

1933

Kenya

No. 3075.

SUBJECT

C0533/432

*Expulsion of Undesirables Ordinance*

Previous

11328/31

Subsequent

1 Lucina Byrne Case 2  
24 Jan '33

Points out that recommendations for deportations of Europeans found guilty of criminal assault on natives cannot be carried out under the existing law, & enquires whether information can now be given as regards of honours of Lt. Boots in relation to deportations, & decision on points in 1901 or 1950/1.

This question is still under consideration by a C.O. Ct.

? a/ck and inform a c/cly and promise to inform as soon as decision has been reached.

- see pass to S.D. to see

J.H. Porellie

27/1/33

The Department does not appreciate the decision which I understand the Committee require was important, between deporting a recent arrival and detaining a person whose residence in Kenya is of long standing.

The interchange undesirable should be returned to his country of origin. The European in here & if, as is possible, he is a second generation Kenya white must be looked after by the Colony.

Reply as proposed, adding that it is impossible that the C.O. will recommend any measure in the power of - Col. Gort.

to deport <sup>in person</sup> in the country for a considerable period.

N.B. Butler  
1.3.33

The C<sup>o</sup> have made good progress, but are  
are likely to be delayed for a considerable  
time in considering 'protected states'. I  
think the Director's anticipation of an  
agreement is well founded; but I do not  
see that it ought to be given away.

← I.P.V. Kraus  
1/3

As I understand it the Committee is  
in process of considering what powers, if any,  
should be given to deport from a Colony  
British subjects, British protected persons  
or natives of protected states. The question  
of the deportation of aliens is not, so far as  
I gather, an <sup>active</sup> ~~actual~~ point in the Committee's  
present deliberations.

If so, the question arises whether  
the Governor should not be told that he can  
take power to deport any alien, i.e. a person  
black or white not being a British subject,  
a British protected person or a native of a  
protected state who is found guilty of conduct  
involving what I may call "moral turpitude".  
We know from correspondence which has been  
received that there is some risk of an influx  
of Greek, Italian and other undesirable elements  
into the Kakamega goldfield, whose conduct in  
many respects leaves a good deal to be desired.

Under

prescribes  
Under the law as it stands, Chapter 61  
when it is represented on oath or affidavit to a  
Judge sitting in Chambers that any person is  
conducting himself so as to be dangerous to peace and  
good order or is endeavouring to excite enmity  
between any section of the people and H.M. or is  
intriguing against constituted power and authority  
in the Colony, the Judge may order his arrest and  
when it is shown by evidence to the satisfaction of  
a Judge sitting in Chambers that any person is so  
conducting himself, the Judge may recommend that  
such person be deported. Under the Restriction  
of Immigration Ordinance (Chapter 62), the  
immigration into the Colony of any person being or  
appearing to be various things is prohibited.  
Among those various things are "any person deemed  
by the immigration officer to be an undesirable  
immigrant in consequence of information or advice  
received from any Secretary of State or through  
diplomatic channels or from any other trusted  
source." Under Section 9(2) of the same Ordinance  
proof adduced within three years after the entry of  
any person that he belongs to any of the classes  
whose entry is prohibited shall be sufficient  
evidence that such person was a prohibited  
immigrant, and he can then be dealt with as a  
prohibited immigrant and deported.

I should have thought that these powers  
were wide enough to cover the situation. It can  
hardly be denied that a European conducting himself  
or

or herself in the way described in this despatch or in the enclosures to No.1 on 17385/31 is conducting himself or herself so as to be dangerous to good order, but apparently that is not the view taken by the Governor or presumably by the Judges. A recent immigrant who misbehaves himself can be tackled under the Immigration Restriction Ordinance because information from the Provincial Commissioner that he was misbehaving would be information from a trusted source, and I should think he could then be regarded as a prohibited immigrant and dealt with under Clause 9(2) etc. of the Immigration Restriction Ordinance.

The matter has a certain urgency about it and I know that the S. of S. holds strong views that the Government should have power to clear out the undesirable element, and I suggest that it might be advisable to authorise the Governor to pass an Ordinance empowering him to deport aliens as suggested above. I should like to know whether there would be any objection from the point of view of the Committee's proceedings.

J.E.W. Flood  
2.3.33

(W. B. The Gov. doesn't say whether the Commission in para 2 is a British subject or not.)

4  
My Committee is only concerned with British subjects and protected persons and I do not think there is any objection from our point of view to more drastic treatment of aliens. We shall probably advise that deportation (of British subjects, etc.) as being "prohibited immigrants" shall only be allowed within a period of two years, as an absolute maximum, of admission, with a general exception permitting deportation, without limit of time, with the prior approval of the Secretary of State. The provisions of Cap.61 set up the kind of machinery which we contemplate (for Br. subjects) - i.e. written charges, enquiry before a judge in chambers who may make a recommendation. Order to be made by Governor in Council. I do not think you need wait for the Committee's report before dealing with aliens on these lines.

R. V. Vernon.  
2.3.33.

Mr. Roberts-Wray  
Mr. Parkinson  
Sir S. Wilson.

Then I think we can tell the Governor that he can proceed with a bill to deal with aliens, and that as regards British subjects and protected persons we can't say anything yet.

J.E.W. Flood.  
3.3.

I agree to the action proposed by Mr. Flood.

K.O. Roberts-Wray.  
15.3.33.

X Sir C. Bottomley.

Please see note which Mr. Downie kindly wrote for me - attached above No.1.

*If possible  
explained to them*

How far the position is appreciated by Kenya I am not sure. The recognised international practice gives us a deal of trouble in Palestine, but it is not likely that you would have in Kenya large numbers of unsatisfactory aliens, though Kakamega may attract some bad people from abroad.

