with dedication given that their future was assured.

During the period under Dominion, there were three factors that influenced future Kenya relations with Britain. These were secessionism, the army mutiny of January 1964, and the policy on land transfer as discussed in this section.

6.2.1 The secessionist war in North Eastern Province

There were two secessionist movements that threatened the survival of the newly independent country and encouraged balkanisation based on religious lines.¹⁷ Arabs along the Ten Miles Coastal Strip had expressed the wish to secede from the rest of Kenya. The certainty that the

¹³ David Throup, "Crime, Politics and the Police in Colonial Kenya, 1939-1963", in *Policing and Decolonisation: Politics, Nationalism, and the Police, 1917-65*, edited by David M. Anderson and David Killingray (Manchester: Manchester University Press, 1992), p. 151.

¹⁴ "John Butter: Civil Servant", *The Times*, 03 November 2008.

¹⁵ Kiereini, *A Daunting Journey*, p. 148.

¹⁶ *Ibid.*, 149.

¹⁷ Hassan J. Ndzovu, "Muslim Relations in the Politics of Nationalism and Secession in Kenya", Working Papers No. 18, Program on African Studies, North-western University, Illinois, United States, 2010.

British administration was handing over leadership to a new regime created fear of domination. In the North-eastern Region, the longstanding struggle between the colonial government and the ethnic Kenyan Somali over administrative isolation and political disenfranchisement motivated the latter to seek union with the Republic of Somalia.¹⁸ The Somali nationalist movement was advocating the creation of a Greater Somalia, which involved the merging with French Somalia (Djibouti), Ogaden in Ethiopia and NFD in Kenya.¹⁹ While Kenya was a colony, Somalia refrained from initiating any threats against the British as it considered itself disadvantaged militarily.²⁰

The first major armed confrontation between the secessionists and government forces had occurred shortly before independence on 22 November 1963, when the Northern Frontier Districts Liberation Army, the military wing of NPPPP and who came to be referred to as Shifta, attacked a King's African Rifles (KAR) camp in Garissa.²¹ Although the attack was repulsed, it prompted the Kenya government to deploy hundreds of troops in the Northern Frontier District (NFD) region. The irredentist war intensified after independence because the new government opposed self-determination by the ethnic Somali, while the Somali resisted the new government viewing it as re-colonisation, this time by Africans.²² In another attack shortly after independence on 25 December, 1963, near Galole in Tana River District, the Shifta insurgents killed 40 people including a policeman. The attack prompted Kenyatta to request Sir Macdonald to invoke section 19 of the Kenya Independence Order in Council to deal with the rising insecurity.²³ The section provided for the suspension of the constitutional

¹⁸ John Ringquist, "Bandit or Patriot: The Kenyan Shifta War 1963-1968", *Baltic Security and Defence Review*, Vol. 13, Issue 1 (2011), p. 100.

¹⁹ Hatem Elliesie, "Statehood and Constitution-building in Somalia: Islamic Responses to a Failed State", in *Constitutionalism in Islamic Countries: Between Upheaval and Continuity*, edited by Rainer Grote and Tilmann Röder (Oxford: Oxford University Press, 2012), pp. 556.

²⁰ Paul K. Huth and Todd L. Allee, *The Democratic Peace and Territorial Conflict in the Twentieth Century* (Cambridge: Cambridge University Press, 2002), p. 147.

²¹ Ringquist, "Bandit or Patriot", p. 108.

²² Kiereini, *A Daunting Journey*, p. 136.

²³ Ibid.

procedure in the event of declaring a state of emergency empowering the Governor-General to make any provision that appeared “necessary or expedient for the purpose of ensuring effective government or in relation to the North Eastern Region”. Consequently, Sir MacDonald declared a state of emergency on 28 December, 1963, which was approved by the House of Representatives on 31 December, 1963.²⁴ The emergency powers allowed the security agents to confiscate livestock and other property from suspected insurgents, arrest without warrant and detention without trial for 28 days.²⁵

Shifita activities were characterised by ambush of police and army camps, such as the attack on a government police patrol near Buna in Wajir on 7 January, 1964. The Shifita operated in small units and applied psychological warfare, unpredictable strikes and utilised Somali sympathisers to their advantage also targeting administrative personnel stationed in the region and known collaborators.²⁶ The attacks appeared as aiming to achieve political other than military objectives, which included the expulsion of European administrators and advisers from the (NFD), greater attention of the Kenya government, demonstration of Kenya government’s inability to contain and secure North-eastern, Eastern and Coastal Regions, and prevention of collaborationists from taking positions in the Kenya government.²⁷

The Kenya armed forces lacked the capability to control the NFD and subdue the Shifita who were operating from bases along the Kenya-Somali border.²⁸ The British military came in to support the Kenya forces by providing logistical, leadership, training and reconnaissance assistance.²⁹ The RAF spotter planes stationed in Nanyuki were especially effective in picking out “illegal villages” and therefore preventing the Shifita from establishing base

²⁴ Hannah Whittaker, “Forced Villagization during the Shifita Conflict in Kenya, ca. 1963–1968”, *International Journal of African Historical Studies*, Vol. 45, No. 3 (2012), p. 346.

²⁵ *Ibid.*

²⁶ Ringquist, “Bandit or Patriot”, p. 111.

²⁷ *Ibid.*, p. 108.

²⁸ *Ibid.*, p. 109.

²⁹ *Ibid.*

camps.³⁰ The British government was aware that the Soviet government was providing military aid and training to the Somali government having entered into a bilateral agreement, in 1960.³¹ The Republic of Somalia was in turn supporting the Shifta movement.³²

The Kenya government introduced longer-term strategies to complement military programmes. These strategies included the enactment of the Public Security (North Eastern Region) (Detention Camps) Regulations, 1964 and Public Security (North Eastern Region) Regulations, 1964. The latter provided for villagisation, a system of establishing protected villages and pulling down *manyattas* (dwellings or huts) that were outside government villages and where the inhabitants were kept away from areas of military action. They were also screened and issued with passes which they used to move about in the region.³³ Kenya also adopted political strategies to end the Shifta war; for example, the government hired the services of Lt Col. R.S. Richmond to draw a blueprint for psychological warfare operations against the Shifta in a bid to win the support of all the Kenyan Somalis.³⁴ The intrigues that resulted from the internationalisation of the conflict drew determined effort by the British government to seek military continued presence in Kenya. Therefore, the implication of the Shifta war was to strengthen Kenya's relations with Britain leading to military pacts and diplomatic and trade agreements that subsist to date.

6.2.2 Army mutiny of January 1964

The incident, in which a unit of the Kenya Army mutinied in Lanet, Nakuru, on 24 January 1964, was one in a series of similar mutinies across East Africa following the Zanzibar Revolution of 12 January, 1964. In Tanganyika, the *askaris* (rank and file soldiers of the

³⁰ Ibid.

³¹ Philipp Schulz, "The Horn of Africa in a Bipolar World: The Cold War as the Origin of the Somalia Crisis", *Undergraduate Research Journal for the Human Sciences*, Vol. 10 (2011).

³² Ringquist, "Bandit or Patriot", p. 115.

³³ Nene Mburu, "Contemporary Banditry in the Horn of Africa: Causes, History and Political Implications", *Nordic Journal of African Studies*, 8(2) (1999), p. 99.

³⁴ Ringquist, "Bandit or Patriot", p. 115.

former King's African Rifles, KAR) of the 1st Battalion, Tanganyikan Rifles, mutinied at the Colito Barracks on the morning of Monday, 20 January 1964. The mutiny, led by a signaller and educationist Sergeant Francis Hingo Hogi, lasted for five days.³⁵ The mutineers locked up senior British and African officers, set up road blocks in Dar-es-Salaam and controlled all means of communication — the radio station, the airport, the post office and the cable and wireless office.³⁶ The intended protest spilled over to the streets resulting in breakdown of civil authority involving rioting and looting.³⁷ Jomo Kenyatta and Milton Obote, Prime Ministers of Uganda, immediately requested British military assistance to forestall possible mutinies within their armies and the British government responded promptly with General Freeland of the 24th Infantry Brigade stationed in Kahawa and Gilgil in Kenya to keep watch on the developments.³⁸ However, this did not prevent mutinies taking place and seeking concessions given by the Tanganyika government to their army involving improved pay and benefits.³⁹

Reaction from the news of the Tanganyikan government's concessions led the *askaris* of Uganda and Kenya to mutiny.⁴⁰ On 22 January, 1964, the 1st Battalion in Jinja detained their British officers, several non-commissioned officers (NCOs), and the Uganda Minister of Interior, Felix Onama, who was in the barracks to represent government views to the *askaris*. In Kenya, the soldiers of the 11th Battalion of the Kenya Rifles broke into the armoury on the evening of 24 January 1964, and took positions in the barracks demanding similar

³⁵ Timothy H. Parsons, *The 1964 Army Mutinies and the Making of Modern East Africa* (Westport, CT: Praeger Publishers, 2003), p. 108.

³⁶ Keith Kyle, "Mutinies and After", *The Spectator*, 31 January 1964, p. 15.

³⁷ Parsons, *The 1964 Army Mutinies*, p. 108.

³⁸ *Ibid*, p. 120.

³⁹ *Ibid*, p.1.

⁴⁰ Kyle, "Mutinies and After", p. 15.

concessions of the Tanganyikan *askaris*. They also demanded a meeting with Prime Minister Jomo Kenyatta to discuss their grievances.⁴¹

The *askaris* in the three East African territories shared common origin and organisation having served under the British East African colonial army known as the King's African Rifles (KAR), which was administered as a unified formation.⁴² After independence, they faced similar circumstances. These included the slow rate of Africanising the army with the expectation that the national battalions of KAR would require British officers for some time, lack of preparation for the political change with regard to the *askaris*, failure of the new political elites in all three territories to pay attention to the physical and psychological needs of their soldiers, lack of respect shown by the new political leaders to soldiers of considerable service and experience despite their sense of privileged status, and "above all the issue of pay which had fallen behind comparable civilian rates in the civilian processes of Africanisation".⁴³ The soldiers had expected more in the new dispensation such as greater "deference from the political elite and society" based on their training and experience, but this had not been realised.⁴⁴ The East African governments had also failed maintain the delicate balance of coercion and concessions that had kept the colonial soldiers in check.⁴⁵ With just over a month into independence, Kenyan *askaris* were "sucked" into the mutiny by their counterparts in Tanganyika and Uganda.

With the help of the British Army consisting of elements of the 24th Infantry Brigade and the Royal Marine Commandos, the mutinies were broken on the morning of 25 January 1964. In Kenya and Uganda the incident ended without bloodshed, where units of the Royal Horse Artillery re-took Lanet Barracks and the Scots Guards and Staffordshire Regiment

⁴¹ Timothy Parsons, "The Lanet Incident, 24-25 January 1964: Military Unrest and National Amnesia in Kenya", *International Journal of African Historical Studies*, Vol.40, No. 1 (2007), pp. 51.

⁴² Parsons, *The 1964 Army Mutinies*, p. 35.

⁴³ *Ibid*, pp. 3-6.

⁴⁴ *Ibid*, p. 24.

⁴⁵ Kiereini, *A Daunting Journey*, p. 167.

(both units of the 24th Infantry Brigade) surrounded the Jinja Barracks respectively. In Tanganyika however three *askaris* were killed when the British Marine Commandos seized the Calito Barracks.⁴⁶

The Lanet mutiny was compounded by political considerations given the skewed ethnic representation in the military, although the Kenyatta government strived to confine it as an isolated soldiers' strike without political motive.⁴⁷ At independence, the Akamba comprised about one-third of the KAR.⁴⁸ The colonial government had encouraged recruitment of certain ethnic communities and discouraged others based on preconceived notions. The Somalis and Turkana were enlisted because they were considered fearless, while the Akamba were believed to be loyal, obedient and therefore amenable to discipline.⁴⁹ The Gikuyu were regarded as trouble makers and were only recruited during the First and Second World Wars due to shortage of manpower.⁵⁰ There were allegations that the Kenyatta government had adopted an army recruiting policy that ensured one-third of all new recruits were Gikuyu in a bid to secure positions from an ethnic perspective.⁵¹ The overriding grievances however were better pay and the Africanisation of the officer corps, and the rising anxiety that the new political dispensation would weaken the *askaris*' status and patronage that went with military service.⁵²

The immediate cause of unrest was failure by Kenyatta to announce measures to match the concessions awarded in Tanganyika and Uganda. The *askaris* had expected the announcement to be made in a radio broadcast on Friday, 24 January 1964, as had been relayed on the KAR's old radio network that was still operational.⁵³ The *askaris* became

⁴⁶ Parsons, *The 1964 Army Mutinies*, p. 2.

⁴⁷ Parsons, "The Lanet Incident", p. 52.

⁴⁸ *Ibid.*, p. 77.

⁴⁹ Kiereini, *A Daunting Journey*, p. 169.

⁵⁰ *Ibid.*

⁵¹ Charles Hornsby, *Kenya: A History since Independence* (London: I.B. Tauris and Co., 2013), p. 87.

⁵² Parsons, "The Lanet Incident", p. 61.

⁵³ *Ibid.*, p. 62.

angry and agitated ultimately defying Lt. Col. Stead, the battalion commander. Led by Corporal Ethui Mathano and using password ‘Mwananchi’, they broke into the armoury and took entrenched positions. A battery of the 3rd Regiment of the Royal Horse Artillery stationed at Gilgil responded promptly and surrounded the barracks securing the outlying sections and isolating the mutineers.⁵⁴ When Kenyatta refused to meet with them and stated that he would not negotiate, the steam died out and the rebellion was quelled by the morning of 25 January, 1964.⁵⁵ All the *askaris* were disarmed and detained awaiting charge for hostile insubordination.⁵⁶ By the evening of 26 January 1964, the British troops had maintained their positions and taken control of all the Kenya Army units including in the Nairobi area, though there were no parallel actions by other dissident soldiers.⁵⁷ Some British forces, for instance the 2nd Battalion Scots Guard, were also deployed to secure certain key points and protect vital installations in Nairobi.⁵⁸

The immediate reaction of the Kenya government was to disband the 11th Battalion of the Kenya Rifles and in its stead formed 1st Kenya Rifles. A court-martial was constituted with Joseph Ndolo, one of the senior African military officers, as President, to try those suspected of complicity in the rebellion.⁵⁹ Ndolo, together with such officers as Jackson Mulinge, had been promoted on the eve of independence in a bid to Africanise the Army.⁶⁰ Of the total 597 *askaris* in the battalion, 33 were put on trial charged with mutiny under the Kenya Military Forces Act upon which they were convicted to serve jail terms of varying periods and others acquitted. Another 158 were dismissed on suspicion of complicity in the

⁵⁴ Ibid, p. 63.

⁵⁵ Ibid.

⁵⁶ Parsons, *The 1964 Army Mutinies*, p. 35.

⁵⁷ David Percox, *Britain, Kenya and the Cold War: Imperial Defence, Colonial Security and Decolonisation* (London: I.B. Tauris, 2004), p. 168.

⁵⁸ Murray Naylor, *Among Friends: The Scots Guards 1956-1993* (Barnsley: Pen and Sword, 1995), p. 31.

⁵⁹ Parsons, “The Lanet Incident”, p. 66.

⁶⁰ GN No. 2341, *Kenya Gazette*, Vol. LXV No. 27, 4 June 1963, pp. 614-615.

rebellion and 340 were allowed to join the 1st Battalion of the Kenya Rifles.⁶¹ In April 1964, the government raised the pay of the military, the police and prisons staff substantially and also accelerated the rate of Africanisation in the military thereafter.⁶² Although, the mutiny gave the army “a taste of the fruit of the bargaining power”, it also made the government aware that the army might be open to influence by “tempting promises”.⁶³

As Prime Minister, Kenyatta had no control over the army despite Macdonald having delegated limited defence function to his office. The fanatical support that he enjoyed from the Africans and the cordial working relationship with Macdonald created the illusion that he was in total control of the army as well as government. However, he was serving a non-African government in which the Governor-General was still in-charge of the armed forces with his role being only advisory. Confronted by the demands from the *askaris*, he advised the Governor-General to bring in the British Army to intervene. As the Kenyan army was modelled on British professionalism, it owed its allegiance to the Sovereign; hence, the British government controlled it. Even without Kenyatta’s request, it was British government’s responsibility to quell the mutiny.

Coming at a time when the political leaders were involved in internal struggles over the shape of the new nation, the incident was cast in a wider perspective.⁶⁴ Oginga Odinga, then Minister for Home Affairs, insinuated that the mutiny had been “deliberately provoked” by the expatriate British officers “to create an opportunity for British forces to intervene, thereby strengthening their influence in the Kenyan Army”, while the British officers suggested that Odinga and his allies in KANU had conspired to sow unrest in the army.⁶⁵ The latter assertion was strengthened by Odinga’s and Ngei’s persistent demands for changes in

⁶¹ Ibid, p. 65.

⁶² Ibid, p. 67.

⁶³ Parsons, *The 1964 Army Mutinies*, p. 189.

⁶⁴ Parsons, “The Lanet Incident”, p. 64.

⁶⁵ Ibid, p. 64.

the army recruiting quotas and by their representation of the rank-and-file grievances over pay and working conditions as well as the need to Africanise the military.⁶⁶ This political perspective was a threat to the survival of Kenyatta's regime.

In his dispatch to London, British High Commissioner to Kenya, Sir Geoffrey de Freitas, expressed his belief that the mutinies had frightened the East African governments to the point where they could no longer oppose offers of military assistance.⁶⁷ The situation was compounded by the imbalance of the forces as they existed in the East African countries, which comprised solely of infantry units.⁶⁸ There were no artillery, armour, engineering and other auxiliary units as well as air force and navy that were necessary to build an effective military force capable of protecting the integrity of the long sea and land frontiers.⁶⁹ These observations were followed by a visit to East Africa by Duncan Sandys, the Secretary of State for the Colonies and Commonwealth Affairs in March 1964. When he visited Kenya, Kenyatta thanked him for the role the British military had played in helping quell the Lanet mutiny. Kenyatta had earlier refused to express the gratitude publicly "well aware of the political risks inherent in such a gesture".⁷⁰ He subsequently held discussions with Sandys and reached broad agreement on how the British government could assist the Kenya military.⁷¹ At the conclusion of the discussions, de Freitas requested the British government to retain "sufficient British Army and Royal Air Force personnel" to carry out the duties that were beyond the capability of the Kenya armed forces.⁷² The implication was that the British military was bound to remain in the region for some time. While the British Army was preparing to leave, the mutiny affected the implementation of the exit. It also cemented the bilateral relations between the two countries.

⁶⁶ Parsons, *The 1964 Army Mutinies*, p. 87.

⁶⁷ *Ibid*, p. 161.

⁶⁸ Lord Twining, Parliamentary Debates, HL Deb 15 July 1963 vol 252 cc4-88.

⁶⁹ *Ibid*.

⁷⁰ Percox, *Britain, Kenya and the Cold War*, p. 169.

⁷¹ *Ibid*, p. 170.

⁷² Parsons, *The 1964 Army Mutinies*, p. 209.

Kenyatta interacted deeply with the British Army and had open discussion with the British regarding their interests. This resulted in his invitation for them to stay. In doing so, he was aware that the British could sustain him and secure his position militarily, politically and internationally. The discussions were formalised in the form of a defence agreement between the two countries as will be discussed later in the chapter.

6.3 Establishment of the Republic

The first two amendments to the independence constitution established the Republic of Kenya. The KANU government wanted Kenya to become a republic and remove the remaining traces of colonialism. Its election manifesto had promised to do that.⁷³ Establishing a republic involved amending provisions on the structure of government. In his statement to the House of Representatives on 14 August 1964, Prime Minister Jomo Kenyatta announced KANU government's intention to introduce the republican constitution during the first anniversary of independence on 12 December, 1964.⁷⁴ This would make Kenya a republic within the Commonwealth of Nations. He also announced that the government was working "on the full text of the amended constitution" with a view to laying it before the House during the third week of October 1964.⁷⁵ He stated that the proposed constitution would feature three elements: one, was a President who would be Head of State with a cabinet responsible to Parliament; two, was that the President would be the leader of the majority party in Parliament and would appoint his cabinet from amongst Members of Parliament; and, three was that the President's term in office would be related to that of Parliament.⁷⁶

Kenyatta said that despite the introduction of the republican constitution, the government intended to retain the Regional Governments and local government authorities,

⁷³ Kariuki Njiiri, KANU Calling, KNA: AHC/29/14.

⁷⁴ Kenya National Assembly Official Record (Hansard) Jul 28 - Oct 1, 1964, col. 1707-10.

⁷⁵ Ibid, col. 1708.

⁷⁶ Ibid.

but they would be controlled in the following manner: withdrawal of exclusive executive authority and legislative competence over matters that were directed on a national scale such as education, agriculture and land utilisation; control of local government authority by the Central Government; centralisation of the public service in matters of appointment, transfer, discipline and promotion; making the Police Force and matters of law and order exclusive to Central Government; and, determination of the taxes and levies to be charged by the local government authorities and the services that they would provide. The amendments, he said, would be for “a better Kenya” and would embody national leadership, Ministerial collective responsibility and guarantee the supremacy of Parliament.⁷⁷ Kenyatta also wanted the Governor-General, in accordance with the Constitution, to appoint a person to review the provisions of finances to the regions with a view to carrying out reforms.

In response, Ronald Ngala, the leader of official Opposition, protested over the proposed amendments. He termed the amendments as “destructive”, and sought to prepare a counterstatement. This was ruled out as being un-procedural by the Deputy Speaker, Fitz de Souza. Kenyatta, however, gave assurance that the amendments would reflect the wishes and aspirations of the Kenyan people.⁷⁸

Kenyatta anticipated a referendum during the third week of November 1964 to endorse the constitutional changes as they affected entrenched rights of Regions and local authorities and therefore required the support of 75 per cent of the vote in the House of Representatives and a 90 per cent vote in the Senate in accordance with section 71 of the Constitution. KANU had no likelihood of marshalling these numbers and would resort to the popular vote. Tom Mboya, Minister for Justice and Constitutional Affairs, introduced the Referendum (Amendment of the Constitution) Bill in the House of Representatives on 16 October 1964, having published it the previous day. He also sought a reduction in the publication period.

⁷⁷ Ibid, col. 1708-10.

⁷⁸ Ibid, col. 1709.

