

## MINORITY RIGHTS IN KENYA

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WITHIN the last nine months there has been a remarkable transformation—or, perhaps I should say, clarification—in the attitude of the Asian communities towards minority rights and safeguards. Clear evidence of their present attitude is the memorandum submitted by the Central Council of the Indian Associations in Uganda on behalf of the Indian community to the Committee of Constitutional Enquiry set up by the Uganda Government. It declares plainly: “We consider ourselves an integral part of the Uganda community. We therefore cannot justifiably ask for minority rights”. A step in the same direction was taken immediately after the General Election in Tanganyika last year, when the Elected Members declared their opposition to a racial allocation of three ministerial seats to Elected African Members and one each to Asian and European Members. They demanded instead that the five Ministries for Elected Members should be filled on the recommendation of the Elected Members without reference to race.

In Kenya similar rapid strides have been made in the thinking of the Asian community. The Constituency Elected Members Organisation, which had made such a promising start—containing as it did all the Elected African, Asian and Arab Members, with the addition of Mr. S. V. Cooke, the most senior of the European Elected Members—has branched off into the Kenya National Party and the Kenya Independence Movement, the latter recently having ceased to exist as a body by the refusal of the Government to grant it registration under the Societies’ Ordinance. The KNP contains eight out of the fourteen African Elected Members and all the Asian Elected Members, while the KIM was supported clearly by four African Elected Members. The remaining two African Elected Members signed the policy statements of both the KNP and the KIM and successfully joined both bodies.

In its constitutional proposals, the KNP does not go as far as the Uganda Indian Associations in wholly abandoning communal representation. Instead it recommends the retention up to 1968 of a limited number of Reserved Seats for each of the communities, African, European, Indian, Muslim, and Arab, to be elected on a common roll with a restricted franchise but low

qualifications. Thus even on the new restricted roll, it is expected that African voters will greatly outnumber voters of other races. In addition, it is proposed that there should be a large number of Open Elected Seats, to be filled by voters on a common roll with universal adult franchise, so that if the voting went heavily on racial lines all or almost all these seats would go to African candidates. Under the proposals of the KNP (to which all the Asian Elected Members are party), the few seats reserved for the minorities will quite plainly not operate as a safeguard; indeed, as minority rights, their actual voting value will be slight. The function of the Reserved Seats is thus essentially to give expression to the democratic principle that minority sections must have a voice in the Legislature. But there is nothing in these proposals of the KNP seeking to give the minorities a privileged position or to give them anything in the nature of control or unfairly large influence in the Legislature.

With the same principle of representation in view, and to prevent candidates elected for minority communities from being persons wholly unrepresentative of opinion and wholly lacking support in their own community, from being, as it were, mere stooges of the majority community, the KNP recommends that candidates for Reserved Seats who do not secure a prescribed proportion of the votes cast by voters of their own community should be disqualified, even if they secured an overall majority of the total votes cast. The prescribed proportion is to be kept low; so that while minority sections retain a measure of influence in the elections for these seats, separate electorates are not brought in by the back door. The minority communities are thus given representation, without much power or influence in the Legislature or the Executive.

It is plain from an examination of the attitude and policies of the Asian communities in the three mainland East African territories that they have abandoned the idea of racial or communal rights or safeguards and that they are fully prepared to accept a representation based on democratic principles. But as political parties, which are essential for the realisation of parliamentary democracy, have yet to become established, the Asians have realistically, at least in Kenya, proposed measures to ensure, during the transitional period that must intervene before the racial parties which now operate are replaced by effective political parties, that the constitution should provide for representation of minority communities, though nothing like control

or power over the Legislature.

The history of the European and Indian communities in Kenya accounts for the differences in their present attitudes to issues such as the question of minority rights and safeguards. The Indian community has in the past been the victim of serious discrimination in matters of land rights, the Civil Service, immigration practice, political and local government representation, and so forth. The struggle of the Indian community for equality of rights has been based on an appeal to democratic principles. When, therefore, Africans appeal to the same principles, the Indian is already attuned to respond; and, if the African appeal is genuinely based on and genuinely follows democratic principles, it meets with no substantial resistance or opposition from Indians. With the Europeans the position has been different. They have always been a privileged minority in Kenya, politically, economically and socially, and they are far from prepared to accept democratic claims or democratic practices which would mean the loss or diminution of racial privileges.