The aim of introducing the Bill at that moment was to put measures in place that would enable the constitutional amendment to proceed in the event the normal process stalled.⁷⁹ The specific objectives were to provide for the following: holding of a referendum to ascertain the wishes of the people; appointment of a referendum supervisor; appointment of other referendum officers; compilation of register of electors; delimitation or determination of constituencies; petitions to the Supreme Court; cases where the results of the voting were declared invalid; expenses of the referendum; and, rules for the referendum. The Bill was enacted on 23 October 1964, paving way for the popular vote to overhaul the Constitution. The enactment of the Bill showed Kenyatta that there was no threat in his intention to amend the constitution.

While presenting the government's intention to amend the constitution in the House of Representatives, Kenyatta said that KANU had campaigned against the original nature of the constitution due to its rigidity, cost and unworkability.⁸⁰ KANU viewed the constitution as "one that had been the subject of massive compromises, artificial feelings of mistrust and fear, and arbitration by the Secretary of State. Thus, it failed completely to satisfy the majority of the people whose lives it was supposed to govern and had resulted in numerous contentions".⁸¹ As Kenyatta put it:

If after independence we fail to fulfil the minimum requirements of every citizen of our country; if we fail to use our resources and wealth to banish poverty, illiteracy, and disease, we shall have betrayed the basic principles of the national liberation movement which has swept across the continent of Africa.⁸²

The immediate amendment involved conversion of the country from a constitutional monarchy to a republic, which also included reforms with regard to finances of the Regions.

⁷⁹ Kenya National Assembly Official Record (Hansard) Oct 2 - Dec 1, 1964, col. 3626.

⁸⁰ Kenya National Assembly Official Record (Hansard) Jul 28 - Oct 1, 1964, 14 August 1964, col. 1701

⁸¹ Report of the Kenya Constitutional Conference, 1962" KNA: MAC/KEN/48/8.

⁸² Kenyatta, Closing Remarks, op cit.

This was done in two amendments, the *Constitution of Kenya (Amendment) Act, No. 28 of 1964* and the *Constitution of Kenya (Amendment) (No. 2) Act, No. 38 of 1964*, which had an implication on the original framework of the constitution.

The Bill to enact the *Constitution of Kenya (Amendment) Act, No. 28 of 1964* was introduced to the House of Representatives by Tom Mboya on 22 October, 1964. He also sought and secured a shortened publication period with a view to fast tracking the amendment process.⁸³ The Bill had the following objectives: to establish the Republic of Kenya; to provide for the form of government under an elected President; and, to make other amendments to the constitution in accordance with the statement made by the Prime Minister in August, 1964.⁸⁴ The amendments were made to the Constitution of Kenya and the Kenya Independence Act 1963. Consequential amendments affected such areas as legislation, land, financial arrangements, public service, certain categories of Regional properties, and all references to Her Majesty and Governor General. The Bill was passed in the House on 3 November 1964, with the requisite majority surpassing the threshold of 98 votes garnering 101 against 17 votes. Most Members of the Opposition crossed the floor to vote with the government.⁸⁵

The ‘remaining’ Opposition protested the passing of the Bill. Ngala accused the government of trivialising the amendment process and adopting a dictatorial attitude as well as applying the “strength of numbers”.⁸⁶ He observed that the KANU government had refused to consult with the Opposition on the amendments and had ignored their views and feelings despite representing vast areas of the country. He said therefore that the Opposition would not be part and parcel of the amendment.⁸⁷ Martin Shikuku of KADU (and MP for

⁸³ Ibid, col. 3800.

⁸⁴ Constitution of Kenya (Amendment) Act No. 28 of 1964, 21 October 1964.

⁸⁵ Ibid, col. 4230-1.

⁸⁶ Ibid, col. 4220.

⁸⁷ Ibid.

Butere in western Kenya) warned that “it would be a big mistake” if the Bill passed and that the country “would not be a happy country” because the amendment had been presented on the basis of falsehoods, such as on the issues of land and the resolution of no confidence with the President.⁸⁸

On 10 November 1964, when the Senate was scheduled to vote on the Constitution of Kenya (Amendment) Bill, Ngala led the Opposition in crossing the floor to the Government side and dissolving KADU as the official opposition party “in the interest of Kenya”.⁸⁹ Ngala, Martin Shikuku and Masinde Muliro were the last members of the Opposition to cross the floor and join the government side. In his remarks, Ngala observed that such a political reunion was reminiscent of the 1952 and 1957 nationalist solidarity that was aimed at forging common ground for the people of Kenya.⁹⁰ Kenyatta welcomed the gesture, stating that KADU had been “opposing for opposition’s sake”.⁹¹ After the dissolution, KADU Members in the Senate voted with Government for the Bill giving it unanimous support. This eliminated the need for a referendum. The Bill was assented to on 23 November 1964 and therefore enacted as the *Constitution of Kenya (Amendment) Act, No. 28 of 1964* effectively providing the constitutional framework for establishing the Republic.

Although Ngala was against a one-party structure, in dissolving the official Opposition, he may have weighed the political gravity and realised that continued stay in the opposition was futile. Moreover, there was no time available for him to re-organise his forces for resistance. With Daniel arap Moi, KADU’s Chairman, having left with the Kalenjin and Stanley Oloitiptip, having left with the Maasai, it was no longer feasible to continue with

⁸⁸ Ibid, col. 4224-5.

⁸⁹ “Dissolution of KADU as Official Opposition Party”, Ngala’s Personal Statement, Kenya National Assembly Official Record (Hansard) Oct 2 - Dec 1, 1964, col. 4415.

⁹⁰ Kenya National Assembly Official Record (Hansard) Oct 2 - Dec 1, 1964, col. 4416.

⁹¹ Ibid, col. 1416.

KADU. It was also not possible to put another opposition together in the foreseeable future as the tribes that had converged to form KADU were already in disarray.

Effort towards establishing a one-party system of government in Kenya had begun when Jomo Kenyatta, on arrival from the Commonwealth Conference in London on 27 July 1964, announced that his government intended to “bring the opposition into the ruling Kenya African National Union (KANU)”.⁹² This was influenced by Kwame Nkrumah, President of Ghana, who had advocated one party philosophy as the most suitable for expressing and satisfying the common aspirations of a nation as a whole.⁹³ Tom Mboya adopted the philosophy from Nkrumah and brought it to Kenya in “his briefcase”.⁹⁴ It was thereafter promoted in Harambee, the national slogan, which stood for “one country, one destination, one Africa, one party, one policy”.⁹⁵ When the “upcountry KADU politicians” from the Kalenjin and Maasai areas where KADU had the greatest support joined the government, they found themselves with no support and therefore found it expedient to dissolve the party and joined the rest without seeking the mandate of their constituents.⁹⁶ Taita Towett however resigned his seat in the House of Representatives as Member for Buret constituency on 12 November 1964, to protest the manner in which KANU was “cajoling the opposition to cross the floor and join it”.⁹⁷ He felt that he was obliged to seek a fresh mandate from his constituents with the new party (KANU). The Speaker issued the writ to announce the seat as vacant on 20 November 1964.⁹⁸ In the ensuing elections Towett lost to Alexander Bii, an independent candidate.

⁹² Kenyatta’s Address, available at: <http://www.itnsource.com/shotlist/RTV/1964/07/27/BGY505150394/?v=1>, accessed on 15 December 2014.

⁹³ Ama Biney, *Political and Social Thought of Kwame Nkrumah* (London: Palgrave Macmillan, 2011), p. 94.

⁹⁴ Taita Towett, *Unsung Heroes of Lancaster: An Account of Kenya’s Constitutional and Political Transformation* (Nairobi: Taita Towett Foundation, 2010), p. 101.

⁹⁵ Oginga Odinga, *Not Yet Uhuru* (Nairobi: Heinemann, 1967), p. 253-54.

⁹⁶ Eric Aseka, *Ronald Ngala* (Nairobi: East African Educational Publishers, 1993), pp. 23-24.

⁹⁷ Kenya National Assembly Official Record (Hansard) Oct 2 - Dec 1, 1964, Towett, *Unsung Heroes of Lancaster*, p. 100.

⁹⁸ Gazette Notice No. 3974, *The Kenya Gazette*, Vol LXV No. 28, 24 November 1964, p. 1354.

The *Constitution of Kenya (Amendment) Act, No. 28 of 1964* changed the structure of government by establishing a republic and providing for new offices. It provided that on 12th December 1964, Kenya would become a sovereign republic and cease to form part of Her Majesty's Dominions. The Head of State was no longer the Queen as represented by the Governor-General but the President who was also Head of Government and Commander-in-Chief of the Armed Forces. The Constitution transferred all the prerogatives and privileges formerly vested in Her Majesty to the Government of the Republic of Kenya with the President empowered to exercise them. The Act stated that the person holding the office of Prime Minister immediately before that date would be the first President of Kenya. Therefore, Jomo Kenyatta assumed office with the amended Constitution bestowing on him elected status, but took and subscribed the oaths of allegiance and for the execution of office as prescribed in the amended Constitution.

The repealing of Schedule One of the Kenya Independence Order in Council 1963 also affected powers of the Regions. The Schedule defined the matters to which executive authority of the Regions extended, matters within the exclusive legislative competence of the Regional Assemblies, and matters that were within the concurrent legislative competence of Parliament and Regional Assemblies.⁹⁹ The amendment re-defined the relationship between the Central and the Regional governments and provided for the establishment and control of local government authorities by Parliament.¹⁰⁰ The powers to withdraw moneys from the Consolidated Fund were now vested in Parliament, which affected the financial arrangement of the Regions.

The amendment to section 157 of the Constitution restructured the police force from one consisting of Regional Contingents, a Nairobi Contingent and the specialised branches to a unified one under the command of the Chief Commissioner of Police. The repeal of

⁹⁹First Schedule, Constitution of Kenya (Amendment) Act No. 28 of 1964,

¹⁰⁰ Ibid.

sections 158-161 renamed the ‘Inspector General’ to ‘Chief Commissioner’ and did away with the institutions of National Security Council and the Police Service Commission, while section 163 was revised to vest the Chief Commissioner and the Public Service Commission with powers to discipline members of the police force. Regulation of the Force was vested in Parliament.

The amendment to section 186-188 of the Constitution vested the powers to appoint the members of the Public Service Commission with the President. It transferred powers of appointing and suspending the members of the Public Service Commission to the President without consulting the Judicial Service Commission.¹⁰¹ Changes on section 188 conferred the President with more supervisory powers over the Commission in respect of power to appoint persons to hold or act in offices in the public service and to exercise disciplinary control and remove such persons from office. The repeal of section 187 eliminated the role of the Regions in the matters of public service offices, while vesting more powers on the President.

The new structure of government reflected the form of government envisioned by KADU in its constitutional proposals at the 1962 conference according to which the Executive would have a Council of Ministers (Cabinet) who would elect a Chairman to exercise executive authority and act as Head of State.¹⁰² However, in the amendment, the mode of electing the President was by the House of Representatives acting as an electoral college. Also, the KADU proposals did not indicate the powers of Head of State whilst the amendment conferred the office with powers previously enjoyed by the Governor-General.

The amended of the Constitution gave the President-designate powers to make appointments necessary or expedient for its functioning upon which Kenyatta reconstituted

¹⁰¹ First Schedule, The Constitution of Kenya (Amendment) Act, No. 28 of 1964.

¹⁰² “Comparative Analysis of Main Constitutional Proposals”, K.C.C (SG) (62)3, 27 February 1962, MAC/KEN/46/1

the Cabinet and re-allocated responsibilities. He also appointed Assistant Ministers.¹⁰³ The new Cabinet was expanded from the previous 16 Ministers to 18 Ministers with Ajuma Oginga Odinga being appointed Vice President and Minister without Portfolio. Daniel arap Moi and Paul Ngei, both of whom had been in the Opposition, joined the list of Ministers. Moi, Chairman of the dissolved KADU, was appointed Minister for Home Affairs and took over the functions from Odinga, while Ngei was assigned the Ministry of Co-operatives and Marketing. Odinga's new national designation matched his position in KANU. Although the position was a heartbeat from the President, it had few formal duties that included being "the principal assistant to the President in the discharge of his duties".¹⁰⁴

Kenyatta addressed a joint sitting of Parliament, comprising the House of Representatives and Senate, on 14 December 1964 to introduce the republican constitution and to certify the birth of the Republic.¹⁰⁵ As the Head of State in Parliament, it signified the departure of Malcolm Macdonald and the entry of Kenyatta. In his address, he emphasised the role of Parliament, which was also its obligation, as "to represent fairly to the Government the views of constituents and to interpret fairly to the people the policies and decisions of the Government."¹⁰⁶ To perform this role, he demanded "absolute loyalty to the House, the Party and the country".¹⁰⁷ He also warned against Members of Parliament who might "become target of some foreign government or subversive institution" stating that his government would "meet any threat of subversion with the fullest rigours of the law".¹⁰⁸ By asserting his authority in Parliament Kenyatta was demonstrating that he was now the power wielder. It also commenced Kenyatta's journey to self-rule.

¹⁰³ Gazette Notice No. 4239, *The Kenya Gazette*, Vol. LXVI, No. 59, 12 December 1964, p. 1415.

¹⁰⁴ Hornsby, *Kenya*, p. 107.

¹⁰⁵ President's Address, Kenya National Assembly Official Record (Hansard) 14 December, 1964 - May 12, 1965, pp. 5-6.

¹⁰⁶ *Ibid*, p. 4.

¹⁰⁷ *Ibid*, p. 5.

¹⁰⁸

Conversion of Kenya to republican status was not unique in Africa. It had happened elsewhere, especially in the other former British colonies. For example, Ghana, the first black African country to attain independence in March 1957, carried out a national referendum on 27 April 1960 and passed to change the country's status from a constitutional monarchy to a republic. It also confirmed incumbent Prime Minister, Kwame Nkrumah, as President on 1 July 1960, replacing Governor-General William Hare as Head of State. In Nigeria, the 1960 independence constitution was changed in 1963 to provide for a republican status with Chief Benjamin Nnamdi Azikiwe inaugurated first President on 1 October, 1963, having served as Governor-General since 1 October, 1960. In the Eastern Africa region, Tanganyika implemented the republican constitution on 9 December 1962, installing Mwalimu Julius Kambarage Nyerere as the first President, while Zambia became a Republic on 24 October 1964 with Kenneth Kaunda as President. Nevertheless, the process of amending the constitution to establish a republic marked the beginning of a culture of manipulating the constitution to legitimise undemocratic governance that persists to this day.

On 16 November 1964, Mboya published a Constitution of Kenya (Amendment) Bill “to make amendments to the specially entrenched provisions of the Constitution necessary in consequence of the establishment of the Republic and the other amendments of the Constitution made by the first Act.”¹⁰⁹ The changes involved were “technical amendments, especially consequential changes to names and titles, such as substitution of the ‘Governor-General’ with ‘President’, ‘Ordinances’ with ‘Acts’ of Parliament, and ‘President’ and ‘Vice-president’ in Regional Assemblies with ‘Chairman’ and ‘Vice-Chairman’ respectively, with the latter intended to eliminate confusion among the people with regard to President in Central and Regional governments.”¹¹⁰ The affected specially entrenched areas were:

¹⁰⁹ Kenya National Assembly Official Record (Hansard) Oct 2 - Dec 1, 1964, 25 November 1964, col. 4563-4573.

¹¹⁰ Ibid.

citizenship (Chapter I); fundamental rights (Chapter II), the Senate (Chapter IV), Regional Assemblies (Chapters VI and VIII), the judicature (Chapter X) and trust land (Chapter XII). It also included the change of titles from 'Parliamentary Secretary' to 'Assistant Minister', who were to be appointed by the President.

The *Constitution of Kenya (Amendment) (No. 2) Act, No. 38 of 1964* repealed section 239 of the Constitution in respect of alteration of Regional boundaries with the power now vested in Parliament, but only following a recommendation by a commissioner appointed to investigate the question of the change.¹¹¹ Parts 2 and 3 of Chapter Eight on 'Financial procedure of Regional Assemblies' and 'Financial relations between Centre and Regions' were repealed, which disabled the revenue collection capacity of the Regions. By denying the Regions powers to collect revenue, this made them almost entirely dependent on the central government for funding. This amendment was crucial because it was the last nail in scuttling the *majimbo* constitution. The abolition of regionalism was a move to consolidate the semi-presidential system and move away from the inherited Westminster model.

Amendment to section 172 of the Constitution gave powers to the President to appoint the Chief Justice and puisne judges without consulting the Regions or the Judicial Service Commission.¹¹² Previously, the Prime Minister was required to consult the Presidents of the Regional Assemblies, of which not less than four had to concur, before advising the Governor-General to appoint a person as Chief Justice.¹¹³ The President could also institute disciplinary powers on the Chief Justice and the judges without consultation to the Judicial Service Commission or any other quarter. The provisions on citizenship were removed from the category of entrenched clauses and were accorded the same weight as other clauses. The

¹¹¹ Constitution of Kenya (Amendment) (No. 2) Act No. 38 of 1964.

¹¹² Ibid.

¹¹³ Article 172(1), Constitution of Kenya, 1963 (Schedule 1, The Kenya Independence Order in Council, 1963, 4 December 1963).

implication was that it now required similar thresholds in Parliament (both Houses) to be amended.

The overbearing effect of establishing a republic was to diminish regionalism. The principle of regionalism had been driven by a “feeling” of fear among the minority groups of dominance by the majority. While the constitution took care of this “feeling” through the Bill of Rights, such as the guarantee to own property anywhere, the “feeling” was not sorted out politically. This has been a source of perennial fragmentation of the country as is evident during the general elections.

6.4 Consolidation of the Constitutional Amendments

Between October 1964 and February 1969, eleven amendments to the independence constitution were enacted, which gave it a distinctive form. The 1964 amendments were intended to create the Republic of Kenya and the government decided on minimum changes to avoid possible delays in the event that Parliament rejected the amendment Bills in their entirety and hence derail the plan to establish the republic during the first anniversary of independence.¹¹⁴ Therefore, it decided on piecemeal amendments. The next set of nine amendments aimed at consolidating the Republican status. The consolidation of power became a reality.

6.4.1 *Constitution of Kenya (Amendment) Act No. 14 of 1965*

Attorney-General Charles Njonjo presented the Kenya (Amendment) Bill No. 53 to the House of Representatives on 23 March 1965, aimed at consolidating the *Constitution of Kenya (Amendment) Act No. 28 of 1964* in matters incidental to the amendment. While presenting the Bill, he stated that the government was planning to present a revised

¹¹⁴ Charles Njonjo, Kenya National Assembly Official Record (Hansard) Dec 14, 1964 - May 12, 1965, 23 March 1965, col. 691.

constitution in form of an Act of Parliament “rearranged, and correctly numbered in its final form for approval and adoption”. This fourth Bill would be the last constitutional amendment so that it would no longer be read in its “mangled form”.¹¹⁵ This revised constitution would be “derived from the will of Parliament” as representatives of the will of the people of Kenya and not from the Order in Council as stated in the independence constitution.¹¹⁶

The Bill was passed by both Houses and received the President assent on 4 June, 1965. The amendments mainly affected three areas: structure of government, Regions and the judiciary. The President was vested with powers to do all things necessary for the exercise of the privileges and prerogatives previously vested on Her Majesty through the Governor-General. The President was also vested with powers to make grants and to dispose of any estates, interests or rights with regard to land under the Government of Kenya. Regions were converted to Provinces and Regional Assemblies into Provincial Councils. Njonjo stated that “Kenya had not fully adopted a federal system” and therefore needed to strengthen the Central government.¹¹⁷ The date for the dissolution of the Councils was even set for 1 June 1968 when the members had served their elective term. The Chairman of the Regional Assembly was to be referred as Chairman of the Provincial Council. The Civil Secretary (the administrative head of the Region) and the Regional Government Agent assumed the titles of Provincial Commissioner and District Commissioner respectively. The void of local autonomy left by the anticipated dissolution of the Provincial Councils was to be filled by elective units based on administrative district, referred to as County Councils, which were to be vested with such powers as administration of trust land. The amendment saw the establishment of the provincial administration as alluded to in the preceding discussion.

¹¹⁵ Ibid.

¹¹⁶ Ibid.

¹¹⁷ Ibid.

The amendment also made changes to the judiciary by replacing the Supreme Court with the High Court. It abolished the right of appeal to the Judicial Committee of the Privy Council stating that, “No appeal shall lie to the Judicial Committee from any court having jurisdiction in Kenya.”¹¹⁸ However, the appeals already lodged with the Judicial Committee would continue to be heard, while the decisions of appeal by the Committee would be enforced in accordance with the existing laws and procedure. The East African Court of Appeal now acted as highest appellate court.

On legislation, the amendment preserved the laws enacted during the colonial era and changed from ‘Ordinances’ to ‘Acts of Parliament’. However, they were to be construed with such modifications, adaptations, qualifications as exceptions as necessary to bring them into conformity with the Constitution. The President was vested with powers to make amendments to the existing laws (by Legal Notices published in the *Kenya Gazette*) whenever it was necessary and expedient to do so in order to bring the law into conformity with the Constitution, and to give effect to the law and to the Constitution, to operationalise it. The procedure for amending the constitution was also changed following amendment to section 71, which lowered the threshold required to amend the constitution from 75 per cent for the Lower House and 90 per cent for the Upper House. The government felt that this arrangement was restrictive on the power of Parliament yet the will of the people as represented by Parliament needed to be sufficiently expressed. The attitude of the government was that “the real safeguard of the Constitution was its acceptability to the majority of people it was supposed to govern”.¹¹⁹ The National Assembly (Parliament) now had power to “alter” the Constitution through a Bill supported by 65 per cent of the Members entitled to vote in the Assembly. The amendment also repealed the entire schedule of the

¹¹⁸ Constitution of Kenya (Amendment) Act No. 14 of 1965.

¹¹⁹ Charles Njonjo, Kenya National Assembly Official Record (Hansard) Dec 14, 1964 - May 12, 1965, 23 March 1965, col. 697.

entrenched clauses implying that all the clauses in the Constitution were now to be treated as equal and “subject to the same amendment procedure.”¹²⁰ Parliament therefore replaced the people in constitutional amendment.

Amendment to section 29 extended the period within which approval for declaration of a state of emergency could be sought from the National Assembly (Parliament) from seven days to twenty-one days. The threshold for the support of the Bill for such purpose was also lowered from 65 per cent of the Members in both the Lower House and Senate to a simple majority. This amendment was envisaged to deal with situations such as the Shifta War, which were anticipated to take a long time, eliminating the need to constantly obtain approval from Parliament.¹²¹

6.4.2 *Constitution of Kenya (Amendment) Act No. 16 of 1966*

Attorney-General Charles Njonjo presented another constitutional amendment Bill to the House of Representatives on 22 February 1966, with the intention of changing the “Constitution and some laws connected with the Constitution” with regard to certain matters incidental to the first amendment.¹²² The Bill was passed under the threshold of 65 per cent of the votes in both Houses and received the President’s assent on 5 April, 1966.¹²³ The key areas affected by the amendment were citizenship, public service and the Bill of Rights.

Amendment to section 6 of the Constitution removed the provision for automatic Kenyan citizenship for persons with Commonwealth origins or citizenship or that of a country in Africa who had been ordinarily resident in Kenya. It introduced the need for such

¹²⁰ Githu Muigai, “*Constitutional Amendments and the Constitutional Amendment Process in Kenya (1964-1997): A Study in the Politics of the Constitution.*” PhD Thesis, Faculty of Law, University of Nairobi, 2001, p. 120.

¹²¹ Charles Njonjo, Kenya National Assembly Official Record (Hansard) Dec 14, 1964 - May 12, 1965, 23 March 1965, col. 691.

¹²² Charles Njonjo, Kenya National Assembly Official Record (Hansard) Jan 25 - Mar 10, 1966, 22 February 1966, col. 1274.

¹²³ Humphrey Slade, Kenya National Assembly Official Record (Hansard) Mar 10, 1966, 28 April 1966, col. 1992).

persons to apply for registration at the discretion of the Minister responsible for such matters. The amendment to section 24 introduced further regulations with regard to establishment of trade unions by limiting the involvement of members of the disciplined forces and the registration of trade unions. The National Youth Service was included in the list of the ‘disciplined forces’. The National Youth Service had been established in 1964 through an Act of Parliament to train “young citizens to serve the nation, and [perform] tasks of national importance, and ... service of the nation”.¹²⁴ It also engaged and prepared the youth for military service.

Amendment to section 41 introduced imprisonment as a condition for disqualification for election as a member of either House of the National Assembly and this applied to any person under a sentence of imprisonment for a period exceeding six months. The first casualty of this amendment was Abraham Lucky Gaciatta, Member for Nyambene South, who was convicted by the High Court of Kenya for fraud and sentenced to six years imprisonment. He lost his seat despite the Court of Appeal for Eastern Africa substituting the sentence for nine months upon which the Speaker issued writs for a by-election.¹²⁵ Amendment to section 42 also provided that a person would cease to be a Member of the National Assembly if he absented himself from Parliamentary proceedings for eight consecutive days without permission from the Speaker. However, the President was vested with powers of prerogative of mercy to direct otherwise. Amendment to section 56 revised the vote of the person presiding as a Speaker of either House whereby the Speaker would have a casting vote but not an original vote, while the person acting as Speaker would have both a casting vote and an original vote.

Amendment to section 87 vested the President with powers to constitute offices for Kenya, make appointments to any such office and terminate any such appointment. This also

¹²⁴ Section 16, The National Youth Service Act No. 3 of 1965.

¹²⁵ Ibid.

included offices in the Regions, which had previously been excluded. The amendment also introduced a provision that the tenure of office in the service of the Republic would be determined by the President; any person holding public office would do so during the pleasure of the President. This applied to the public service, armed forces, National Youth Service and any other office established in the Republic of Kenya.

Section 121 on the financial procedure of the Government of Kenya was repealed and replaced with two sections which placed the revenues collected by the government under the control of the Constitution and Parliament. Regions were therefore excluded from controlling monies collected by their authorities.

Martin Shikuku, MP for Butere (western Kenya), observed that the set of amendments were “not going to profit the people” or provide for the unemployed. He urged the government to consider the interests of the poor people when drafting constitutional amendments and to ensure that the poor benefitted.¹²⁶

6.4.3 *Constitution of Kenya (Amendment) (No. 2) Act No. 17 of 1966*

The Bill for the enactment of the amendment was published on 28 April, 1966, and was presented to the House of Representatives by Tom Mboya, the Minister for Economic Planning and Development, and Dr Njoroge Mungai, Minister for Internal Security and Defence, in a special sitting convened by the Speaker at the request of the government. The Bill was drafted against a backdrop of internal conflict within KANU over ideological differences in which Oginga Odinga differed with Jomo Kenyatta on their respective visions of development strategies. Whereas Kenyatta considered development to be a matter of individual endeavour and hard work, Odinga thought that resources should be redistributed

¹²⁶ Martin Shikuku, Kenya National Assembly Official Record (Hansard) Jan 25 - Mar 10, 1966, 23 February 1966, col. 1342.

immediately for the benefit of the poorest in society.¹²⁷ He especially urged the government to redistribute European-owned land to landless peasant and was critical of the manner in which Kenyatta's government was forgetting the freedom fighters who had laid their lives down for the independence struggle, hence perpetuating the policy of neglect.¹²⁸ The divergent approaches generated "much debate" within the government and KANU.¹²⁹

Kenyatta's strategy was expounded in *Sessional Paper No. 10 of 1965 on African Socialism and its Application to Planning in Kenya*, and which was the guide to the approach that the government was to adopt in developmental matters as contained in the KANU Manifesto.¹³⁰ Therefore, the Paper influenced decisions on governance and shaped the country's development paradigm.

According to the Paper, the country would develop on the basis of the "concepts and philosophy of democratic African Socialism".¹³¹ Although African socialism was meant to escape the capitalism of colonial economy and the Marxian model,¹³² it did not conflict with the pro-Western ideology of free enterprise and therefore encouraged massive inflows of foreign capital and investment.¹³³ This resulted in an almost fully foreign-owned and controlled manufacturing and service sectors of the economy, especially tourism and oil distribution.¹³⁴

Although the Sessional Paper was meant to explain the policies and programmes clearly, it did not prevent the split of opinion into pro-Kenyatta and pro-Odinga camps. The

¹²⁷ Branch, *Kenya*, p. 10.

¹²⁸ Odinga, *Not Yet Uhuru*, p. 238.

¹²⁹ Kenya, "Statement by the President", p. iv.

¹³⁰ Republic of Kenya, "Statement by the President", *African Socialism and its Application to Planning in Kenya* (Nairobi: Government Printer, 1965), p. iii.

¹³¹ *Ibid.*

¹³² Paul Bohannon and Philip Curtin, *Africa and Africans, Third Edition* (Prospect Heights, Ill.: Waveland Press, 1988), p. 390.

¹³³ Colin Leys, *Underdevelopment in Kenya: The Political Economy of Neo-colonialism* (Berkeley: University of California Press, 1974), p. 145.

¹³⁴ *Ibid.*, p. 146.

pro-Kenyatta camp was spearheaded by Mboya who enjoyed full backing of the state machine and the President and led in condemning the dissident groups in KANU.¹³⁵

Kenyatta convened a KANU conference in Limuru on 13 March 1966, which was attended by 400 delegates. The conference was aimed at restructuring the party by adopting a new constitution. The constitution, as voted for earlier by the party's Parliamentary Group, abolished the position of Vice-President and this would serve to weaken the pro-Odinga camp.¹³⁶ According to Odinga, the meeting took the pattern of a stage-managed American convention and was full of 'anti-Communist' feeling.¹³⁷ At the conclusion of the conference, Odinga had been replaced by eight vice-presidents representing the Regions and no longer occupied any of the senior party positions. The resulting frustrations both in government and KANU encouraged him and his group to resign and constitute an opposition in Parliament.¹³⁸ Moreover, his sympathy with former freedom fighters identified him with the masses. Public involvement in amending the constitution was denied due to the wrangling within KANU.

In March 1966, twenty-two Members of both Houses of the National Assembly had crossed the floor and resigned from KANU to help found the Kenya Peoples Union (KPU).¹³⁹ Those in government resigned their positions after which they laid claim to represent the "overwhelming opinion of the people in the country".¹⁴⁰ Odinga resigned on 14 April 1966.¹⁴¹ The departure of the pro-Odinga group from government prompted Kenyatta to reconstitute his cabinet on 23 May 1966, which was expanded to consist of 22 Ministers. Joseph Murumbi was appointed Vice President and Minister without Portfolio to replace Odinga Odinga. Ronald Ngala was appointed Minister for Cooperatives and Social Services.

¹³⁵ David Goldsworthy, *Tom Mboya: The Man Kenya Wanted to Forget* (Nairobi: East African Educational Publishers, 1982), p. 170.

¹³⁶ Hornsby, *Kenya*, p., 158.

¹³⁷ Odinga, *Not Yet Uhuru*, p. 299-300.

¹³⁸ *Ibid*, pp. 268-70.

¹³⁹ Robert M. Maxon, "Structural and Political Changes", in *Decolonization and Independence in Kenya, 1940-93*, edited by B.A. Ogot and W.R. Ochieng' (Nairobi: East African Educational Publishers, 1996), p. 98.

¹⁴⁰ Tom Mboya, Kenya National Assembly Official Record (Hansard) Mar 10, 1966, 28 April 1966, col. 1992.

¹⁴¹ Odinga, *Not Yet Uhuru*, p. 300.

The Members who had crossed the floor wrote to the Speaker of the House of Representatives seeking to operate as independent individuals and to be recognised as formal Opposition in the House, which would enable them to provide alternative policy.¹⁴² They proposed Oginga Odinga as leader and Bildad Kaggia as deputy leader with the former also recognised as “alternative President”.¹⁴³ The Speaker, Humphrey Slade, accorded them the recognition in line with the Standing Orders.¹⁴⁴ However, among the twenty-two Members, six withdrew and re-joined KANU.

The main objective of the Bill presented by Mboya was to amend the independence constitution further on matters incidental to the first amendment with regard to the legislature. Mboya argued that the amendment would “protect the interest of voters in every part of Kenya” and enhance the practice of parliamentary democracy.¹⁴⁵ With the publication period shortened, the Bill was debated for one day and passed later the same day.¹⁴⁶ It received the President’s assent on 30 April, 1966. Section 42 was amended by inserting section 42(A), which re-defined how a member of either House of the National Assembly would vacate their seat. It stated that a member who stood for election with the support of a political party would lose the support if they resigned from the party at a time when it was a parliamentary party or upon its dissolution. Zephania Anyieni, Member for Majoge-Bassi in South Nyanza and one of those who had crossed the floor, termed the speed at which the government moved to amend a constitution as “undemocratic as [it was using]... the majority to hurry up things” and was destroying what had taken a lot of time and effort at the Lancaster House negotiation conference.¹⁴⁷

¹⁴² Humphrey Slade, Kenya National Assembly Official Record (Hansard) Mar 10, 1966, 28 April 1966, col. 2019.

¹⁴³ Ibid.

¹⁴⁴ Ibid.

¹⁴⁵ Tom Mboya, Kenya National Assembly Official Record (Hansard) Mar 10, 1966, 28 April 1966, col. 2023.

¹⁴⁶ Kenya National Assembly Official Record (Hansard), 28 April 1966, pp. 273-330.

¹⁴⁷ Zephania Anyieni, Kenya National Assembly Official Record (Hansard) Mar 10, 1966, 28 April 1966, col. 2010-12.

The aftermath of the enactment of the amendment was a series of by-elections involving 10 senate and 19 House of Representatives seats.¹⁴⁸ The elections, which came to be popularly referred to as “little general election”, were a culmination of the long personality battle between Tom Mboya and Oginga Odinga.¹⁴⁹ Mboya campaigned against KPU and Odinga in Nyanza determined that KPU would turn out to be “a Central Nyanza District party” and would return so few members as to qualify for recognition as the official Opposition.¹⁵⁰ Kenyatta was disappointed that Bildad Kaggia, a former detainee, had joined forces with the Opposition and that Achieng Oneko, another former detainee, had defected, resigned from government and joined KPU.¹⁵¹ In April 1966, he travelled to Kandara and Nakuru Town, Kaggia’s and Oneko’s constituencies respectively, and campaigned against them. State machinery was also used heavy-handedly to campaign against the KPU candidates with ethnic pressure and extensive cheating being used in Kikuyu areas to ensure victory.¹⁵²

The elections were conducted between 11 and 26 June 1966. The results indicated a return of only 7 of the 19 Members who had resigned their seats in the House of Representatives 6 of whom came from the Luo Nyanza region. The rest were newcomers who had successfully defended KANU’s dominance.¹⁵³ The implication was that “Odinga’s attempt to move Kenyans a little to the left [failed] because when he looked to see who was following him, it was not the dispossessed of Kenya of all ethnic groups, but his fellow Luo of all social classes and levels of income”.¹⁵⁴ KANU was strengthened because the many politicians who were dissatisfied with Kenyatta’s newfound relations with the British and

¹⁴⁸ Gazette Notice Nos 1649 & 1650, *The Kenya Gazette*, Vol. LXVIII No. 23, 17 May 1966, p. 516.

¹⁴⁹ George Bennett, “Kenya’s ‘little General Election’”, *The World Today*, Vol. 22, No. 8 (August, 1966), p. 336.

¹⁵⁰ Goldsworthy, *Tom Mboya*, p. 245-246.

¹⁵¹ *Ibid.*, pp. 243-244.

¹⁵² David Throup and Charles Hornsby, *Multi-party Politics in Kenya: The Kenyatta & Moi States & the Triumph of the System in the 1992 Election* (London: James Currey Publishers, 1998), p. 41.

¹⁵³ Gazette Notice No 2386, *The Kenya Gazette*, Vol. LXVIII No. 23, 5 July 1966, p. 755.

¹⁵⁴ Ali Mazrui, “The Path to Nigeria’s Greatness: Between Exceptionalism and Typicality”, available at: <https://www.utexas.edu/conferences/africa/ads/9.html>. Accessed on 31 October 2014.

wanted to leave KANU to found another party remained. This was due to the fear that was created among them.

6.4.4 *Constitution of Kenya (Amendment) (No. 3) Act No. 18 of 1966*

The method for the publication of the Bill to enact the amendment and the accompanying Preservation of Public Security Act was subjected to exemption of the House Standing Orders No. 86 with regard to what was supposed to be included in the official Gazette. The period of publication of the Bill was also shortened to one day.¹⁵⁵ The Constitution of Kenya (Amendment) (No. 3) (Bill No. 8) was published in the House of Representatives on 2 June, 1966, debated and passed unanimously the same day. It received the President's assent on 3 June, 1966. The objective of the Bill was to amend both the Constitution and the Preservation of Public Security Act and matters incidental to the amendment. Attorney-General Njonjo said that the intention of the government was to enable it, "subject to the control of Parliament, and subject to proper constitutional safeguards," respond quickly and effectively to the incidents that were a menace to public safety.¹⁵⁶ The amendment affected the Bill of Rights and the provisions on land.

Amendment to Chapter 2 on the 'Protection of Fundamental Rights and Freedoms of the Individual' curtailed some fundamental rights for the preservation of the state security, specifically the facilitation of detention without trial. The aim was to change the provisions of sections 16 and 26 of the Constitution that deal with guarantee of personal freedom and protection against discrimination respectively, and also to amend section 27 (1) on limitation of freedoms when dealing with national crisis such as war. The amendment to sections 27 and 29 allowed for the amendment to, and operation of, the *Preservation of Public Security Act*

¹⁵⁵ Kenya National Assembly Official Record (Hansard) May 24 - Jun 30, 1966, 31 May 1966, col. 199.

¹⁵⁶ Charles Njonjo, Kenya National Assembly Official Record (Hansard) May 24 - Jun 30, 1966, 2 June 1966, col. 274.

Cap 57. This made it possible for an individual to be detained without trial. The amended Act detailed how detention without trial was to be carried out.¹⁵⁷

With regard to land, amendment to Chapter 12, sections 209 provided for the government to make regulation for the acquisition of trust land during the period of war and emergencies.

6.4.5 *Constitution of Kenya (Amendment) (No. 4) Act No. 40 of 1966*

Attorney-General Charles Njonjo presented the amendment Bill to the House of Representatives on 21 December, 1966, having been debated in the Senate and passed.¹⁵⁸ The Bill was subjected to reduction of publication period from fourteen days to one day with the Opposition objecting to the rush. The Bill proposed amendment to eight sections of the independence constitution mostly affecting the legislature. The intention of the government was to introduce a National Assembly consisting of one House. This proposal had become necessary due to the deconstruction of the *Majimbo* system.¹⁵⁹ The Bill was discussed on 21 December and 22 December 1966. The President, Mzee Jomo Kenyatta, attended as a member of the House of Representatives (Gatundu). It passed with 110 votes against 5.¹⁶⁰

The amendment of Chapter 4 on Parliament dealing with the composition, procedure, summoning, prorogation and dissolution, and legislative powers of the National Assembly, merged the House of Representatives and the Senate into one National Assembly bringing together Members to form a House of 170. It provided for the abolishing of the Upper House or Senate with effect from 3 January 1967, which weakened the *majimbo* system of government. It also provided for the creation of 41 new parliamentary seats on the basis of the 41 administrative districts. This increased the single member constituencies from 117 to

¹⁵⁷ Preservation of Public Security Act No. 18 of 1966.

¹⁵⁸ Kenya National Assembly Official Record (Hansard) Nov 1 - Dec 22, 1966, p. 19.

¹⁵⁹ Charles Njonjo, Kenya National Assembly Official Record (Hansard) Nov 1 - Dec 22, 1966, 21 December 1966, col. 3029

¹⁶⁰ Ibid, col. 3098.

158. The amendment also extended the term of Parliament by two years, from June 1968 to June 1970, but the elections were held in December 1969. The reconstituted National Assembly met for the first time on Wednesday, 15 February, 1967. Humphrey Slade was elected Speaker and Fitz de Souza Deputy Speaker.¹⁶¹ The election of the two facilitated the control of the legislature as one House.

6.4.6 *Constitution of Kenya (Amendment) Act No. 4 of 1967*

The Constitution of Kenya (Amendment) Bill of 1967 was introduced to the National Assembly on 3 March 1967, by Attorney-General Charles Njonjo. It was a follow-up to the Constitution of Kenya (Amendment) (No. 2) Bill of 1966 requiring people who have changed allegiance to seek fresh mandate, which became law and came into force on 30 April 1966. The purpose of the Bill was to remove doubt as to the interpretation of section 42 of the Constitution. The amendment clarified section 42A with regard to how a member of the National Assembly would vacate his seat after resigning from the sponsoring party or upon dissolution of the party. It stated thus:

It is hereby declared for the removal of doubt that the references to sections (a) and (b) of section 42A(1) of the Constitution to a member who in certain circumstances resigns from a party at a time when that party is a parliamentary party include, and have always included, references to a member who, before the commencement of Constitution of Kenya (Amendment) (No. 2) Act 1966, resigned in those circumstances... shall be taken to have duly vacated at the expiration of the session during which he so resigned.

The Bill was debated on 3 March through to 9 March 1967 when it was passed with 125 votes for and 9 votes against.¹⁶² Thomas Okelo Odongo, Member for Kisumu Rural and one of the Opposition KPU members, observed that this was the third time the government was proposing a constitution amendment in a hurry and without adequate notice to the House.

¹⁶¹ Kenya National Assembly Official Record (Hansard) Feb 18 - Apr 7, 1967, 15 February 1967, col. 1.

¹⁶² Kenya National Assembly Official Record (Hansard) Vol XII, Feb 18 - Apr 7, 1967, 9 March 1967, col. 938.

He said that the government had “started meddling around with the constitution for political purposes”.¹⁶³ The Bill received Presidential assent to on 29 March, 1967.

The constitutional amendment contained Odinga and the KPU and left anti-Odinga allies to compete against themselves.¹⁶⁴ Tom Mboya became the next target as the possible successor to the presidency. On 14 July 1967, Oduya Oprong sponsored a motion to censure Mboya stating that he was an agent of the American Central Intelligence Agency (CIA) and a recipient of CIA funds in Africa as alleged in a book by George Morris titled *CIA and American Labor*. He therefore wanted Mboya dismissed from the Cabinet and tried for economic sabotage.¹⁶⁵ Although the motion was defeated, Mboya’s political star started to decline.¹⁶⁶

6.4.7 Constitution of Kenya (Amendment) (No. 2) Act of 1968

The Constitution of Kenya (Amendment) (No. 2) Bill of 1968 was debated in the National Assembly between 12 and 14 March 1968. Its objective was to abolish the Provincial Councils and to remove the District and Provincial boundaries from the Constitution. It also provided for the repeal of Provincial enactments of 1965 stating that:

All laws made by the Provincial Councils or the former Regional Assemblies other than by virtue of section 6(2) of Constitution of Kenya (Amendment) Act 1965, have effect as if they had been made by Parliament are repealed.¹⁶⁷

This involved the repeal of sections 11 and 12 Constitution of Kenya (Amendment) Act 1965, and the repeal or deletion of the following schedules: Part III of Schedule 5 (Qualification and Disqualification for Registration as a Voter in Elections); Schedule 7

¹⁶³ Ibid, col. 852.

¹⁶⁴ Macharia Munene, *Historical Reflections on Kenya: Intellectual Adventurism, Politics and International Relations* (Nairobi: University of Nairobi Press), p. 118.

¹⁶⁵ Kenya National Assembly Official Record (Hansard) Vol XII, Jun 29 - Jul 28, 1967, 14 July 1967, col.

¹⁶⁶ Munene, *Historical Reflections on Kenya*, p. 119; Philip Mwanzia and Macharia Munene (eds), *Reminisces on Kenya’s Early Diplomacy, 1963-1993* (Nairobi: Foreign Services Institute, 2011), p. 81.

¹⁶⁷ Republic of Kenya, Constitution of Kenya (Amendment) Act No. 16 of 1968 (Nairobi: Government Printer, 1968).

(Election of Specially Elected Members of a Regional Assembly); Schedule 8 (Election of Committees of Regional Assemblies); and Schedule 11 (Boundaries).