The attitude of Asian communities is based not merely on their inability to justify ethically safeguards and rights for themselves as racial or communal groups. From a practical point of view, they are satisfied that safeguards and rights for numerically very small minorities based on or related to membership of a racial or communal group are illusory, and that such differences or seeming privileges will in effect relegate their communities to permanent membership of permanent minorities. They know that they have never in the past enjoyed control or substantial power or influence and that they are not losing privileges or power possessed in the past. On the other hand, if genuine and effective political parties, in place of exclusively racial parties, can be built up, the bulk of whose members would, of course, be Africans, but of which Asians and Europeans would be members, Asians could well find themselves members of groups or parties which could command a majority in the Legislature and so form the government of the day. From within the party or group they could thus influence—though not, of course, control—policy; and they would thus not merely be better off than if they had the right to elect or be represented by a small minority of members of the Legislature or Executive, but would be promoting a much healthier and more lasting political system, based on the principles of parliamentary democracy.

Asians have in the past taken the view, and they are becoming increasingly satisfied, that safeguards and rights based on race have no lasting value unless they are founded on the goodwill of and full acceptance by the majority community. They are fully aware how in the Union of South Africa minority rights, small and almost negligible though they were, have been washed away; and of the strenuous efforts and unscrupulousness that characterised the destruction of relatively unimportant safeguards.

The real danger to minorities is the danger of demagogues or power-seeking politicians in the majority group attempting to buttress themselves by diverting attention from their own weaknesses to members of minority communities. That could easily lead to persecution or victimization of minorities. How is that danger to be effectively dealt with?

The only protection of any value against that danger is to entrench as strongly as possible fundamental rights in the Constitution. The protection must, however, be accorded to persons as individuals, not as members of a race or communal group. A Second Chamber can be useful in that direction, since the delaying and revising powers given to such a Chamber may bring about a cooling of passions and give to temporary majorities time for second thoughts. If the bulk of the majority section entertain permanent or enduring feelings of ill-will towards the minorities, even a Second Chamber could not afford lasting protection to members of minority sections. Special provisions ought also to be incorporated in the Constitution to ensure that alteration of fundamental civil rights can be made only by a special legislative process requiring a special majority and by compliance with special conditions designed to prevent easy or hasty alteration of vital minority safeguards.

It will, of course, be of the utmost importance not merely to entrench fundamental individual rights in the Constitution, but to ensure that they cannot be washed away by the lack of an adequate judiciary. Special provisions will, therefore, need to be incorporated in the Constitution to secure the appointment and maintenance of a competent, impartial and independent judiciary.

Safeguards and protection for fundamental rights are as important to individual members of majority communities as to members of minority communities. For the majority community is bound sooner or later to split into political parties (indeed the first steps in that direction have already taken place);

and there is no assurance that some day many members of the majority community in the majority party may not find themselves in a minority party, potential victims of political persecution. The majority community will itself contain minority sections, tribal differences will not die overnight, there will be larger and smaller tribes with politicians ready to exploit tribal differences, and minorities, like the poor, will always be with us. Every individual thus has a strong interest in the safeguarding of the rights of minorities against the abuse of power by a majority.

While preparation of the ground cannot be too early begun, the latest time for the entrenching of these safeguards against the oppression of minorities or individuals by a governing majority will be before independence is accorded to the country. After independence is attained, it will be too late to expect an immature majority to act in the highest traditions of a mature parliamentary democracy. But before independence, the country will be sufficiently disposed to accept such safeguards, for even in the majority community there will be substantial numbers who would then be members of a minority party and who would welcome and might soon need such protection. Even the majority party may then be not strongly opposed to such safeguards and rights, since it must face the possibility that it may find itself some day in a minority, unless, like the Nationalists in South Africa, it is placed in the position of being able to take steps, having once secured rule, to entrench itself permanently in power. The British Government which will have to make the final surrender of power will be in a position at that time to impose such conditions, for which it will have complete moral and political justification. To fail in this regard, and to surrender power without precautions against the destruction of parliamentary democracy and its early conversion into a petty autocracy, whether by an individual or a group, would be the greatest breach of duty that the British people could commit against every inhabitant of this country.

In the ultimate analysis, the problem of minority rights and safeguards resolves itself into the problem of safeguarding the rights of the individual. That is the final problem of a constitution, and that essentially is the problem of minorities, whether racial, religious or political.