While presenting the Bill, Attorney-General Charles Njonjo explained that with the abolition of the *Majimbo* system, “the Provincial Councils served no useful purpose”¹⁶⁸ Samie Omar, Member for Mombasa Island South, observed that, while the enactment “brought to an end the aim of the Majimbo constitution,” it would not change the attitude of politicians who “revived tribalistic feelings” whenever they went back to their respective constituencies.¹⁶⁹ The Bill was passed on 14 March 1968 with 113 votes for and 3 abstentions from the KPU Members who were concerned over the concentration of power on the Presidency.¹⁷⁰

The amendment repealed all the past laws of the Regions that were in force as provincial enactments and all references in the sections relating to Provincial Councils. The amendment also repealed Schedule II of the Constitution, which contained the description of boundaries in Parts 1, 2 and 3 for the districts, regions and Nairobi Area respectively. This reduced the size of the Constitution by 110 pages.¹⁷¹

6.4.8 *Constitution of Kenya (Amendment) Act, No. 4 of 1968*

The Constitution of Kenya (Amendment) (No. 2) Bill of 1968 was presented in Parliament in the midst of a Presidential succession struggle. Jomo Kenyatta suffered a second stroke (cerebral thrombosis) on 4 May 1968 while on a visit to the coast.¹⁷² He had suffered a first mild stroke in mid-1966, which limited his travels.¹⁷³ This second stroke created uncertainty in government and prompted the agitation to change the constitution to curtail Mboya’s

¹⁶⁸ Charles Njonjo, Kenya National Assembly Official Record (Hansard), 12 March 1968, col. 760.

¹⁶⁹ Samie Omar, Kenya National Assembly Official Record (Hansard), 12 March 1968, col. 894-5.

¹⁷⁰ Kenya National Assembly Official Record (Hansard), 14 March 1968, col. 896-7.

¹⁷¹ Constitution of Kenya (Amendment) (No. 2) Act of 1968, 29 June 1968.

¹⁷² Hornsby, *Kenya*, p. 203.

¹⁷³ Murray-Brown, *Kenyatta*, p. 320.

ability “to mesmerize MPs into making him President in case a vacancy occurred”.¹⁷⁴ The Bill was first published on 10 May 1968, but was withdrawn due to public outcry on a provision that sought to raise the minimum age for electing the President from 35 to 40 years; at the time, Mboya was 38 years old.¹⁷⁵ The withdrawal had been occasioned by the requirement that a Bill to amend the Constitution could not be amended at Committee stage.¹⁷⁶ When the Bill was re-published on 17 June 1968, it reflected the comments of Members.¹⁷⁷

The Bill was presented in Parliament by Attorney-General Charles Njonjo and Njoroge Mungai, Minister for Defence and Internal Affairs. Its purpose was to provide for the election of the President and therefore affected provisions on the electoral law, the legislature, the executive and the Bill of Rights. The Bill was debated from 20 June through to 25 June 1968. The main issues discussed were the period within which the Vice-President was to act before an election in case of the President’s death or incapacitation.¹⁷⁸ It was passed on 25 June with 113 votes for and Nil against.

The amendment provided for the President to be elected by the national electorate (the citizens of Kenya) during a general election. Previously, the President was to be elected by the National Assembly acting as an Electoral College. It also provided that all the candidates in a general election were to be sponsored by the respective political party and there would be no provision for independent candidates. The amendment also made changes to the composition of Parliament whereby the 12 specially elected Members were to be nominated by the President acting at his sole discretion. The provision for independence candidates was

¹⁷⁴ Munene, *Historical Reflections on Kenya*, p. 119.

¹⁷⁵ *Ibid.*

¹⁷⁶ Charles Njonjo, National Assembly Official Record (Hansard), 28 June 1968, col. 1250.

¹⁷⁷ *Ibid.*

¹⁷⁸ National Assembly Official Record (Hansard), 25 June 1968, col. 1449.

also removed implying that a popular person not approved by the KANU machinery could not participate in the election.¹⁷⁹

The amendment to the section relating to the Presidency provided for the succession when the office became vacant other than at the dissolution of Parliament. It provided that the election of a President must be held within 90 days of the position falling vacant within which time the Vice President would exercise all the functions of the President, except in matters relating to the Preservation of Public Security Act and dismissal of Ministers, which would require a resolution of the Cabinet. This provision persisted into the current constitution.

Further amendment to Chapter 2 removed the requirement where the order bringing the provisions of *Preservation of Public Security Act* into force to be reviewed by Parliament every eight months. This gave the President more powers to deal with a person considered to be a threat by detaining him without trial.¹⁸⁰

6.4.9 *Constitution of Kenya Act, No. 5 of 1969*

The Constitution of Kenya Bill of 1969 was first published on 28 November 1968 and was presented to the National Assembly by Attorney-General Charles Njonjo on 10 February 1969. The Bill contained all the amendments that Parliament had passed from 1964 up to 1968 as well as “minor amendments of substance to 120 sections, including the composition of the Electoral Commission”.¹⁸¹ The government’s intention was to publish a revised constitution that was simplified and suited for the people of Kenya.¹⁸² Through clause 6, the Bill provided for Parliament to declare the revised constitution as the Constitution of the Republic of Kenya and therefore delinking it from the independence constitution, which had

¹⁷⁹ Munene, *Historical Reflections on Kenya*, p. 119.

¹⁸⁰ Ibid.

¹⁸¹ Charles Njonjo, National Assembly Official Record (Hansard), 10 February 1969, col. 4775.

¹⁸² Ibid.

been promulgated through the Order in Council. Njonjo stated that Parliament was empowered to declare a new constitution passing of the Bill, as there was no constitutional requirement for a constituent assembly or referendum to adopt the constitution as was being practised in other parts of Africa.¹⁸³ The Bill also provided that the revised constitution would be “printed as a separate document and not a schedule of an Act of Parliament”.¹⁸⁴

Debate on the Bill began on 10 February through to 18 February 1969. It was passed on 18 February with 112 votes for and 4 against. The four Noes were from the KPU Members who had argued that the government was not “taking the constitution seriously” and that Members had not been given sufficient time to consult with their constituents.¹⁸⁵

The amendment changed the format of the Constitution. Physically, it was re-organised rearranged, and reduced from an extent of “about 300 pages” to 80 pages.¹⁸⁶ The content was also simplified in respect of wording, style, and definitions.¹⁸⁷ The amendment provided for the insertion of new sections in the Constitution (sections 3, 124, 125, 126 and 128) and the repeal of others Constitution (sections 10, 66, 85, 157, 162, 166, 177, 212, 231 and 223), and Schedules 9 on Pensions and 10 on Local Government Authorities. Thus, the revised edition was radically different from the original document to the extent of re-promulgating the Constitutions of Kenya.

The eleventh constitutional amendment completed the consolidation of the presidential executive powers consequent upon the establishment of the Republic in 1964. It is the view of this study that the changes made to the constitution demonstrate the covert interests that the African leaders had during the struggle for self-rule. The amendment process also demonstrates that the constitution was obstructive to the wishes of the people.

¹⁸³ Ibid.

¹⁸⁴ Ibid.

¹⁸⁵ National Assembly Official Record (Hansard), 18 February 1969, col. 5201.

¹⁸⁶ Charles Njonjo, National Assembly Official Record (Hansard), 10 February 1969, col. 4775.

¹⁸⁷ Ibid.

6.5 Implication of Constitutional Amendment on Governance

Given that the independence constitution was not endorsed by all the parties, it was hoped that by amendment it, the aspirations of its recipients would be finally met. However, not only was democratic space eroded, but the redistribution of resources, especially land, was grossly mismanaged.

6.5.1 Erosion of the democratic space

Successive amendments to the constitution ostensibly to establish the republic concentrated power at the Executive, particularly the Presidency. The shade of dictatorship became ironically clear. Politicians and freedom of expression were curtailed due to fear of persecution. Parliament, as discussed earlier, resorted to serving the autocratic regime. This situation was deemed as fit to check Communist spread as this study has shown. In the study's view, Kenyatta's rush in mutilating the constitution had the British nod because no new clauses or sections of the amended constitution talked about the longstanding issues such as land. For example, the acreage an individual could hold was not addressed, yet people had died for it. The overall effect was to secure Kenyatta's journey to personal rule.

In effect, the general population found that the constitution had not emancipated them from oppression, both political and economic. The resultant popular discontent gave impetus to pro-democracy forces that had spearheaded the anti-colonial struggle.¹⁸⁸ Successive regimes blocked routes to the masses through repressive laws, intimidation and harassment as well as co-option of organisations that represented workers and peasants by compromising their leaders.¹⁸⁹ This left the civil society, which stood in the middle between the political elite and the masses and comprised professional groups, political parties and religious

¹⁸⁸ Yash P. Ghai and Patrick McAuslan, *Public Law and Political Change in Kenya: A Study of the Legal Framework of Government from Colonial Times to the Present* (Nairobi: Oxford University Press, 1970), p. 507.

¹⁸⁹ Willy Mutunga, *Constitution Making from the Middle: Civil Society and Transition Politics in Kenya, 1992-1997* (Nairobi: SAREAT, 1999), p. 7.

leaders, to take up the role of constitutional reform. The groups attracted international attention as they endeavoured to synthesise and merge constitutional values from other civilisations.¹⁹⁰ The initiatives from this “middle” group were however suppressed by the prevailing authoritarian regimes until external actors and changed global environment forced the liberalisation process in 1990 after which the change-the-constitution movement emerged.

6.5.2 The politics of land transfer programme and reform

At independence, the land question was still outstanding between Kenya and British governments. A land transfer programme would give hope to both the Africans and the European farmers, the former because their political fears would be assuaged and the latter because they would be compensated for their land given that land valuation was done jointly. However, the process was mismanaged and the issue was never fully addressed.

Britain continued to be involved in financing the purchase and transfer of land from Europeans to Africans as discussed in Chapter Five. The implementation of the Million Acre Scheme was undertaken amid threats and incidents of insecurity in the Central Region where cases of landlessness, homelessness and unemployment were critical. At the end of November 1963, Duncan Sandys, the Secretary of State for Commonwealth Relations and for the Colonies, prepared a cabinet memorandum on the future of the European farmlands in Kenya, which was discussed on 19 November 1963. Sandys wanted the British government to consider immediately “new measures to facilitate the transfer of substantial additional acreages to African ownership”.¹⁹¹

The Kenya Police prepared an assessment report on the security situation in Nyandarua (Aberdare) District of the Central Region, one of the areas where the settlement scheme was being implemented. The report, which was annexed to the Secretary of States’ memorandum,

¹⁹⁰ Ibid, p. 9.

¹⁹¹ Ibid.

painted a dire picture and called for “special and immediate measures to be devised to alleviate the dangerous position”.¹⁹² It identified factors that were not only likely to disrupt the settlement plan, but also to be the source of “serious trouble in the months ahead”.¹⁹³ These factors included the following: the economic plight of the Gikuyu; the casting of covetous eyes at the European farms; the frustration caused by the slow progress of settlement; the activities of subversive gangs; the illegal squatter problem; and, the problem of redundant labour.¹⁹⁴ The resulting atmosphere of disillusionment and resentment was responsible for the rising incidence of crime such as oath taking and subversion. Elements of the Kenya Land Freedom Army (KLFA) were active in the area and oaths were being administered by an underground organisation going by the name *Kamau Maithori* (Weeping Kamau) with the motive of driving the Europeans out of their farms.¹⁹⁵ Other groups were *Kĩama kĩa Mũingĩ* – KKM (Society of the People) and *Kĩama kĩa Hathara* (Society of Loss) both of which were an extension of the aims of Mau Mau that had been exacerbated by dispossessions and disaffections resulting from land consolidation in Central Region.¹⁹⁶

The situation was aggravated by the increasing number of homeless, landless and unemployed Africans consisting of those who had been “sold out” when the European farmers left and those who had been residing in the farms illegally. These Africans had resorted to illegal squatting or moving to the marginal areas of urban centres where they were joined by immigrants from other areas in search of land and work.¹⁹⁷ The increasing gap between the inflow of immigrants and the rate of settlement created concern among the authorities. Excessive land hunger, fed by nationalist emotions, coupled with the increasing

¹⁹² “Security Situation in Nyandarua District of the Central Region with Particular Reference to Land Settlement”, C.P. (63) 18, 28th October, 1963, CAB 129-115, pp. 166-170.

¹⁹³ Ibid, p. 170.

¹⁹⁴ Ibid.

¹⁹⁵ Ibid, p. 169.

¹⁹⁶ Percox, *Britain, Kenya and the Cold War*, p. 149.

¹⁹⁷ “Security Situation in Nyandarua District”, p. 170.

population threatened to progressively squeeze the European farmers out.¹⁹⁸ The farmers were also exposed to the risk of “illegal squatting, thieving of farm equipment, trespass and personal attacks”.¹⁹⁹ Governor Macdonald observed that, under the circumstances, European farmers had no medium or long-term future in Kenya.²⁰⁰ This prompted the Kenya government to request for “sufficient money” from the British government to purchase a further 550,000 acres through the Land Bank to transfer to the Africans.²⁰¹

In response to the situation in Kenya, Sandys proposed the immediate release of £3 million to cover the purchase of additional 350,000 acres of land in the Central Region where the “dangers of land hunger” were imminent. He also proposed the review of the schemes’ operations to determine future involvement and arrangements. The purchase would be over a period of three-and-a half years to affect 110 of the 1,250 farmers with the rest expected to be accommodated in future purchases, which were expected to cost about £21 million.²⁰² The British government had already committed £14 million in the Million Acre Scheme up to June 1967.

John Boyd-Carpenter, the British Chief Secretary to the Treasury and Paymaster General, prepared a supplementary cabinet paper discouraging the increased expenditure on the purchase of the European-owned farms in Kenya, especially when the Million Acre Scheme had not been half-implemented.²⁰³ He noted that Sandys request for additional funding was against the existing policy where the arrangement to “help European farmers” was intended to be a by-product of the expenditure and the overt purpose being the settlement of Africans. He stated that some Europeans in Kenya had opposed this strategy saying that it

¹⁹⁸ Ibid.

¹⁹⁹ Ibid.

²⁰⁰ Colonial Office, “The Future of European Farming Land in Kenya”, C.P. (63) 18, 19th November, 1963, CAB 129-115.

²⁰¹ Ibid.

²⁰² Ibid, p. 165.

²⁰³ Treasury, “The Future of Europe an Farming Land in Kenya”, C.P. (63) 18, 20th November, 1963, CAB 129-115, pp. 172.

amounted to “helping and encouraging European farmers to leave the country”, which was an “appalling waste of public money”.²⁰⁴ Other than being expensive, Boyd-Carpenter questioned Sandys’ proposals of ‘helping’ of Europeans” a substantial number of which consisted of farmers of South African origin and citizenship and whom the British taxpayer might not support.²⁰⁵ Sandys was, however, determined to obtain additional funds in anticipation of Kenya government cooperation if he was to secure Britain’s strategic interests. The cabinet decided to approve Sandys proposals, which were meant to enhance the cabinet conclusion of July 1962 in respect of settling Africans.²⁰⁶

The land transfer programme was intended more as a political solution to a political problem than alleviating the economic deprivation of the African people. Landless Africans, who came from areas where the programme was being carried out as well as other parts of the country, did not get the land that they had hoped for, but were subjected to the allocation procedures of the Settlement Fund Trustees (SFT). As a revolving fund, the beneficiaries were required to repay money for the purchase of the allocated plots at an interest. This was disappointing to majority Africans who had hoped to regain their property. With no source of funds, they continued to live in misery. Moreover, the implementation of the programme was not tightly controlled and hence was open to abuse and corruption with the political class taking advantage. More than fifty years later, the country is still faced with landlessness on a large scale and recurrent land disputes.

In effect, both Britain and Kenya failed to completely address the issue of landlessness. The Bill of Rights protected foreign-owned land regardless of how it had been acquired, something that was not envisaged by the Mau Mau war at the time. The policy of “willing buyer willing seller” was introduced to give comfort to the white settlers and advantage to the

²⁰⁴ Boyd-Carpenter interview with Alexander, 25 September 1963, Annex, C.P. (63) 18, CAB 129-115, p. 174.

²⁰⁵ Ibid, p. 175.

²⁰⁶ Cabinet Conclusions, Kenya, CAB/128/36.

‘collaborators’. For the settlers, it encouraged those who were willing to stay on in independent Kenya and guaranteed the value of investment for those who wished to leave. For the ‘collaborators’, it provided them with a means to continue amassing wealth and economic privileges, a scenario that persisted for decades thereafter. The entrenchment of the right of property that had been forcefully alienated and the guarantee to safeguard it legitimised grabbing of property. This rendered independence meaningless to the majority Africans. Failure to resolve the land issue could be a recipe for future uncontrollable violence.

6.6 Diplomatic Relations and Foreign Policy Direction, 1963-67

The attainment of independence in December 1963 opened a new era of foreign relations and diplomacy for Kenya. The new regime faced internal and external pressure with regard to the foreign policy direction, especially in view of the fact that Britain had steered the country to independence. This section looks at Kenya’s early diplomatic relations, factors and instruments that determined foreign policy, and the implication of the Shifta war, which produced the first diplomatic confrontation.

6.6.1 Early diplomatic relations, 1963-1967

Western diplomatic presence in Kenya and East Africa in general predates colonial administration. The United States was the first to establish a consulate and appoint a consul, Richard P. Waters, to Zanzibar on 17 March 1837 primarily to represent the interests of the “Salem Merchants” (of Massachusetts) following the signing of the Treaty of Amity and Commerce with Sultan Said Seyyid.²⁰⁷ Britain followed in December 1841 when Captain Atkins Hamerton transferred from Muskat (Oman) to Zanzibar to establish a consulate with

²⁰⁷ Peter Duignan and Lewis H. Gann, *The United States and Africa: A History* (Cambridge: Cambridge University Press, 1984), p. 74.

the aim of protecting British commercial and political interests.²⁰⁸ By the time of the scramble and partition of Africa in 1884, France and Germany also had diplomatic presence.²⁰⁹ It was the British consulate that anchored the establishment of the East African Protectorate in 1895 as discussed in Chapter Two.

During the colonial time, Kenya's foreign policy was the responsibility of the British government. External relations were handled in London by the colonial government, which controlled all its external dealings. The Orders in Council, White Papers and government pronouncements reflected this one-sided view of imperial diplomacy. International agreements, conventions, charters, treaties and settlements entered by the HMG such as the Nile Waters Agreements (1929 and 1959), Charter of the United Nations (1945), International Air Transport Agreement (1944) and General Agreement on Tariffs and Trade, GATT (1947) became part of post-colonial Kenya's foreign relations. However, the independence Kenya government insisted on reviewing all the instruments to determine whether they would be retained.²¹⁰

When Governor Malcolm Macdonald delegated "full responsibility for external affairs" upon Kenya's attainment of self-government in June 1963, Jomo Kenyatta appointed Joseph Murumbi and Mbiyu Koinange to the Prime Minister's Office to deal with External Affairs and Pan-African Affairs respectively.²¹¹ This implied that the colonial government was opening up space for the KANU government to implement its manifesto with regard to foreign policy, but under the supervision of the Governor.

²⁰⁸ Ibid; Chris McIntyre and Susan McIntyre, *Zanzibar, Eighth Edition* (Buckinghamshire: Bradt Travel Guides, 2013), p. 13.

²⁰⁹ Duignan and Gann, *The United States*, p. 74; Arthur J. Knoll and Hermann J. Hiery (eds.), *The German Colonial Experience: Select Documents on German Rule in Africa, China, and the Pacific 1884-1914* (Lanham, MD: University Press of America, 2010), p. 66.

²¹⁰ Abdulqawi A. Yusuf, *Pan-Africanism and International Law* (Leiden: Brill, 2014), p. 116.

²¹¹ Gazette Notice No. 2455, *The Kenya Gazette*, Vol. LXV No. 28, 11 June 1963, p. 643; Hornsby, *Kenya*, p., 83.

As independence became imminent, Cold War dynamics pushed the powers on both sides of the West-East divide to develop increased interest in Kenya and Africa in general. The policy of non-alignment, to which many countries in Africa were subscribing upon being granted independence, did not imply equidistance between the West and East giving a window for the superpowers to draw the countries towards them. British policy at the time was not just to preserve stability for its African colonies, but also to keep them in the Western camp. Moreover, Britain aimed to maintain its influential global position in the post-colonial era by retaining as many ex-colonies as possible in the Commonwealth. By having them in the Commonwealth, it could manage them, especially in the United Nations and other international quarters. Economically, it wanted to secure sources of raw materials, most of which could not be sourced elsewhere, and to procure market for British goods. Its military interests involved the stationing of strategic reserve in Kenya and securing overflying and staging rights in other territories.

With cessation of Kenya's dominion status and the abolition of the position of Governor-General, Sir Malcolm Macdonald left for Britain, but was immediately appointed High Commissioner to Kenya. He therefore returned, after a brief vacation in London, to replace de Freitas who had failed to endear himself to Kenyans especially Kenyatta.²¹² For example, the speeches he made were considered divisive and working against national unity.²¹³ He had also been involved in a confrontation with political leaders over the deportation of senior British security officers by Oginga Odinga, Minister for Home Affairs. The most notable were two Assistant Commissioners of Police, Leslis Pridgeon and Ian Henderson, who were deported in July and August 1964 respectively. The former had been involved in quelling the Isiolo election riots in May 1963, while the latter became infamous

²¹² Sanger, *Malcolm MacDonald*, p. 403.

²¹³ Kenya National Assembly Official Record (Hansard) Oct 2 - Dec 1, 1964, 30 June 1964, col. 770.

for the hunt and arrest of Mau Mau leader, Dedan Kimathi.²¹⁴ De Freitas was also unwilling to continue serving if the East African Federation did not materialise.²¹⁵ The return of Macdonald was important in the consolidation of the Anglo-Kenyan relations.

The United States' interests came to the fore during the preparation and assembling of the first Lancaster House conference in January 1960 when the African group was selecting its constitutional advisers. Tom Mboya's recommendation, and hence selection of Thurgood Marshall as the constitutional adviser was seen as portrayal of the American influence in the negotiation process.²¹⁶ It also pointed to the growing relationship between the United States and the people of Kenya. The former was showing interest in the imminent independent state, and hence the outcome of the conference. Previous efforts by civil rights movements such as the National Students Association (NSA) and NAACP had transformed the US government policy from one of collaborating with the colonial government in suppressing those who opposed the colonial system to one that was sympathetic to their social progress and liberty.²¹⁷ By the time the conference was convening, the infamous student 'airlift' that was spearheaded by Tom Mboya had begun and was even supported by the Joseph P. Kennedy Jr Foundation and the State Department through the African-American Students Foundation (AASF).²¹⁸ This airlift saw 600 students enrol in American institutions of higher learning between 1959 and 1961.²¹⁹ It was the most significant and meaningful aspect of the relations during this period as it addressed the most pressing developmental need among Africans –

²¹⁴ "Kenya Orders British Officer: Get Out", *The Straits Times*, 3 July 1964, p. 2; "Hunt 'Colonialists', Kenyans are Urged", *New York Times*, 12 July 1962, p. 9; Kenya National Assembly Official Record (Hansard) Jul 28 - Oct 1, 1964, 14 August 1964, col. 1760.

²¹⁵ Kenya National Assembly Official Record (Hansard) Jun 7, 1964, 17 June 1964, col. 290.

²¹⁶ James P. Hubbard, *The United States and the End of British Colonial Rule in Africa, 1941-1968* (Jefferson, NC: McFarland, 2010), p. 265.

²¹⁷ Martin L. Kilson Jr, "Mugo-son-of-Gatheru", *The Crisis: A Record of the Darker Races* (March 1963), p. 142.

²¹⁸ Goldsworthy, *Tom Mboya*, p. 168.

²¹⁹ Macharia Munene, J. D. Olewe Nyunya and Korwa Gombe Adar, eds, *The United States and Africa: From Independence to the End of the Cold War* (Nairobi: East African Educational Publishers, 1995), p. 90.

education.²²⁰ United States also provided about USD 8 million in aid to Kenya during the pre-independence period.²²¹ Generally the aid was motivated by five key factors, namely the Cold War rivalry, assertion of American role in the world, help for the struggling economies, search for markets, and influence from the civil rights movements and American blacks to increase assistance to Africa.²²²

During the Lancaster conference, Mboya did not share the accommodation with members of his African group, but stayed at Piccadilly Hotel, a more expensive and comfortable establishment, which they shared with his friends of the American Committee on Africa (ACOA), George M. Houser and William X. Scheinman.²²³ From his association with Americans, he carried the tag of “American connection”.²²⁴ After independence, Mboya came to be mentioned severally in public as the hand of the CIA in the Kenya political scene and was even “nicknamed the American ambassador”.²²⁵

Immediately upon attaining independence on 12 December 1963, United States established its embassy in Kenya with Laurence C. Vass as Chargé d’Affairès. William Attwood was posted as the first ambassador on 2 March 1964.²²⁶ Primarily, the US-Kenya relations were informed by the US security concerns in the Eastern Africa region, which were integrated with its regional and global interests especially keeping the Soviets out of Africa.²²⁷ American interests especially found a footing in the new government given that five of the sixteen members of the independence cabinet (Njoroge Mungai, Mbiyu Koinange,

²²⁰ Ibid, p. 91.

²²¹ Goldsworthy, *Tom Mboya*, p. 133.

²²² David A. Baldwin (ed), *America in an Independent World: Problem of United States Foreign Policy* (Hanover, NH: University Press of New England, 1976), p. 227.

²²³ See Goldsworthy, *Tom Mboya*, p. 136.

²²⁴ Edwin Gimode, *Tom Mboya* (Nairobi: East African Educational Publishers, 1996), p. 25.

²²⁵ Jonathan Kwitny, *Endless Enemies: The Making of an Unfriendly World* (New York: Penguin, 1984), p. 127.

²²⁶ Nina D. Howland, David C. Humphrey, Harriet D. Schwar, Adam M. Howard (eds), *Foreign Relations of the United States, 1964-1968, Vol XXIII* (Washington DC: United States Government Printing Office, 2013), p. xxiii

²²⁷ Macharia Munene, J. D. Olewe Nyunya and Korwa Gombe Adar (eds), *The United States and Africa: From Independence to the End of the Cold War* (Nairobi: East African Educational Publishers, 1995), p. 101.

Julius Kiano, Lawrence Sagini and Samuel Ayodo) had studied in the United States.²²⁸ However, the desire to strengthen US-Kenya relations was undermined by the United States' taking of sides in the Congo Crisis when Kenyatta was asked to mediate in 1964.²²⁹

China and Soviet Union (Union of Soviet Socialist Republics – USSR) established diplomatic relations with Kenya two days after independence on 14 December 1963.²³⁰ Wang Yutien and Vladimir Sergeevich Lavrov were appointed the first ambassadors respectively.²³¹ Under Prime Minister Zhou Enlai, China began providing aid to non-communist countries from 1956 and was taking the initiative to expand its zone of influence in Africa which Zhou viewed as presenting “an excellent revolutionary situation”.²³² From 1956 also, the Soviet Union confirmed its focus towards Africa following the “collapse of the colonial system of imperialism” and emphasised that it would play a role in the ‘irreconcilable struggle against colonialism’.²³³

Both China and Soviet sought to make inroads into the Kenya's political establishment and took advantage of the split within KANU. The group led by Oginga Odinga, which consisted of former detainees Bildad Kaggia, Fred Kubai and Achieng Oneko were determined that Kenya would not be a Western satellite and advocated a more aggressive approach to nationalisation, repudiation of the 1962 land deal, faster

²²⁸ Hornsby, *Kenya*, p. 105.

²²⁹ Ibid.

²³⁰ Michael Chege, “Economic Relations Between Kenya and China, 1963-2007” in Jennifer G. Cooke (ed.), *U.S. and Chinese Engagement in Africa: Prospects for Improving U.S.-China-Africa Cooperation* (Washington DC: The CSIS Press, 2008), p. 17.

²³¹ Michael Chege, “Economic Relations Between Kenya and China, 1963-2007”, in *U.S. and Chinese Engagement in Africa: Prospects for Improving U.S.-China-Africa Cooperation*, edited by Jennifer G. Cooke (Washington DC: The CSIS Press, 2008), p. 15.

²³² Natasa Miskovic, Harald Fischer-Tiné and Nada Boskovska (eds), *The Non-Aligned Movement and the Cold War: Delhi - Bandung – Belgrade* (New York: Routledge, 2014), p. 6; Colin Legum, “What Kind of Radicalism for Africa?”, *Foreign Affairs* (January 1965), available at: <http://www.foreignaffairs.com/articles/23661/colin-legum/what-kind-of-radicalism-for-africa>, accessed on 22 February 2015.

²³³ Alexandra Arkhangelskaya and Vladimir Shubin, “Is Russia Back? Realities of Russian Engagement in Africa”, Paper presented at the London School of Economics and Political Science, 28 October 2013, available at: <http://www.lse.ac.uk/IDEAS/publications/reports/pdf/SR016/SR-016-ArkanghelShubin.pdf>, accessed on 28 February 2015.

Africanisation, and a non-aligned foreign policy.²³⁴ The other group, led by Jomo Kenyatta and Tom Mboya was sympathetic to Western interests and was determined to increase cooperation with Britain, United States and Western Europe.²³⁵

KANU members in Odinga's wing were the point men in establishing relations with China and Soviet Union. They even chose to have relations with China over Taiwan.²³⁶ Odinga led a visit to the Soviet Union and China in April and May 1964. The delegation secured aid worth US\$ 62.5 million from both countries. From the Soviets they got US\$ 18.1 million for some projects, which included a hospital in Kisumu, a technical college and a radio station. From China, the delegation secured \$44.4 million in aid for an irrigation project on Tana River.²³⁷

The complete split of the Odinga group from KANU in 1966 influenced Kenya's relations with Eastern countries. Kenyatta entered a period of open confrontation with the Communist states, which saw the deterioration of diplomatic relations with USSR and China. In July 1967, Chinese and Russian diplomats and journalists were expelled some of whom were suspected of aiding Odinga.²³⁸ Immediately thereafter, diplomatic ties between Kenya and China were downgraded. Their embassies operated without top-level representation and efforts to enhance trade between the two countries were shelved for over a decade. Normal diplomatic ties resumed in 1978 after China's Mao Tse Tung and Kenyatta had exited.²³⁹ Thus, Sino-Kenyan relations became victims of the internal struggles within the KANU government.

²³⁴ Hornsby, *Kenya*, p. 129

²³⁵ Jennifer G. Cooke, *U.S. and Chinese Engagement in Africa: Prospects for Improving U.S.-China-Africa Cooperation* (Washington DC: The CSIS Press, 2008), p. 16.

²³⁶ *Ibid.*

²³⁷ *Ibid.*, p. 16.

²³⁸ Hornsby, *Kenya*, p. 178.

²³⁹ Chege, "Economic Relations", p. 16.

During this period, Britain was aware of hostile competition for influence from Eastern countries. While the Kenyatta was suspicious of the Chinese political intention in Kenya, the British were worried by the size and potential impact of the aid despite being small compared with the amount from Western countries.²⁴⁰ Kenyatta could therefore afford to ignore aid from the Eastern quarters, especially because the British were delivering militarily and economically.

Britain countered the threat by adopting a policy of supporting Kenyatta and was prepared to intervene militarily to counter any direct Communist interference.²⁴¹ The study's view, therefore, is that the process of consolidating the constitution had Britain's support because the amendments did not tamper with British interests such as foreigners' control of national resources and investments, which were pertinent to majority Africans. The visible outcome of these Anglo-Kenyan relations was to keep Kenya in the pro-Western camp and to secure the new regime in power.

Upon opening of diplomatic missions by states that represented the major ideological axis of East and West, the Kenya government immediately posted ambassadors in those countries. Burudi Nabwera was appointed to the United States and as Ambassador and Permanent Representative to the United Nations on 12 December 1963. Henry Muli, a former Member of the Legislative Council from Machakos, was appointed to China on 28 December 1963. Adala Otuko was appointed to the Soviet Union on 30 December 1963.²⁴² As mentioned earlier, Josphat Karanja was appointed High Commissioner to the United Kingdom in January 1964. The appointees were accredited by the Queen. As has been seen earlier in this chapter, the establishment of relations with these super powers opened the country to potential internal conflict.

²⁴⁰ David Williams, *International Development and Global Politics: History, Theory and Practice* (Oxford: Routledge, 2012), p. 170.

²⁴¹ Percox, *Britain, Kenya and the Cold War*, p. 172.

²⁴² Gazette Notices No. 656-660, *The Kenya Gazette*, Vol. LXVI, No. 10, 3 March 1964.

6.6.2 Kenya's foreign policy direction, 1963-1965

Kenya's foreign policy at this early stage of its independence was determined by the whims of the Executive and policy documents such as sessional papers, development plans, and KANU manifesto. For instance, in the cabinet reshuffle carried out upon establishment of the republic in December 1964, Bruce Mackenzie was retained as Minister for Agriculture and Animal Husbandry to serve in a sector that was not only crucial to the country's economy, but was important to the Anglo-Kenyan relations. A collaborator of British intelligence in Africa and the regional director of Pye Telecommunications, the giant British electronics firm, Mackenzie became a key adviser to President Kenyatta.²⁴³ Tom Mboya was appointed Minister for Economic Planning and Development with the functions of justice and constitutional affairs left to the Attorney-General, Charles Njonjo. Njonjo, a British-educated lawyer and son of a Senior Chief, was more British oriented than Mackenzie and Mboya. The three men ensured that capitalism and Western ideology became important ideals for independent Kenya. This implies a class factor in the structuring of Kenya's foreign relations, especially that of dependence on Britain and the West in general.

Sessional Paper No. 10 of 1965 on African Socialism and its Application to Planning in Kenya was relied upon to explain Kenya's foreign policy direction. It was primarily a statement of Kenya's foreign policy in relation to the escalating Cold War. Coming immediately after Chinese Prime Minister Chou En Lai's visit to Africa in 1964, it sought to clarify that Kenya would not join in the "Great Proletariat Revolution". During his African visit, Chou had expressed the view that Africa was ripe for revolution.²⁴⁴ Upon completion of his visit, he introduced "revolutionary diplomats" who were to be deployed abroad to form

²⁴³ Ellen Ray, *Dirty Work 2: The CIA in Africa* (Fort Lee, NJ: Lyle Stuart, 1979), p. 177.

²⁴⁴ Bruce D. Larkin, *China and Africa, 1949-1970: The Foreign Policy of the People's Republic of China* (London: University of California Press, 1971), p. 137.

militant local Red Guard units “to purify the revolutions in Africa”.²⁴⁵ The pro-Odinga camp was embraced by the Chinese as one that was dedicated to fulfilling the demands of the masses and therefore promote the revolution.²⁴⁶ This further escalated the struggle between the two camps in KANU.

By adopting an alternative development path from capitalism and Communism, the Sessional Paper sought to demonstrate that Kenya was determined to pursue the policy of Non-Alignment as expounded in the KANU manifesto.²⁴⁷ However, although the decision was well-intentioned, as a young and poor nation, the country could not afford to chart a neutral path as it had to rely on external resources that would come from either side and hence the move towards the West. Kenyatta saw foreign investment and protection of private property as capable of complementing individual effort to deliver high economic growth, which would in turn result in growth that would benefit and enrich Kenyan society as a whole.²⁴⁸ Therefore, capitalism overrode the concept of African socialism and further widened the rift within KANU, which had emerged during the negotiation process.

6.6.3 Implication of the NFD crisis on Kenya’s foreign policy, 1963-1967

The crisis in the Northern Frontier District or Shifta war was one of the early features of Kenya’s foreign policy as the country sought to end the conflict. The United States was particularly interested in the outcome of the conflict resolution, which later saw the US Vice-President, Hubert Humphrey, visit Ethiopia, Somalia and Kenya in January 1968.²⁴⁹

²⁴⁵ Ibid.

²⁴⁶ Ibid.

²⁴⁷ KANU, *What a KANU Government Offers You* (Nairobi: Kenya African National Union, 1963), p. 26.

²⁴⁸ Daniel Branch, *Kenya: Between Hope and Despair, 1963-2011* (New Haven: Yale University Press, 2011), p. 10

²⁴⁹ “Kenya: U.S. Vice-President Humphrey Meets President Jomo Kenyatta”, *Reuters*, 10 January 1968.

Available at: <http://www.itnsource.com/shotlist/RTV/1968/01/10/BGY506260297/?v=0>, accessed on 14 August 2015.

To contain the insurgency and end the conflict, Kenyatta signed a Mutual Defence Treaty with Ethiopian Emperor Haile Selassie in 1964.²⁵⁰ While in an OAU meeting in Kinshasa, DRC, in September 1967, the Kenya government reached out to the Somali Prime Minister, Mohammed Ibrahim Egal under the brokerage of the OAU and Emperor Haile Selassie of Ethiopia to deny the Shifta irredentists the much needed military and political support.²⁵¹ This culminated in the signing of the Declaration of Arusha on 28 October 1967 between the governments of Kenya and Somalia during a conference that had been convened by Zambia President, Kenneth Kaunda.²⁵² The Declaration was a Memorandum of Understanding that ended the Shifta border war between Kenya and Somalia.²⁵³

It is the view of this study that the irredentism among the Somali people served to illustrate the insincerity of the British government towards Africans. Early colonial administrators had created an impression that the Somali were a special people that could exist separately from the rest of Kenya as expressed by Sir Charles Eliot, Commissioner of British East Africa between 1900 and 1904. Apart from describing them as “the most intelligent race in the Protectorate”, he advocated forming “them into a separate government” away from the rest of Kenya.²⁵⁴ The British government further encouraged separation when on the eve of independence for British Somaliland in June 1960 it declared that all Somali-inhabited areas of East Africa should be unified in one administrative region. However, at Kenya’s independence, it handed over the territory to the new Kenya government ignoring the results of a plebiscite that overwhelmingly expressed a desire for secession. This indicates that the Somali were naïve as to believe that they would enjoy special status and privileges.

²⁵⁰ Tom Wanambisi, “The Somali Dispute: Kenya Beware” Paper presented to the Marine Corps Command and Staff College, April 6, 1984, available at <http://www.globalsecurity.org/military/library/report/1984/WTL.htm>, accessed on 12 September 2015.

²⁵¹ John Ringquist, “Bandit or Patriot: The Kenyan Shifta War 1963-1968”, *Baltic Security and Defence Review*, Vol. 13, Issue 1 (2011), p. 116.

²⁵² Hannah Whittaker, *Insurgency and Counterinsurgency in Kenya: A Social History of the Shifta Conflict, C. 1963-1968* (Leiden: Brill, 2014), p. 130.

²⁵³ Ringquist, “Bandit or Patriot”, p. 116.

²⁵⁴ Charles Eliot, *The East African Protectorate* (London: Frank Cass, 1905), pp. 180-181.

They were duped with prospects of autonomy against the geopolitical interests of the British government. More than five decades after the NFD irredentist movement was launched, the area teems with inter-clan conflicts that has seen the Somali scattered all over the world as refugees bringing into question the credibility of the assessment from the colonial British administrators.

The Shifta crisis was also a manifestation of challenge to colonial boundaries drawn across Africa, which separated people with similar cultures and affinity. The secessionists' activities were however against the OAU charter, which aimed to defend the sovereignty, territorial integrity and independence of African states. The secession took an international dimension when the Somalia government was drawn into the conflict immediately after it gained independence, supporting the irredentists morally and materially. It further assumed an international security dimension when the Soviet Union signed a military agreement with Somalia in 1963 that involved the training and arming of Somalia's army as well as putting up a military base in Berbera.²⁵⁵ This gave the Western powers a cause for concern setting in motion intrigues of the Cold War. As mentioned earlier, these intrigues contributed to the cementing of the extraordinary relations between Kenya and Britain.

6.7 Kenya-UK Bilateral Relations, 1963-1969

The establishment of post-colonial relations between Kenya and Britain reflected the relative power applied in the negotiation process. Even as Britain was handing over power at independence, it ensured political, economic and social structures that would retain its dominance. During the period of consolidating the Constitution the relations were dominated by military and economic cooperation anchored upon the pursuit of British strategic interests.

²⁵⁵ Helen C. Metz, ed. *Somalia: A Country Study* (Washington DC: Library of Congress, 1992). Available at: <http://countrystudies.us/somalia/17.htm>. Accessed on 10 December 2014; Michael Dumper and Bruce E. Stanley, eds, "Bebera", *Cities of the Middle East and North Africa: A Historical Encyclopedia* (Santa Barbara, CA: ABC-CLIO Inc, 2007), p. 93

These interests were primarily motivated by the Cold War tensions; hence, the East-West divide was significant in Anglo-Kenyan relations because Kenya attained independence at a time when the Eastern powers were shifting their focus on Africa expressing sympathy to Africans as victims of exploitation from “predatory” superpowers.²⁵⁶ While military cooperation between the two governments had culminated in the signing of the Anglo-Kenyan Defence Agreement, economic cooperation mainly featured British aid to Kenya a proportion of which went to the land transfer programme and the rest to budgetary support and technical assistance.

6.7.1 Anglo-Kenyan Defence Agreement, June 1964

The secessionist movement in northern Kenya and the army mutiny of January 1964 galvanised the defence arrangement between Britain and Kenya. During the negotiation process, the Secretary of State, Duncan Sandys, had negotiated with the Kenya government for a phased withdrawal of British forces based in Kenya over a period of twelve months from the date of independence on 12 December 1963. At independence, the main component of the 24 Infantry Brigade and certain of its support units had been transferred to Aden.²⁵⁷ The Brigade Headquarters, two battalions (the 2nd Battalion Scots Guards and 1st Battalion Staffordshire Regiment both at Kahawa), plus 3rd Regiment Royal Horse Artillery and 1st Battalion Gordon Highlanders at Gilgil, remained awaiting to be moved to Aden at the end of October 1964.

After his visit in Kenya, Sandys appeared before the British Cabinet on 12 March 1964, and reported that “the Kenya government was anxious to strengthen their armed forces and to improve their arrangement for maintaining internal security”.²⁵⁸ The Lanet mutiny had

²⁵⁶ Leszek Buszynski, *Soviet Foreign Policy and Southeast Asia* (New York: Routledge, 1986), p. 28.

²⁵⁷ Earl Jellicoe, *Parliamentary Debates*, HL Deb 11 December 1963 vol 253 cc1199-200.

²⁵⁸ Percox, *Britain, Kenya and the Cold War*, p. 209.

impelled Kenyatta to follow the British blueprint closely in rebuilding the Kenya Army, which meant using the British military in training and equipping the armed forces.²⁵⁹

Discussions on the Anglo-Kenyan military cooperation continued for three months and were concluded on 3 June 1964 with the signing of a formal defence agreement.²⁶⁰ The agreement provided that Britain would withdraw all troops stationed in the country by the end of 1964 as had earlier been stated and transfer rights to most of its properties that included equipment and accommodation to the Kenya forces. It would also help build Kenya Rifles into a national army, train and equip a new Kenya Air Force, and create and equip a small navy. In addition, it would commit USD 40 million to Kenya's defence programme and write off military debts of £6 million spanning from September 1954 to March 1960.²⁶¹ In exchange, the Kenya government would grant overflying and staging rights for the British military, including naval facilities in Mombasa that included an armament depot serving the logistic requirements of the British forces in the Middle East.²⁶² British military units could visit Kenya at intervals for training and exercises.²⁶³ The agreement also provided that Britain would make, as much as possible, the troops stationed in Kenya available to "deal with internal disturbances".²⁶⁴

The agreement was immediately implemented resulting in high visibility of British presence in the military. Kenyatta wanted a British model of a well-trained, well-equipped professional non-political army recruited from traditional sources.²⁶⁵ British military trainers were issued with Kenya Army uniforms and deployed with troops around the country.²⁶⁶ These personnel were in addition to other senior officers who were in various positions. For

²⁵⁹ Parsons, *The 1964 Army Mutinies*, p. 169.

²⁶⁰ Hornsby, *Kenya*, p. 99.

²⁶¹ Ibid.

²⁶² "Kenya Navy", available at: <http://kn.mod.go.ke/?p=809>. Accessed on 31 October 2014.

²⁶³ Percox, *Britain, Kenya and the Cold War*, p. 209.

²⁶⁴ Ibid, p. 210.

²⁶⁵ Parsons, *The 1964 Army Mutinies*, p. 6.

²⁶⁶ Daniel Branch, *Kenya: Between Hope and Despair, 1963-2011* (New Haven: Yale University Press, 2011), p. 39.

example, Maj. Gen. Ian H. Freeland had taken command of the new Kenya Army following conversion from KAR and had handed over to Brigadier A. J. Hardy on 1 May 1964. In June 1964, the Kenya Air Force was created using British crafts and British equipment and troops involved in non-combat operations in the north eastern conflict under the command of Group Cpt Ian Stockwell.²⁶⁷ The Kenya Navy was later inaugurated in December 1964 under Commander A.M.C. Walker of the Royal Navy using facilities at the former Royal Naval Armament Depot and training by the Royal Navy Training Team (RNNTT). With the expanded formations of the armed forces, Kenyatta appointed Maj. Gen. Robert Penfold the first Chief of General Staff in 1966.²⁶⁸ Thus, the British government provided technical expertise, extensive funding and donation of weapons and equipment, as well as training opportunities in the Ron and Sandhurst facilities, to the Kenya military.²⁶⁹

The British got all they wanted in the agreement. They were particularly keen to use their military facilities to minimise communist penetration in Kenya. The facilities would also provide a “fall-back option” now that Aden, Cyprus, Egypt, Libya, Malaya and Singapore were no longer available as a haven for the British military.²⁷⁰ The Labour Party, which took over government on 8 October 1964 with Harold Wilson as Prime Minister, continued with the commitment to the Defence Agreement, especially helping to maintain independent Kenya’s internal security and keeping Kenyatta in power. In the event of Kenyatta’s death or incapacity, they would also help pick and maintain a “moderate successor”.²⁷¹

The utterances and actions by such politicians as Jaramogi Oginga Odinga, Fredrick Oduya Oprong and Paul Ngei gave the British government a wider field of play of involving

²⁶⁷ Hornsby, *Kenya*, p. 180.

²⁶⁸ Ibid.

²⁶⁹ Parsons, *The 1964 Army Mutinies*, p. 169.

²⁷⁰ Ibid.

²⁷¹ Ibid.

the British Army ostensibly to help in the maintenance of internal security. This not only assured the protection of British nationals and investment, but also had implications on the transformation of Kenya's armed forces and determination of the country's position in respect of the Cold War politics.

6.7.2 Economic aid, 1962-1969

Immediately after independence in 1964, British aid disbursement to Kenya accounted for 87 per cent of the total with other significant donors being West Germany (8%) and United States (3%).²⁷² Over 65 per cent of overall British aid went to land purchase and adjudication, while the rest went to general development and financing of projects in the agricultural, infrastructure and social services sector.²⁷³

The first phase of the land transfer programme (1962-65) utilised larger proportion of aid because Britain was wary of a possible economic upheaval and political backlash if aid was not forthcoming. For example, should the Million Acre Scheme finish without accomplishing its objectives there was bound to be a political situation.²⁷⁴ This had borne the fear of land nationalisation or take over by the former Mau Mau freedom fighters.²⁷⁵ The British government also feared for the security of the European settlers still in Kenya in the event of possible expulsion.²⁷⁶ However, a report of a mission headed by an economist, Maxwell Stump, to advise on further transfer of land, which was published in 1965, disparaged the land transfer programme as having not only failed to produce visible economic development, but was also straining foreign exchange from the Kenyan economy.

²⁷² Gerald Holtham and Arthur Hazelwood, *Aid and Inequality in Kenya: British Development Assistance to Kenya* (Oxford: Routledge, 2011), Table 3, p. 34.

²⁷³ *Ibid.*, p. 36.

²⁷⁴ Percox, *Britain, Kenya and the Cold War*, p. 173.

²⁷⁵ Yusuf Bangura, *Britain and Commonwealth Africa: The Politics of Economic Relations, 1951-75* (Manchester: Manchester University Press, 1983), pp.169-170.

²⁷⁶ *Ibid.*

The report recommended a reduced rate of land purchase, from the previous 200,000 to 100,000 acres per year.²⁷⁷

The Stamp report was responsible for the gradual reduction of overall British financial aid to Kenya by the end of 1969. At the time, the gross British aid to Kenya was £74 million and reflected a falling pattern since 1964.²⁷⁸ About 1,800 Britons were working on aid contracts in Kenya, over half of them teachers. Large groups were also working in agriculture and health, with emphasis being on road building, agricultural development and education.²⁷⁹ The aid policy now changed to focus on aspects that promoted trade between the two countries and that which benefited the Kenyan economy.²⁸⁰ British economic aid henceforth was premised on three principles. One was the provision of additional sources of capital for the newly independent country to facilitate economic development. Secondly, was prevention of a slump of the new economy by providing aid, considering that Kenya was a major trading partner. Thirdly was the provision of stability in the face of the East-West ideological divide. However, all forms of financial assistance, including loans, were tied to the purchase of British goods and services.²⁸¹

Capital and investment were also significant in Kenya's relation with Britain. British post-war development policy saw increased investment in colonial production "behind tariff walls" and under favourable circumstances such as cheap labour.²⁸² Decline of settler enterprises in the 1950s due to the uncertainties of the Emergency environment saw the entry and takeover by foreign companies, such as Unilever, which had accumulated massive

²⁷⁷ Ibid.

²⁷⁸ Holtham and Hazelwood, *Aid and Inequality* Table 6, p. 37.

²⁷⁹ Marian Radetzki, *Aid and Development: A Handbook for Small Donors* (New York: Praeger Publishers, 1973), p. 170.

²⁸⁰ Bangura, *Britain and Commonwealth Africa*, p.171.

²⁸¹ Bangura, *Britain and Commonwealth Africa*, p. 150.

²⁸² Nicola Swainson, *The Development of Corporate Capitalism in Kenya, 1918-1977* (London: Heinemann, 1980), p. 105

resources to operate overseas.²⁸³ The structure of production, especially safeguard against nationalisation, was negotiated in the constitutional arrangement.²⁸⁴ International firms such as ARMCO, Hoechst, Glaxo Allenbury, Associated Motors and East African Packaging Industries, representing largely American and British interests, were established at independence.²⁸⁵ This economic aspect influenced Kenya's development and foreign relations strategy such that it enacted the Foreign Investment Protection Act of 1964.²⁸⁶

6.8 Overview

The independence negotiation process and the resulting constitution had a significant role in shaping Kenya's post-colonial governance and foreign relations. While the negotiation process was controlled by Britain as the coloniser, the constitution amendment process was equally undertaken under its watchful eye. The overriding factor in this case was to safeguard British long-term interests and ward off Communist influence by keeping Kenya firmly aligned to the West. The amended constitution served these interests and was used to keep popular dissent under check such that it neither effectively redistributed the resources as had been envisaged during the freedom struggle, nor did it achieve national unity as stated in the KANU manifesto. The constitution was placed under the custody of the political elite, who mutilated it to retain power. This supports the assumption that preservation and sustainability of a constitution largely depends on the perceptions, interpretation and the shifting hegemonic interests of the power wielders at any given time.

²⁸³ William R. Ochieng' and Robert M. Maxon (eds), *An Economic History of Kenya* (Nairobi: East African Educational Publishers, 1970), p. 164.

²⁸⁴ Swainson, *The Development of Corporate Capitalism in Kenya*, p. 103.

²⁸⁵ Ochieng' and Maxon, *An Economic History*, p. 299.

²⁸⁶ Philip Mwanzia and Macharia Munene (eds), *Reminisces on Kenya's Early Diplomacy, 1963-1993* (Nairobi: Foreign Services Institute, 2011), p. 81.

CHAPTER SEVEN

FINDINGS AND CONCLUSIONS

7.1 Introduction

The negotiation of Kenya's independence, which culminated in the formulation of a constitution as an instrument of governance, was a prolonged process that started with the establishment of colonial rule. It ended with the consolidation of the constitutional document. In between 1895, when the British formally took over the administration of what was termed as British East Africa, and 1969, were several phases that marked the constitution making process. That process had implications on Kenya's governance and direction on foreign relations. This chapter provides a summary of findings and conclusions of the study.

7.2 Establishment of Colonial Rule

From the pre-colonial times, many people from all over the world were enticed into Kenya as an attractive environment to live in. The result was the migration of diverse communities into the country ultimately creating a unique British colony in which the European settlers aimed at turning it into a "white man's country". The study has identified four features in colonial constitutional development. The first is the racial conflict that pitted four main racial groups against each other in a bid to secure their respective position in the colonial space with the European settlers claiming superiority. The second is the trusteeship of the British government over the inhabitants of the colony. The third is external pressure due to international political developments. The fourth is Africans protest, which culminated in the Mau Mau uprising of 1952.

The establishment of British administration in 1895 affirmed the racial structure as it introduced a legal system that served four distinct racial groups, namely the European, the

Asians, the Mohammedans (Arabs) and the Africans. With the Europeans embarking on establishing a “white man’s country” against the wishes of the other races and with Africans relegated to a passive position, this created tension, which formed the basis of the conflicts that made local agreement on a form of a constitution unachievable. The territory presented a unique problem for the British government, which required a unique strategy to resolve constitutional conflicts.

When Britain declared the territory a Crown Colony and Protectorate of Kenya in 1920, there were three forces. One was that of settlers who thought it was time for colonial management their way. The second one was of Asians who opposed the settlers’ bid for supremacy and wanted to be assured of their future in the colony. They sought parity in its management. The third one was that of the British government seeking to enforce its policy of responsibility and trusteeship for the inhabitants of the colony.

The British government had responsibility over the diverse population in Kenya. It had to ensure that they lived under a stable government and in economic prosperity. Thus, it formulated policy that was aimed at discharging this responsibility. Such policy was more strategic as it had an eye on the future relationship with African countries and sought to understand the African mind. The government devised a constitutional strategy aimed at checking European extremism and African agitation.

Indians’ struggle after World War I saw the British government coming out clearly on its trusteeship role of the Africans through the Devonshire White Paper. This was however at variance with the European settlers’ aspiration of controlling the colony and becoming a British Dominion the same as South Africa. Public opinion in Britain that was increasingly becoming pro-native, as manifested by lobby groups in the British Parliament and media, supported the British government policy to retain ultimate control of the colony and check the settlers’ ambitions.

While the Colonial Office policy changed in the global arena, European settlers did not identify with the changed policy and did not therefore detract British interests. In the early colonial years, the settlers dominated the scene and were able to steer economic and racial policy, which contravened the intentions of the Colonial Office. With the concept of Closer Union they also wished to extend their influence in the whole of the Eastern African region, which illustrates their insatiable quest for domination.

The trusteeship policy was a source of anxiety and uncertainty between the settlers and the British government. Colonial administrators were reluctant to implement it even when the Dual Policy of complementary development was proposed. Failure by the colonial government to act accordingly was mainly responsible for the discontent among the Africans. It was due to pressure from the European settlers that the compromise policy of multiracialism was muted and proposed to be actualised in the two imposed constitutions of 1954 (the Lyttelton Constitution) and 1958 (Lennox Boyd Constitution). As a policy geared towards finding a permanent solution to the immigrants' question it attracted the attention of the British government, but was rejected by Africans who did not wish to see the accommodation of the three races on an equal basis.

Failure of the multiracial constitutions did not mean the discarding of multiracial principles. Whereas the British government considered it its primary responsibility eventually to hand over power to a responsible government with "a good conscience" in an environment of economic prosperity, the settlers felt abandoned if power was not exclusively handed to them. To satisfy the immigrant communities, the multiracial principles re-emerged in the Bill of Rights during the negotiations, which found acceptance among African parties. Therefore, Britain never lost control of its trusteeship policy of Kenya.

The British government also never ceded the control of the colony. All the governance institutions were bestowed with advisory powers only, which left room for final decision to

be taken by the Colonial Office. This illustrates the colonial governance structure which features two levels of subordination, namely the Governor coming directly under the Colonial Office, and the colonial legislature (Legislative Council) answerable to the Executive. This structure was carried over after independence where the Executive subordinated the legislature (Parliament) until the 2010 constitution was promulgated.

Torn between allegiance to the Crown and pursuing their dream of “white man’s country”, the European settlers found themselves resigned to the decisions of the British government, even when it came to granting independence in Kenya under majority African rule. This resignation could be attributed mainly to the presence of a large and influential aristocratic composition among the settlers, which prevailed over the non-British settler population. It also explains the failure of the attempts by settlers to forcefully take over the colonial government in 1921 and 1953.

World War II affected British colonial policy. Britain’s commitment in the Atlantic Charter to the self-determination of its colonies globally, the emergence of the Cold War, and the intensification of pan-Africanism shaped the speed of decolonisation and the nature of engagement with the nationalists. The loss of India to independence sounded a death knell to the British Empire, but this was to be replaced by the Commonwealth of Nations. Independent India’s moral and material support to the nationalists in Kenya provided impetus to the demand for independence.

Change in attitude at the Colonial Office saw it adopt a policy of inclusivity in governance of colonies aimed at empowerment of the indigenous communities. This was responsible for the appointment of Africans in Kenya’s Legislative Council and eventually in the Executive Council. Resistance from the settlers resulted in further straining of race relations as the Africans pressed for their exit and the Asians fought their continued domination.

Post-World War II pan-Africanism fuelled the growth of nationalism throughout the continent. This was given further impetus on one hand by US foreign policy of applying pressure on the colonial powers to end subjugation and imperialism and on the other by the competition for influence created by the Cold War, which enticed the oppressed people to the ideology of Communism. This was against British interests as it wanted to retain its hold on its former colonies and dependencies. Delay in handing over power would push the nationalists to the Eastern bloc. These developments compelled Britain to accelerate the process of decolonisation as was explained in Harold Macmillan's "wind of change" speech. It became a matter of, not whether, but how fast British colonies in Africa would gain their independence. However, the British government was bent on controlling the process to protect its interests. To avoid handing over power in a dogged *retreat* situation, it adopted the principles of political realism of advancing its national interests at the negotiation table.

The brutal force used to bring African communities under colonial rule in Kenya resulted in negative feelings towards Europeans. The alienation and occupation of land in agricultural areas deemed as suitable for European settlement where the Giriama, Gikuyu, Embu, Meru, Maasai, Nandi and Kisii, coupled with levying of heavy taxes and imposition of colonial leaders (such as chiefs) on Africans was even more depressive. The colonial government also encouraged Asians' dominance in commerce and trade resulting in the marginalisation of Africans in the emergent monetary economy. This left a bitter taste in their mouths, which informed their relationship with the other racial groups and put them in a subdued status that affected their participation in the constitutional development.

Declaration of Kenya as a Crown colony in 1920 intensified African protest. The protest movements were infiltrated by missionaries under the guise of offering guidance. Kavirondo Taxpayer's Association in western Kenya became ineffective and later died soon after it was founded. Consequently, the western region continued in political limbo until the

elections of 1957 when there was a resurgence of nationalism. The Kikuyu Association in central Kenya was also infiltrated by missionaries and operated as an elitist movement with no mass appeal. However, the Young Kikuyu Association (YKA) resisted missionary influence and survived to metamorphose to Kikuyu Central Association (KCA). KCA was to become the face of early African protest in Kenya and its traces were evident in the Mau Mau armed uprising of 1952.

Intensification of African protest after World War II coincided with the introduction of the policy of multiracialism. Africans rejected this policy fearing that it was a way of making Kenya a 'white man's country'. Subsequent eruption of violence aimed to expel Europeans from Kenya. Africans also rejected the Lyttelton and Lennox Boyd constitutions because they imposed multiracialism, and the Colonial Office had not involved them in drafting the documents. The rejection of the constitutions and the Mau Mau uprising made the British government realise that Africans could no longer be ignored in constitutional development.

The isolation of Africans from constitutional development created apathy towards constitutions and hence constitutionalism. They viewed constitutional structures in the colonial state, not as instruments of governance, but a source of oppression and subjugation. Freedom, or independence, became their primary aim. The colonial government, however, saw independence as useless if it was not attached to a constitution that could guarantee the well-being of all the inhabitants of Kenya. The fixation to independence, therefore, was the cause of Africans' passivity in the negotiation process.

7.3 Constitutional Negotiations: Process, Interests and Actors

During the negotiations, British and settler interests surfaced. According to the power theory, global powers act in self-interest. Britain was preoccupied in retaining its position in the global politics, securing sources of raw material and enhancing markets for its industrial

produce. Other British interests centred on ensuring international security and its survival as a world power. While the economic interests involved the securing sources of raw material and trade, the political interests pointed at securing stable and friendly relations, and establishing Kenya as a test case of a viable multiracial society. Therefore, in steering the negotiation process, Britain was working to realise all that it had set out to achieve.

The process of decolonisation caught European settlers napping. They still hoped for continued responsibility of the British government in Kenya where their privileged positions would be upheld and African nationalism held in check. Those Europeans who subscribed to multiracialism tried to accommodate the Colonial Office's view of gradual handing over of responsibility to a responsible government. Both groups' interests converged at the point where they hoped to entrench themselves in government and ultimately regain their superior position. They were however disappointed when the British government abruptly started to gravitate towards a majority rule.

Africans were not given an opportunity to express what they were fighting for. Their demands included expelling all the immigrants and seizing lands that had been alienated. Enactment in 1959 of the Native Lands Registration Ordinance and the Land Control (Native Lands) Ordinance facilitating individual land ownership put access to land resources beyond the reach of most Africans. This had been followed by the publication of *Sessional Paper No. 10 of 1958/59 on Land Tenure and Control Outside the Native Lands*, which pre-empted the demand for land. They expected independence to reverse the land inequity, especially by annulling the land alienation to the settlers who had been guaranteed land titles for 999 years.

At the conferences, all that Africans wanted was a date for independence. The promise of independence made them disregard the details of the resulting constitution instead holding that they would change what they did not want. They did not put into consideration that, as Kenya was moving to statehood, it required a constitution that would formalise rules of

government and the agreed elements such as well-defined territorial boundaries, criteria for citizenship and structures of resource distribution. A negotiation process was therefore necessary to arrive at that constitution for independence. Since the Africans were not given the opportunity to express themselves, majority did not have faith with the Lancaster House constitution making process. Thus, the resulting constitution was not sustainable and hence the new power wielders were bound to change what they did not want.

The negotiation process was carried out in phases with venues in London and Nairobi. The key participants were elected representatives in the Legislative Council, divided into various interest groups. It also brought together four main actors, namely the British government, KANU, KADU and the settlers. The British government decided on the participants and excluded those who had participated in the Mau Mau movement. Thus, neither KANU nor KADU MLCs represented the legitimate demands of the Africans. Suffice it to say that the political environment was not conducive to bring in such actors as the British government would have found it impossible to derive any agreement, which would have implied that the British government had failed to steer the negotiation process.

When the Secretary of State announced in the first Lancaster House conference in 1960 that the intention of the British government was to grant independence to Kenya, under African majority, the actors became disorganised. Settlers, anxious about their land which they wanted to keep it forever, felt abandoned. Africans started jostling for power. The disorganisation gave British government the opportunity to conduct many informal meeting in which it deployed its power. Its strength was visible in these meetings as each of the groups was dependent on it for determination of the contentious issues. Therefore, the British government took advantage of a “divided house”.

The negotiation process featured personalities of different backgrounds. While the Europeans, the British government officials and the Asians had vast constitutional

knowledge, the Africans were disadvantaged as they had uneducated negotiators who had little or no constitutional knowledge and experience. They were reduced to reacting other than initiating discussions on issues. The ignorance of the African made them vulnerable to manipulation and imposed decisions. It also limited their participation in the negotiations besides going to the conference a divided lot consequent upon which the British benefitted in terms of influencing them. Both KANU and KADU knew that the settlers wanted to establish a “white man’s country” and unity among them would have made agreements, such as on the land question, impossible.

All the negotiators had their own constituents who were influencing their conduct. The settler constituency was especially powerful with its links in Whitehall and the immense capital and investments that it had amassed in the country. The African constituency was populous and had divided into numerous interest groups ranging from workers and trade unionists to peasants and petty traders. These constituents shaped the outcome of the negotiations thereby establishing that the classical pluralism theory was at work in the negotiations. Some of the groups, such as the Kenya National Farmers’ Union (KNFU), created in 1947 to make representation to the government, influenced actors to the extent of changing the dimension of negotiations.

Prime Minister Harold Macmillan, Secretary of State Duncan Sandys, Governor Malcolm Macdonald and Jomo Kenyatta were the key players in the final phase of the negotiation process. Macmillan played a significant background role in determining the course of and laying the ground for the negotiations. His personal knowledge of Kenya since his tenure as Minister of State in the Foreign Office was visible in his handling of the negotiation process, including informal discussions with the European delegations to impress on them the thinking of the British government. His support for the regional-based structures in the form of ‘other governing structures’, the involvement of the Opposition, and the

creation of the East African Federation was crucial in determining the shape that the constitution took and the pace of advance towards independence. Sandys' negotiation skills procured favourable outcomes for British interests, which also included the guarantees for the European settlers. Macdonald's rapport with Kenyatta endeared the latter to the settlers and also built their confidence with the new African government. In the negotiation process, Macmillan had supported the idea of a form of regional government where certain powers would be delegated to the regions and which would be developed upwards into an East African Federation. Britain however abandoned the idea when they secured the Bill of Rights as the most suitable form of safeguards, as this would have resulted in possible balkanisation of the country which would not have served its strategic interests.

Kenyatta was the principal advocate of KANU's centralist policy and structure of government. As a pan-Africanist, he believed in the unity of the African people. His support was therefore not personalised, but was in line with what had been KANU's manifesto since its inception in 1960. Therefore, Kenyatta picked up a narrative that had been advocated by the majority African people.

Kenyatta's exposure to Western thinking made him realise that it was futile to wage an armed struggle against the British. He was also familiar with the global developments and knew that colonialism as a form of rule was on its way out and that imperialism was no longer tenable. He favoured constitutional means of achieving independence. His thoughts and insights were however not shared or supported by the youthful and seemingly impatient nationalists like Bildad Kaggia, Paul Ngei and Fred Kubai. This resulted in division within the nationalist movement between moderates and radicals. The military defeat of the Mau Mau vindicated his approach to attaining independence although the political tension on which it was built never subsided.

7.4 Power Contests in the Negotiation Process

The negotiation process for Kenya's independence was undertaken with the aim of protecting British interests. Therefore, the British government controlled the process and went to the conferences with full knowledge of the outcome. It applied power games to manage the actors, their interests and the outcome. It also had power to deal with any adverse eventuality that could divert or sway this outcome.

The British government, being the sovereign authority, possessed defining powers at the negotiations. When the negotiations commenced in January 1960, it controlled the negotiation process by formulating the agenda, carefully selecting the delegates, determining the venue, and formulating the logistics, rules and procedure of the conferences, and emphasising on the expected outcome at every negotiation phase. It was the responsibility of the Secretary of State to 'persuade' the delegates, through the application of whatever available means, to see the government's point of view and to eventually agree. By stating that the conferences were purely advisory, where voting or taking decisions would not be involved, the British government was implying that the other parties did not have any tangible power that would influence the determined course of negotiations. Rather, the outcome enabled the British government arrive at the collective advice of the delegates.

The bulk of the negotiation was between KADU and KANU. At the second Lancaster House Conference, KADU was in government with NKG. The British government appeared sympathetic to KADU because the party had agreed to form a government in 1961 at a time when constitutional development almost stalled thereby saving the British government's face and casting it as astute negotiator and lifting from it possible blame for failure of the negotiation process. The European settlers, who were in the minority, had some of them aligned to KADU. The two African parties' power position had been tested during the elections of 1961 in which KANU won overwhelmingly. Despite the loss, KADU was

involved in negotiating the details to the framework of the constitution at Government House in Nairobi, in a coalition government with KANU. Among the dynamics that emerged during this phase of the negotiation process were disagreements, especially between the two parties. Areas of disagreement were mostly those touching on regionalism upon which KADU was so fixated. While in the negotiations, KADU grew weaker upon which its delegates stopped attending constitutional meetings and started obstructing progress. This left KANU and the British government to work on the final details of the constitution.

The subsequent election in 1963 was the final straw that broke KADU's back. Britain's hope was in disarray as the British government had to look at KADU differently. It was left with no option but to work with KANU, which wielded influence by its massive support. This was the least amount of power that as a negotiating party it could deploy. KADU was provided with a weaker power base with its goals and interests overwhelmed by KANU during and after the negotiation process. The shifting of power, with Kenyatta as the new power wielder, enabled KANU to implement the elections manifesto, for instance the change from dominion to republic, in an attempt to redefine and reassert the new nation's sovereignty. Therefore, when the time came, KANU was able to amend the constitution the way he wished to.

Britain handed political power to KANU on the basis that it won the election, but it retained economic and military power which was not a guarantee of future sustainability and relations. On one hand, the British relied on KANU due to its popular support to achieve its strategic interests, while on the other KANU relied on the British government to grant independence. This created an interdependent relationship though one party (Kenyatta and KANU) was weaker.

The British government adopted a tactic of infiltrating African opinion by having Europeans within their grouping. During the formation of CEMO, Shirley Cooke joined in as

a supporter of a non-racial movement. When KANU and KADU were formed and opened their membership to all races, Europeans such as Michael Blundell and Wilfrid Havelock were accommodated on the KADU side, while Bruce Mackenzie and Derek Erskine went to the KANU side under the guise of fighting racial prejudice. Nevertheless, they provided a forum through which the Secretary of State gained insight into the African thought and channelled his thinking to the African delegates. That way he controlled the discussions, especially during the informal sessions.

When the necessity of safeguards was introduced in the negotiations, KANU proposed the Bill of Rights as the best way to protect property and individual rights as well as safeguard the rights of minority groups. KADU proposed regionalism. The details of the Bill of Rights were worked out by the Colonial Office in collaboration with legal experts from the African parties. Ultimately, the provisions were endorsed with minimal resistance by the Africans. However, unknown to the KANU leadership was that they had endorsed a set of sacrosanct legal provisions that did not allow them to expropriate any property, including land, without due process of the law. This extinguished any plan that the nationalists nurtured to nationalise land and other property for distribution to the landless and unemployed. The British compelled Kenyatta to sign a written commitment not to alter any of the provisions after independence. By extension this also guaranteed the immigrants, which betrayed the aspirations of the African people who had hoped to regain their land after independence. Oginga Odinga, Paul Ngei, and other KANU nationalists continued to pursue the nationalisation policy and were eventually ostracised under the guise of fighting disgruntled elements within KANU.

At the close of the drafting of the constitution in March 1963, the Secretary of State asked KANU and KADU leaders to accept that the self-government constitution was not imposed. Kenyatta and Ngala accepted that it was not imposed and pledged to rally support

for it among their followers. Ngala accepted because he did not wish to see the *majimbo* components in the constitution diluted while Kenyatta did not want to delay independence. On their part, the British sought legitimacy of the constitution and did not want to project it as a compromise document for fear of encouraging amendments. It is therefore clear that the British government took advantage of the differences between KANU and KADU to impose its will. However, the two parties were trapped in an agreement with the Secretary of State that whatever they disagreed upon, he would step in and provide a solution. Thus, they had neither the basis of rejecting the resulting document nor blaming the British government on the course of action taken.

7.5 Outcome of the Process

The World Wars and the subsequent Cold War had significant influence on the nature and outcome of the negotiation process. The irreversible developments brought about these historical events, especially land and the defined boundaries, necessitated the British government to launch the country into independence using the concept of the future, which made it impossible to revert to pre-colonial status. This rendered the granting of independence to the country in its original form impractical, yet the British wanted to retain political and economic influence and ensure international strategic interests.

Other than the British government and the KANU elite, the rest of the parties felt short-changed. Disappointed settlers found solace in mass exodus leaving with capital that was much needed to sustain economic development. Frustrated Africans resulted in their rallying cry of betrayal. They started to regroup and agitate for total independence, but they were contained, in some cases through repressive force. The effect of betrayal began the erasing of liberation heroes from institutional memory. Kenyatta's Independence Day speech contained neither a tribute to them nor any mention of Mau Mau. Asians and Europeans who decided to

stay retreated from political life and went to consolidate their investment and commercial interests resting assured that they were already protected by the Bill of Rights.

The signing of the Bill of Rights by the Africans deflated their nationalist rhetoric. For example, while Tom Mboya had fought colonialists and sought their exit from Africa in general in his “scram from Africa” speech of December 1958 in Accra, he could not do so after Kenya’s independence as the provisions of the Bill of Rights offered them protection. This clearly indicates that the Africans’ aspirations had been side-lined and the Africans had been muzzled and humiliated in the negotiations so much that they had to submit.

The Bill of Rights rendered independence meaningless to the majority Africans who had hoped to regain their property, especially land, which had been acquired through forceful alienation. Its entrenchment in the constitution and the guarantee to safeguard legitimised and perpetuated grabbing of property, as it upheld the rights of individuals to ownership and also assured protection of such property – comprising land, capital and investments – regardless of how it had been acquired. The ‘good’ Africans, who had benefitted from land consolidation policy of the mid-1950s, were granted the legal recognition of their land thereby dispossessing those who had joined the freedom movement, especially detainees and forest fighters. Africans who wished to own land were subjected to the new policy of “willing buyer willing seller” yet they did not qualify for any source of funds. Consequently, after independence, the have-nots (the poor) continued to be pauperised, while the ‘collaborators’ continued to amass wealth and economic privileges, a scenario that persisted for decades. While Kenyatta attempted to solve the land problems through the settlement schemes, his efforts were frustrated by the competition between the haves and the have-nots, and mismanagement.

The Bill of Rights also favoured the immigrants who owned and controlled all the productive resources. At independence, 3,500 European families owned “about 20 per cent

of Kenya's arable land, while six million Africans shared the rest".¹ African leaders protested this state of affairs, but they were met with reprimand from the new African government. With Kenyatta commanding a near-fanatic following among the ordinary citizens, they were forced to beat a hasty retreat if only to avoid suffering the wrath of the same people they purported to defend as they were portrayed as enemies of state who had to be silenced.

Another social effect of the Bill of Rights was realisation of multiracialism. Despite the clamour expressed by Africans for a predominantly African country and government ("Africa for Africans") Kenya ended up a multiracial society. Hence, the British government had lived true to its trusteeship role of formulating and enforcing a policy where Kenya would consist of all the races and for whoever wanted to make it their home. From the original aspiration of "white man's country" it turned out as a "no man's country". The set-up was as skewed as had been envisaged in the pre-independence days where the European owned capital and investments and possessed the scientific and technological expertise, the Asians and Arabs controlled commercial enterprises and provided some technical skills, while Africans offered their labour.² Thus, the majority Africans were settled to subordinate status under their own independent government. The few progressive Africans who benefitted from the Africanisation of the civil service and commerce were responsible for the emergence of a middle class and hence a politico-economic and social stratification with majority of marginalised Africans condemned to poverty.

As soon as the British government declared its intention for Kenya as independence under majority rule, groupings among Africans emerged based on tribal lines. No tribe was willing to be dominated by another. All those tribal groups that were not ready for independence, including the Europeans, began to agitate for safeguards. Each of them began

¹ "Land alienation in Kenya", available at: <http://softkenya.com/history/land-alienation-in-kenya/>, accessed on 15 April 2014.

² John D. Hargreaves, *Decolonization in Africa, 2nd Edition* (London and New York: Longman, 1996), p. 76-78.

to jostle for space in an independent nation coalescing into political parties championing ethnic interests. KANU advocated national unity, while KADU championed regionalism. In the process of KADU articulating its *majimbo* (regionalist) policies organised tribalism and fragmentation of the country emerged and was aggravated resulting in tribal politics in Kenya that persist to this day.

The British government used the negotiation process to identify African personalities with whom it would work to safeguard British interests. Radicalism within the African nationalist movements did not assure the British government of the capacity of African leaders to establish democratic systems and responsible government in line with its stated objectives. Extremists who posed a threat of overthrowing the agreed constitution were isolated. Although the British government identified Jomo Kenyatta as one of the radical Africans, his command of national support enticed the British to mould him as a person it could do a deal with. He understood the British dilemma in satisfying so many interests. His long exposure to and association with the British society, including marriage to a British national, opened him to possible rehabilitation to work with the British. Consultations between Kenyatta and the British government were evident from the meeting with the intelligence agents and other government officials. A lot of “cook work” went on behind the scenes as the British prepared him for the transfer of power. The British government did not want to be blamed for the failure of the negotiation process or of undelivered constitution.

Having shown keenness to play a key role in government, Kenyatta was propped up for national leadership, but compelled to sign a firm commitment not to ‘tamper’ with the constitutional provisions that guaranteed safeguards for the minorities. He was also surrounded with Western-educated elite who were positioned centrally in government as the caretakers of the constitution. His signature on the independence document did not meet

popular demands among the nationalists. They had yearned for changes in the constitution once they took over power.

7.6 Implications of Constitutional Amendments

Amendment of the constitution involved the items that KANU had rejected during the negotiation process and which it had clearly stated that it would change once it came to power. For example, KADU persisted on pursuing regionalism while KANU stood its ground for a central form of government. KANU was clear that it would not support the form of government advocated by KADU and would therefore change it once it took power. Thus, in spearheading the constitutional amendments, Kenyatta did what KANU had promised to do, which was the wish of the people. This confirms the assumption that the new power wielders secured the values that they had failed to access during the negotiating process. It also concludes that the consolidation of power was dictated by the election pledges.

7.7 Implication of Negotiation Process on Post-Independence Governance

The negotiation process produced a constitution that was not formulated from a people-driven process; hence, the constitution lacked ownership and legitimacy. It was therefore not sustainable and became a source of later conflict. When the political class disagreed with the constitution from the outset, it became doubtful whether the public officials in general would henceforth be acting out of fidelity to the law or out of expediency, and whether the political disgruntled class would provide life and loyalty to the new constitution.

Constitutional amendments under Kenyatta achieved only one objective: the creation of a strong central government, which accommodated the adoption of the colonial administrative structures. Issues such as land and the control of foreigners were not addressed. The people for whom the amendments were purportedly enacted were not involved. The implementation of this revised constitution was placed in the hands of an elite

whose interest was the sustenance of power. The leadership found that it had to rely on support from Western governments and their agents for survival. Constitutional amendments and enabling legislations were enacted to contain the dissent, which by extension was the suppression of popular opinion and hence the retention of the status quo in respect of socio-economic development. For as long as this state of affairs subsisted, it was apparent that poverty levels would persist.

The creation of a strong central government could be attributed on the one hand to KADU's failure to explain and articulate its policy of regionalism effectively. This implied that its proposals were not taken seriously. On the other hand, it could be attributed to KANU's speed towards self-government and eventual independence, coupled with KADU rivalry, which blinded the examination of the *majimbo* system objectively. KANU resented the system so much that it was inclined to abolish it altogether other than streamline it. The positive attributes of KADU's *majimbo* system came to light in the 2010 constitution featuring such aspects as devolved structures and strong institutions of governance. However, from the public utterances attributed to KADU's leaders the envisaged regionalism was interpreted as a ploy to keep away non-residents from their claimed areas and eventually to launch a secessionist movement.

Although KANU advocated unity, it did not specify the model and structure of government that it wished to install upon coming to power. With the fight against extremist elements in KANU and external threats starting soon after independence, the government retained the colonial structures and machineries given they were familiar and contained effective instruments of coercion needed to govern the new nation and therefore made the management of national affairs easier. Colonialism was replaced by personal and national interests, as the political class sought to manage the affairs of the new country with all the prevailing challenges. Moreover, there was no time or opportunity to formulate new systems

as this would have opened up the country to external manipulations from the East-West superpowers with a view to spreading their ideologies and support, a fact that KANU and the British were aware of.

Constitutional amendments to secure this structure were done with the knowledge and nod of the British government, which did not favour balkanisation of the country as such structure would have made it difficult to manage its interests. The implication was that the governance system would not have been interrupted even if Kenyatta was replaced; hence, no nationalist would have performed differently under the circumstances. Such arbitrary changes of the constitution by the political class persisted for many years. No conference was held after 1963 to discuss the need for amending the constitution. Advocacy for constitutional reform was to be taken up by the civil society groups until President Daniel arap Moi yielded to local and external pressure to revive multi-partyism in December 1991.

7.8 Implication of Negotiation Process on Foreign Relations Direction

The British government steered the negotiation process with the full intention of safeguarding its interests key of which was to retain its superpower status on the global arena through the preservation of the Commonwealth of Nations. It therefore made membership to the organisation a desirable condition for independence. By joining the Commonwealth it was easier for Britain to influence Kenya on the direction that the newly independent nation would take, specifically to remain in the Western side of the ideological divide.

The immigrants also influenced the direction of Kenya's post-independence foreign policy. By the time the Cold War intensified from the early 1950s, the capitalist culture of the Europeans and Asians was deeply entrenched in the country. This culture permeated to the post-independence political class creating affinity more towards the West than the East. The implication was the inflow of foreign investment based on the capitalist modes of production,

which resulted in uncontrolled overexploitation of resources much to the resentment of the masses.

The transitioning of the responsibility for foreign affairs from the colonial government to an independent one was apparently influenced by the nature of the negotiation process. Under colonial rule, the Governor held responsibility for external affairs, which was in turn transmitted to the Colonial Office. Under the independent government and with subsequent constitutional amendments that strengthened the Executive, foreign relations were conducted under the ambit of the Executive. Thus, the relations were determined by the whims of the Executive and the Presidency in view of the fact that Kenya did not have a formal foreign policy. . Personal relations with President Kenyatta therefore made it easier to influence the direction of Kenya's foreign policy.

7.9 Conclusion and Lessons Learnt

The data gathered for this study has established why the independence constitution of 1963 was not endorsed by all groups and why it was amended so many times despite having been negotiated in three main conferences in London, between 1960 and 1963. On the background and nature of the negotiation process, the data has revealed that, as an imperial power, Britain possessed relative power at the negotiations as described in Bacharach and Lawler's Dependence Theory of Bargaining Power. Therefore, it had the ability to shape the outcome of the negotiations process. This enabled it to entrench its influence and interests in the constitutional document to reflect its dominant interests even after independence.

Upon granting independence, the British government left the Africans to manage their own disagreements which continued in a different colour. Only the Africans' face was visible in the disagreements over the constitution. However, propelled by the dictates of the Cold War, British relics persisted with African leaders at the front to perpetuate colonial structures.

The implication was that the British had conquered the country in fact and their concept of independence was not to pack up and leave, but to continue wielding influence through proxy.

On how the dynamics of the negotiation process influenced the outcome and shaped the foreign policy direction and governance the data revealed that the independence negotiations took place under an environment of Cold War ideological alignments, decolonisation by the colonial powers, and disagreements between the racial groups. Britain as a global power set out to safeguard its interests as depicted by Morgenthau's Theory of Political Realism. Its power position provided the ability to shape the foreign policy direction of post-colonial Kenya.

The data specifically reveals that foreign relations did not feature at the Lancaster negotiations as an agenda item. As the African groups were fixated at attaining independence they did not press for its inclusion for discussion. They did not even contest the declaration by the British government that Kenya would join the Commonwealth as a prerequisite for granting independence. The areas that had immediate implication on foreign relations such as the questions of the Northern Frontier District (NFD) and the Coastal Strip were discussed on the side of the main conference under the ultimate determination by the British government. Moreover, Kenya's membership to the East African Community (EAC), the Organisation of African Unity (OAU) and the Non-Aligned Movement (NAM) did not face opposition from Britain because it did not threaten British strategic interests. This was particularly assured because the implementation of the relations was entrusted to the elite in the Executive that served British interests.

On the correlation between the composition of the actors and their divergent interests and its impact on subsequent constitutional amendments, foreign relations and nature of governance, the data showed that the various parties in the negotiations did not get what they

wanted except the British government. The data also revealed the presence of many pressure groups, such as tribal parties, white farmers, British public, African students and Asian professionals, which were out to influence the negotiation process and secure their interests as is reflected in the Theory of Classical Pluralism. These groups are a potential source of conflict and disagreement if their demands are not met.

Upon acquiring political power, Kenyatta carried out amendments to the constitution through power games played by one party ultimately consolidating power and resulting into a one-party state. This raised many eyebrows among the actors so much that implementation of the amended constitution was rife with disagreements. The ensuing power struggles and disagreements bred intolerance, repression, detentions without trial and assassinations. This supports the study's assumption that the amendments to the constitution after independence were the result of the failure of the Lancaster House negotiations process to address and secure the interests of the recipients of the constitution. The findings also support the assumption that the sustainability of a constitution depends on the interpretation of the power wielders and hegemonic interests at the time.

There are three main observations from this study. One, the British constitutions enacted for decolonisation, even if supposedly negotiated, were not from a participatory process and were therefore produced governance structures that were not sustainable. Soon after independence countries such as Ghana, Nigeria and Uganda changed their constitutions to suit them to their own needs. In the same way, Kenyatta changed and overthrew the independence constitution. Secondly, the base for negotiation of Kenya's independence laid out in 1960 was not well grounded because the process was meant to solve British crisis in the colony. The flawed handling of the process brought in a flawed outcome. Had all the actors been involved in an all-inclusive process, the negotiation would have provided a reasonable and sustainable result. Thirdly, any negotiation that lacks inclusivity and is

grounded on power would collapse. In the Kenyan case there was no convergence of interests. The negotiations were primarily based on power and property rights and least on popular demands. Many issues were left unresolved and hanging with KANU rushing to secure independence on the one hand and the British government the Bill of Rights on the other. The two parties produced constitutions that could only be sustained through coercion and repression.

The key lesson learnt is that unless negotiation is an all-inclusive process, it is bound to produce an unsustainable product. However, in the Kenyan case, Britain needed Kenyatta for securing its interests, while Kenyatta embraced Britain for survival in the troubled waters of the Cold War. Britain-Kenya relations have persisted for decades and may be a subject of further study.

APPENDICES

APPENDIX 1

KEY INFORMANTS

Interviewee	Date interviewed	Interview venue	Lancaster House Conference attended
1. Taita arap Towett	09 February 2007	County Hall, Nairobi	First and Second
2. Martin Joseph Shikuku	05 October 2010	KCS House, Nairobi	Third
3. George Nthenge	17 March 2011	Nairobi Safari Club	Second
4. John Keen	17 March 2011	Karen home, Nairobi	Second

APPENDIX 2

INTERVIEW SCHEDULE

1. What conference(s) did you participate in? Did you attend on behalf of a political party or a group?
2. What other people do you remember who participated in the same conference(s)? Comment on their party affiliation, political orientation and character.
3. Comment on your preparation for the conference(s).
4. Comment on the choice of venue and hospitality during the conference(s). How was the general environment? Who paid for the expenses that were involved in organising and attending the conference(s)?
5. Were there any experts that were hired for the negotiations? If so, who were they? Who chose them? Were they qualified as experts? Were any of them Africans?
6. What was the agenda of the conference? Did the participating parties negotiate the agenda? If so, comment on the negotiation? If not, comment on the formulation of the agenda.
7. Comment on your relationship with the other people who attended the conference(s).
8. Who presided over the conference (i.e., chaired the conference)? Comment on the strategies and tactics that the chairman used to run the conference. In your view did the chairman display any bias? If so, how and in whose favour was the chair biased?
9. Comment on the attitude of the British Government (especially the Colonial Secretary) during the conference(s). How did he relate with you and your group?
10. Comment on the general attitude of Africans after each conference, especially the one you participated in.
11. Do you think the Kenyan constituents played any role in the conference(s)? If so, what role did they play and how did they play it?
12. Comment on your feeling regarding the achievement of the conference(s). Do you think the conference(s) was/were successful?
13. In your own opinion, were there agenda items proposed by the negotiating parties that were not discussed? What do you think was left out of the negotiation process at the conference that may have prompted constitutional amendments immediately after attaining independence?
14. What was agreed upon by the parties on how the new constitution would be implemented? In your view, what structures were necessary for the implementation of the constitution?
15. Did the Lancaster negotiations decide who Kenya would relate with after independence?
16. Why did Kenya appear to lean to the Western ideological camp after independence?
17. Comment on whether Kenya's membership to the Commonwealth, OAU, United Nations and the Non-Aligned Movement has been beneficial.
18. In the case of constitutional crises, what mechanisms were available for re-negotiation once the conference(s) was/were concluded (i.e., were there options open for re-entering negotiations)?
19. If you were to turn back the clock and revisit the negotiation process, how would you have done it differently?

APPENDIX 3

PARTICIPANTS IN THE KENYA CONSTITUTIONAL CONFERENCE, Jan-Feb 1960

UK Ministers

1. Rt. Hon. Iain Macleod M.P. - Secretary of State for the Colonies
2. Rt. Hon. The Earl of Perth* - Minister of State for Colonial Affairs
3. Mr Julian Amery - Parliamentary Under-Secretary of State

Colonial Office

4. Sir Hilton Poynton K.C.M.G., C.B. - Permanent Under-Secretary of State
5. Sir. John Martin K.C.M.G., C.B., C.V.O. - Deputy Under-Secretary of State
6. Sir Kenneth Roberts-Wray, K.C.M.G., Q.C. - Legal Adviser to Secretary of State
7. W.B.L Monson, C.M.G. - Assistant Under-Secretary of State
8. F.D. Webber, C.M.G., M.C., T.D. - Assistant Secretary, East African Department
9. D.G. Gordon-Smith - Senior Legal Assistant

Kenya Government Delegation

10. Sir Patrick Renison - Governor
11. E.N Griffith-Jones, C.M.G., Q.C. - Attorney General
12. Professor W.J.M. Mackenzie - Constitutional adviser to the conference
13. Dr R.V. Rostowski - Personal Assistant to the constitutional adviser

African Constituency Elected Members

14. Ronald G. Ngala - MLC Coast Rural (Leader of African delegation)
15. Tom J. Mboya - MLC Nairobi Area (Secretary to African delegation)
16. Francis J. Khamisi - MLC Mombasa Area
17. Daniel I. Kiamba - MLC Machakos
18. Julius Gikonyo Kiano - MLC Central Province South
19. Bernard Mate - MLC Central Province North
20. Samuel O. Ayodo - MLC Nyanza South
21. Daniel T. arap Moi - MLC North Rift
22. James N. Muimi - MLC Kitui
23. P. Masinde Muliro - MLC Nyanza North
24. Joseph J.M. Nyaga - MLC Nyeri and Embu
25. Oginga Odinga - MLC Nyanza Central
26. Justus K. Ole Tipis - MLC Central Rift
27. Taita arap Towett - MLC Southern Area

Asian Constituency Elected Members

28. John Maximian Nazareth, Q.C. - MLC Western Area (Leader of Asian Delegation)
29. Arvind B. Jamidar - MLC Central Area
30. Anantprasad J. Pandya - MLC Eastern Area
31. Karsanji D. Travadi - MLC Central Electoral Area
32. S.G. Hassan, M.B.E. - MLC East Electoral Area (Muslim)
33. Zafrud-Deen s/o Shamsud-Deen - MLC West (Muslim)

Arab Constituency Elected Members

34. Sheikh Mahfood S. Mackawi - MLC Arab
35. Shariff M.A Shatry - MLC Arab

European Constituency Elected Members

- 36. Captain Llewellyn Rolls ('Puck') Briggs - MLC Leader of United Party
- 37. Reginald Stanley Alexander - MLC Nairobi West
- 38. Fredrick William.Gwinnett Bompas - MLC Kiambu
- 39. William Edmund Crosskill - MLC Mau
- 40. Major Frederick William.J.S. Day - MLC Aberdare
- 41. Colin Wentworth Percival Harries - MLC (Temporary) Ukamba
- 42. Norman Francis Harris - MLC Nairobi South
- 43. Cmdre. E.L. Howard-Williams M.C. - MLC Nairobi North
- 44. Eugenie Dorothy Hughes M.B.E. (Mrs) - MLC Uasin Gishu
- 45. James Robert Maxwell, C.M.G. - MLC Trans Nzoia
- 46. Major Bryan.Peter Roberts - MLC Rift Valley
- 47. Agnes Ramsay Shaw (Mrs) - MLC Nyanza
- 48. Cyril George Usher, M.C. - MLC Mombasa

Specially Elected African Members

- 49. Musa S. Amaleba
- 50. John M. Muchura
- 51. Gibson Ngome
- 52. Wanyutu Waweru, M.B.E.

Specially Elected Arab Member

- 53. Sheikh Mohamed el Mandry

Specially Elected Asian Members

- 54. Ibrahim Esmail Nathoo
- 55. Chunilal Bhagwandass Madan, Q.C.

Specially Elected European Members

- 56. Michael B.E Blundell - Leader of New Kenya Party
- 57. Wilfrid B. Havelock
- 58. Lt Colonel Bruce R. Mackenzie
- 59. Humphrey Slade

Nominated Members

- 60. Sheikh Salim Muhashamy - Liwali, Mombasa District
- 61. Ahmed Farah Eleya B.E.M - Nominated MLC

Secretariat

- 62. R.B.M. King, M.C. - Secretary General
- 63. J.L.F. Buist - Assistant Secretary General
- 64. B.E. Rolfe - Conference secretary
- 65. T.M. Heiser - Conference secretary
- 66. K.A.F. Woolverton - Conference secretary
- 67. Mr. R.W. Francis - Press officer
- 68. Mr. J. Martin - Document Officer
- 69. Miss S.M. Strachan - Conference Officer

Special advisers

- 71. A.T. Culwick - United Party
- 72. Commander A.B. Goord, D.S.C. - New Kenya Party
- 73. Dr. Thurgood Marshall - African Constituency Elected Members

* John D. Drummond

APPENDIX 4

PARTICIPANTS IN THE KENYA CONSTITUTIONAL CONFERENCE, 1962

I. MEMBERSHIP

Kenya

ELECTED MEMBERS OF THE LEGISLATIVE COUNCIL

KADU Parliamentary Group

1. Sheikh M.A. Alamoody
2. R.S Alexander
3. Musa S. Amalemba
4. Michael B.E Blundell
5. R.P. Cleasby
6. Wilfred B. Havelock
7. Air Cmdre E.L. Howard-Williams, M.C
8. A.B. Jamidar
9. A.M. Jeneby
10. Eric E. Khasakhala
11. A. Kilelu
12. J.L.N. ole Konchellah
13. R.A. Macleod
14. Robert Matano
15. Bernard Mate
16. Daniel T. arap Moi
17. H.P. Masinde Muliro
18. William C. Murgu
19. Ronald G. Ngala
20. Peter J.H. Okondo
21. S.S. Patel
22. J.L. Porter
23. M.J. Seroney
24. A.R. Shaw, O.B.E. (Mrs)
25. Justus K. ole Tipis
26. Taita Towett
27. Wafula Wabuge

KANU Parliamentary Group

28. Jackson H. Angaine
29. S.J. Anjarwalla
30. P.A. Areman
31. C.K.G. Argwings-Kodhek
32. S.A. Ayodo
33. T.M. Chokwe
34. K. Zafrud-Deen
35. Fitz R.S. de Souza
36. Derek Erskine
37. James S. Gichuru
38. A.H. Jamal
39. John Keen
40. Jomo Kenyatta
41. Dr Julius G. Kiano
42. D.B. Kohli
43. Bruce Mackenzie, D.S.O, D.F.C.
44. P.D. Marrian
45. Fredrick M.G. Mati
46. Tom J. Mboya
47. Jan Mohamed
48. H.N. Mulli
49. D. Mwanyumba
50. Eliud N. Mwendwa
51. George W. Nthenge
52. Jeremiah J.M. Nyaga
53. F.W. Odede
54. A Oginga Odinga

55. Lawrence Sagini
56. K.P.Shah
57. Chanan Singh
58. V. Wokabi

Kenya Coalition

59. D.L. Cole, M.B.E.
60. C.W. Salter, Q.C.
61. L.R. Maconochie Welwood

Mwambao United Front

- 62. O.S. Basaddiq
- 63. Sheikh A. Nassir

Cross-benchers

- 64. A.R. Khalif
- 65. A.J Pandya

ADVISERS

- 66. Dr E. Zellweger KADU Parliamentary Group
- 67. E.M. Bennett, M.P. KADU Parliamentary Group
- 68. Dr E. Malik KANU Parliamentary Group
- 69. H.B.W. Macallan Kenya Coalition

THE GOVERNMENT OF KENYA

- 70. Sir Patrick Renison, Governor
K.C.M.G.
- 71. A.M.F. Webb, Q.C. Attorney General
- 72. R.E. Lyut, C.M.G., D.C.M. Permanent Secretary
- 73. F.A. Loyd, C.M.G., O.B.E. Permanent Secretary
- 74. P.I. Abwao (Mrs)

United Kingdom

MINISTERS AND COLONIAL OFFICE

- 75. Rt. Hon. Reginald Maudling, M.P. Secretary of State for the Colonies (Chairman)
- 76. Rt. Hon. The Earl of Perth Minister of State for Colonial Affairs
- 77. The Hon. Hugh Fraser Parliamentary Under-Secretary of State, Colonial Office
- 78. Sir Hilton Poynton K.C.M.G., C.B. Permanent Under-Secretary of State
- 79. Sir. John Martin K.C.M.G., C.B., Deputy Under-Secretary of State
C.V.O.
- 80. Mr. J.C. McPetrie, C.M.G., C.B.E.
- 81. W.B.L Monson, C.M.G. Assistant Under-Secretary of State
- 82. F.D. Webber, C.M.G., M.C., T.D. Ass. Secretary, East African Department
- 83. H. Steel
- 84. P.J. Kitcatt
- 85. P.R. Noakes
- 86. G.W. St. J. Chadwick, C.M.G.
- 87. K.A. East
- 88. C.E. Wool-Lewis, O.B.E.

CONSTITUTIONAL ADVISER TO THE CONFERENCE

- 89. Sir Ralph Hone, K.C.M.G., K.B.E. M.C., T.D. Constitutional adviser

SECRETARIAT

90. A.M. MacKintosh, C.M.G.	Secretary General
91. P.J. Kitcatt	Assistant Secretary General
92. W.T. Hull	Conference secretary
93. G.O. Young	Conference secretary
94. E.R. Bright	Conference secretary
95. L.T.J. Stapleton	Conference secretary
96. Mr. R.W. Francis	Press officer
97. Mr. A. W. Cassey	Document Officer
98. A.H. Grey	Conference officer

II. DELEGATIONS RECEIVED

MAASAI DELEGATION

1. J.K. ole Sein
2. P. ole Lemein
3. Dr Likimani
4. Partasio ole Mambaso
5. John ole Tameno
6. J.K ole Tipis
7. J. Keen
8. J.L.H. ole Konchella
9. P. Rurumban Observer
10. R.L. McEwen Legal Adviser

NORTHERN FRONTIER DISTRICT DELEGATION

1. Y.H. Abdi
2. A. Farah
3. Chief H.G. Dida
4. Mr Murgian
5. A. Kholkholti
6. Sheikh Mohammed
7. A.R. Khalif
8. N. Lawson, Q.C. Legal Adviser

Source: Report of the Kenya Constitutional Conference, 1962 (KNA: MAC/KEN/45/3)

APPENDIX 5

MEMBERSHIP TO THE COMMITTEES

(a) Steering Committee

Rt. Hon. Reginald Maudling, M.P.
Secretary of State for the Colonies
Chairman

KADU Parliamentary Group

1. Daniel T. arap Moi
2. Wilfred B. Havelock

KANU Parliamentary Group

1. Oginga Odinga
2. Bruce Mackenzie, D.S.O, D.F.C.

Kenya Coalition

L.R. Maconochie Welwood

Mwambao United Front

O.S. Basaddiq

(b) Committee on Structure of Government

Rt. Hon. Reginald Maudling, M.P.
Secretary of State for the Colonies
Chairman

KADU Parliamentary Group

1. Reggie S. Alexander
2. Musa S. Amalemba
3. Michael B.E Blundell
4. R.P. Cleasby
5. Wilfred B. Havelock
6. Arvina B. Jamidar
7. Daniel T. arap Moi
8. Masinde Muliro
9. Ronald Ngala
10. Peter Okondo
11. Jean-Marie Seroney
12. Justus ole Tipis

KANU Parliamentary Group

1. S.J. Anjarwalla
2. Peter Andrew Areman
3. Firtz de Souza
4. Derek Q. Erskine
5. James Gichuru
6. A.H. Jamal
7. Jomo Kenyatta
8. Bruce Mackenzie
9. Frederick M.G. Mati
10. Tom Mboya
11. Jeremiah Nyagah
12. Oginga Odinga

Kenya Coalition

1. Clive Salter
2. L.R. Maconochie Welwood

Mwambao United Front

O.S. Basaddiq

Cross Benchers

Anant Jagannath Pandya

(c) Sub-committee on Central Government

Sir Hilton Poynton
United Kingdom
Chairman

KADU Parliamentary Group

1. Arvina B. Jamidar
2. Peter Okondo
3. Jean-Marie Seroney
4. Taita Towett
5. Wafula Wabuge

KANU Parliamentary Group

1. Firtz de Souza
2. Derek Q. Erskine
3. James Gichuru
4. D.B. Kohli
5. Jeremiah Nyagah

Kenya Coalition

1. Clive Salter

Mwambao United Front

- O.S. Basaddiq

Cross Benchers

- Anant Jagannath Pandya

(d) Sub-committee on Governing Authorities

Sir John Martin
United Kingdom
Chairman

Kenya Government
Sir Patrick Renison
Governor

KADU Parliamentary Group

1. R.P. Cleasby
2. Wilfrid Havelock
3. Daniel arap Moi
4. Masinde Muliro
5. Ronald Ngala

KANU Parliamentary Group

1. Jomo Kenyatta
2. Frederick M.G. Mati
3. Tom Mboya
4. Bruce Mackenzie
5. Oginga Odinga

Kenya Coalition

- D.L. Cole

Mwambao United Front

- O.S. Nassir

Cross Benchers

- Anant Jagannath Pandya

(e) Committee on Bill of Rights

Sir John Martin
United Kingdom
Chairman

Kenya Government
Sir Patrick Renison
Governor

KADU Parliamentary Group

1. Arvina B. Jamidar
2. R.P. Cleasby
3. Jean-Marie Seroney

KANU Parliamentary Group

1. C.K.G. Argwings-Kodhek
2. D.B. Kohli
3. Eliud N. Mwendwa

4. Taita Towett
5. S.S. Patel

Kenya Coalition

1. Clive Salter

Cross Benchers

- Anant Jagannath Pandya

4. Jan Mohammed
5. Victor Wokabi

Secretariat

- P.J. Kitcatt
- L.T.J. Stapleton

Source: *K.C.C. (BR) (62) 1, 28 February, 1962, MAC/KEN/46/5*

(f) Committee on Judiciary and Public Service

Sir Hilton Poynton
United Kingdom
Chairman

Kenya Government
Sir Patrick Renison
Governor

KADU Parliamentary Group

1. R.P. Cleasby
2. A. Kilelu
3. R.A. Macleod
4. Taita Towett
5. Peter Okondo
6. Jean-Marie Seroney

Kenya Coalition

1. Clive Salter

Cross Benchers

1. Anant Jagannath Pandya

KANU Parliamentary Group

1. Samuel A. Ayodo
2. T. Muinga Chokwe
3. K. Zafrud-Deen
4. Henry N. Mulli
5. K.P.Shah
6. Chanan Singh

Secretariat

1. A.M. MacKintosh
2. G.O. Young
3. Cornelius

Source: *K.C.C. (JP) (62) 1, 28 February, 1962, MAC/KEN/46/5*

(g) Committee on Land and Citizenship

Reginald Maudling
Secretary of State for Colonies
Chairman

Kenya Government
Sir Patrick Renison
Governor

KADU Parliamentary Group

1. Musa Amalemba
2. Michael Blundell
3. Robert Matano
4. Bernard Mate
5. Philip Murgu
6. Justus ole Tipis

KANU Parliamentary Group

1. Jackson Angaine
2. John Keen
3. Julius Kiano
4. P.D. Marrian
5. Dawson Mwanyumba
6. George Nthenge

Kenya Coalition

1. D.L. Cole
2. L.R. Maconochie Welwood

Cross Benchers

1. Anant Jagannath Pandya

Secretariat

1. P.J. Kitcatt
2. W.T. Hull

Source: *K.C.C. (LC) (62) 1st Meeting, KNA: MAC/KEN/46/7*

(g) Representative Group for the Maasai Delegation

KADU Parliamentary Group

1. Masinde Muliro
2. Michael Blundell
3. Ronald Ngala
4. Bernard Mate
5. Philip Murgol
6. Taita Towett

Kenya Coalition

1. D.L. Cole

Source: *K.C.C. (62) 41, 28 March 1962, KNA: GO/1/1/7*

KANU Parliamentary Group

1. Jomo Kenyatta
2. Tom Mboya
3. Julius Kiano
4. Henry Mulli
5. Lawrence Sagini
6. Chanan Singh

(i) Representative Group for the NFD Delegation

KADU Parliamentary Group

1. Wilfred Havelock
2. A.M. Jeneby
3. Ronald Ngala
4. Justus ole Tipis
5. Robert Matano
6. Masinde Muliro

Kenya Coalition

1. D.L. Cole

Source: *K.C.C. (62) 29, 19 March 1962, KNA: GO/1/1/7*

KANU Parliamentary Group

1. Jomo Kenyatta
2. Tom Mboya
3. Jackson Angaine
4. Eliud N. Mwendwa
5. Walter Odede
6. P.A. Areman

(j) Kenya Coastal Strip Conference

Reginald Maudling
Secretary of State for Colonies
Chairman

UK Government

Ministers

The Rt. Hon. The Earl of
Perth

The Hon. Hugh Fraser

Constitutional adviser

Sir Ralph Hone

Minister of State for Colonial Affairs

Parliamentary Under-secretary of
State, Colonial Office

Officials

1. Sir Hilton Poynton
2. Sir John Martin
3. J.C. McPetrie
4. W.B. L. Monson
5. A.N. Galsworthy
6. F.D. Webber

7. J.C. Morgan
8. J.D. Higham
9. P.J. Kitcatt
10. M. L. Woods
11. H. Steel
12. D. Derx
13. G. W. St. J. Chadwick
14. K.A. East
15. C. E. Wool – Lewis

Kenya Government

1. Sir Patrick Renison *Governor*
2. Mr. R.E. Luyt
3. A.M.F. Webb
4. F.A. Loyd
5. Sheikh S. M. Muhashamy

Coastal Strip and Bajuni Lands Elected Members

1. Sheikh M.A. Alamoody
2. S. J. Anjarwalla
3. O.S. Basaddiq
4. T.M. Chokwe
5. R.P. Cleasby
6. A.M. Jeneby
7. Sheikh A. Nassir
8. A.J. Pandya

Constitutional advisers

1. Dr. E. Zellweger (KADU)
2. Dr. B. Malik (KANU)
3. E.F.N. Gratiaen QC
(Kenya Protectorate
Members)

Kenya Colony Elected Members

1. Ronald G. Ngala (KADU)
2. Robert S. Matano (KADU)
3. Danson Mwanyumba
(KANU)
4. Masinde Muliro (KADU)
5. Daniel arap Moi (KADU)
6. Jomo Kenyatta (KANU)
7. Tom Mboya (KANU)
8. L. Maconochie Welwood
(KC)

Zanzibar Government

British Resident and Officials

1. Sir George Mooring *British Resident*
2. P.N. Dalton
3. G. C. Lawrence
4. A.L. Pennington

Constitutional advisers

1. Sheikh Abdulrahman Mohamed (Zanzibar Elected Members)
2. Rustom Sidhwa (Zanzibar Elected Members)

Legal advisers to His Highness the Sultan of Zanzibar

1. Dingle Foot, Q.C.
2. D. S. Downs

Zanzibar Elected Members

1. Sheikh M. Shamte Hamadi
2. Sheikh Ali Muhsin El
Barwani
3. Sheikh Ibuni Saleh
4. Sheikh A. A. Rahman
Balaawy
5. Sheikh Othman Shariff
6. Sheikh Abeid Karume
7. Sheikh Aboud Jumbe
8. Sheikh H. Makeme Mwita

Uganda Observer

1. C.B. Patel

Source: "Report of the Kenya Coastal Strip Conference, 'Annex A'" C.S.C. (62)10, 6th April 1962, KNA: MAC/KEN/46/7

APPENDIX 6

PARTICIPANTS IN THE KENYA INDEPENDENCE CONFERENCE, 1963

United Kingdom

1. Rt. Hon. Duncan Sandys, M.P. Secretary of State for the Colonies (Chairman)
2. Sir Hilton Poynton K.C.M.G., C.B. Permanent Under-Secretary of State
3. Mr. J.C. McPetrie, C.M.G., C.B.E.
4. W.B.L Monson, C.M.G. Assistant Under-Secretary of State
5. P.J. Kitcatt
6. H. Steel
7. P.R. Noakes
8. A.R. Rushford
9. N. Aspin
10. Sir Charles Dixon

Kenya

GOVERNOR AND OFFICIALS

1. Rt. Hon. Malcolm MacDonald Governor
2. A.M.F. Webb, Q.C. Attorney-General
3. F.A. Loyd, C.M.G., O.B.E. Permanent Secretary

ELECTED MEMBERS

Government

1. Jomo Kenyatta Prime Minister, Leader of KANU
2. Tom Mboya Minister of Justice and Constitutional Affairs
3. Jaramogi Oginga Odinga Minister of Home Affairs
4. James Gichuru Minister of Finance and Economic Planning
5. E. Ngala Mwendwa Minister of Labour and Social Services
6. Duncan Mwanjumba Minister of Works, Communication and Power
7. Chanan Singh Parliamentary Secretary, Prime Minister's Office
8. Samuel O. Ayodo Minister of Local Government and Regional Affairs
9. Dr Julius Gikonyo Kiano Minister of Commerce and Industry
10. Bruce Mackenzie Minister of Agriculture and Animal Husbandry
11. Lawrence G. Sagini Minister of Game, Fisheries, Water and Natural Resources
12. Paul Ngei

Opposition

1. Ronald Ngala
2. Masinde Muliro
3. Justus ole Tipis
4. Jean-Marie Seroney
5. Robert Matano
6. Martin Shikuku

European delegation

1. The Earl of Enniskillen
2. C.W. Salter, Q.C.
3. L.R. Maconochie Welwood

Advisers

1. Dr B. Malik
2. Dr E. Zellweger
3. E.M. Bennett, M.P.
4. R.S. Alexander
5. Lord Delamere

Government
Opposition
Opposition
Opposition
European Delegation

Government Officials

1. C. Njonjo
2. G.J. Ellerton
3. M.K. Mwendwa
4. M.L. Dunlap

SECRETARIAT

1. Mr. J. T. A. Howard-Drake
2. Mr. J. K. Hickman
3. Mr. J.D.A. Evans
4. Mr. R.J. Dorrington
5. Mr. F.M. Brown
6. Mr. W.T. Hull
7. Mr. R.W. Wootton
8. Mr. G.O. Young

Source: Report of the Kenya Independence Conference, 1963, KNA: MAC/KEN/45/3.

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