I have not attempted to dispose of this paper, which I thought was of sufficient importance to wait another 2 days for you.

*recd.  
20.3.33*

*The Roberts Group  
Mr. Vernon*

*The Hood tells me that he contemplates an Ordinance defining excluding from the country in the territories those in which deportation by judicial order is permissible*

*That is not such a drastic step as is contemplated by the Bill in the case of British subjects & protected persons, and I find it difficult to justify differential treatment according to residence in a country when the 'Cape' basis of that distinction is not, I hope*

*last thing to*

*hope that, as a condition, Kenya may be permitted to legislate for British subjects &c. without waiting for the report of the Committee.*

*20.3.33*

I was under the impression that it was proposed to inform Kenya simply that they could enact an Ordinance similar to the draft enclosed with (1) on 17385/31, but restricted to aliens. Under such an Ordinance, if the gross immorality amounted to a criminal offence, the alien could be deported under section 2(1)(a), and if it did not, section 2(1)(b) would apply, but there would be no judicial enquiry.

I am bound to say that the idea of Kenya, doing something which it is almost certain the Committee will recommend that Colonies should not do does not appeal to me, and if, before the Committee have reported, Kenya are to enact an Ordinance enabling British subjects to be deported, I would suggest that the Ordinance should follow the lines of a draft prepared for them by Mr. Bushe in 1924, with the additional provision that no person (or, alternatively, no British subject or British protected person) who has been resident in Kenya for two years or more shall be deported without the prior approval of the Secretary of State.

*J. B. [Signature]  
21.3.33.*

Our report has not yet got beyond the stage of a draft, and the model clauses which we were instructed to prepare have not yet got to that

stage

stage. I can let you see the latest draft of the report if you like. I may say that we have found the subject a good deal more difficult than I, at any rate, originally contemplated; and I find it somewhat embarrassing to be asked to express opinions about the propriety of immediate action in Kenya. My Committee will almost certainly advise that "persons whose continued presence in the territory concerned is a menace to peace, order, and good government or to public morals" should be liable to deportation, but only "within a limited period of their arrival". We are at present proposing to suggest that this period should be defined at two years in the case of the persons described, but we are also suggesting that security for good behaviour, removal from one part of the Colony to another, or exclusion from a specified part of the Colony, are expedients the adoption of which should be very carefully considered.

I understand your minute to suggest that the "Congo Basin" régime means that alien undesirables must receive not merely most-favoured-nation treatment, but national treatment. My Committee will deal with the whole subject as a general proposition, and not consider the particular circumstances of the Congo Basin treaties, but we have dealt with analogous conditions in mandated territories and considered the alternative policies of levelling up and levelling down; that is to say, treating all undesirables in mandated territories as well as we treat British undesirables, or treating them as badly as we treat alien undesirables in British Colonies. We are at

present

6  
present disposed to advise the former alternative, which means that our standard for the treatment of British subjects would be the standard for the treatment of all persons in places where discrimination in favour of British subjects is impracticable. I must also say that your exception "not Kenya born" does not go so far as the exception which my Committee will probably propose. We are disposed to recommend that a person born of parents who at the time of his birth were ordinarily resident in a Colony or Protectorate, a person naturalised in a Colony or Protectorate, or a person ordinarily resident in a Colony or Protectorate for a period of not less than seven years, should not be liable to deportation.

My understanding of Mr. Flood's previous minute was that it was desired merely to legislate with regard to alien undesirables. I still think that as my Committee has done most of its work but not yet produced its report, it would be very unfortunate if Kenya found it necessary to legislate on this subject in anticipation of the report. I have given away a lot of information as to the draft report which is not yet finally adopted, and I want to make it perfectly clear that I am not entitled to assume, or at all disposed to assume, that the ultimate recommendations of my Committee will necessarily be accepted by the Secretary of State as they stand.

*V.V. Vernon*

21/3

*Mr Vernon*

*I managed to forget about this paper & lose it for a year. The Committee has now produced its report, and Kenya has reminded*

*from its attached letter in regard to the*

7.0. it appears that Kenya can legislate for  
foreigners as distinct from British subjects but  
I am inclined now to think that it would be  
well to wait and do it all at once. Kenya are  
fairly certain to object to the limitations put  
forward by the Committee as regards British  
subjects and then it will be possible to frame  
one Ordinance.

If you agree I should like to tell all Kenya  
that they may soon expect to have the general  
draft of the suggested <sup>British subject</sup> legislation for comment  
and that it seems better to provide for all cases of  
deportation in one Ordinance though there is no  
objection to differentiating between British subjects  
and aliens as such.

S. G. H. R. D.  
3.4.34

to H. H. H.

I should like to agree, but the Report  
of the C. C. has not yet been seen  
by the S. of S. and I don't feel justified  
in assuming that he will agree to its  
circulation to Colman. I think this  
should be settled in not more than a  
month.

→ I. P. V. Varma

19.4.34

see now on 30301/2B/34

FOREIGN OFFICE, S.W.1.

(T.13868/5601/388)

14th February, 1934.

Dear Vernon,

With reference to your letter 10339/1/33 of the 20th December last we do not consider that either Article 3 of the Treaty of St.Germain or Article 1 of the Commercial Treaty with Switzerland precludes differentiation between British Subjects and foreigners in the matter of deportation.

2. We do not feel that Article 3 of the Treaty of St.Germain is applicable to deportation at all, indeed it does not appear to us to give any rights whatever as regards entry, residence etc. Its wording is practically identical with that of the second paragraph of Article 5 of the Berlin Act, but the latter is perhaps a little clearer from this point of view, and it could not be suggested that the intention of Article 3 of the Treaty of St.Germain was to convey any rights which did not exist under the Berlin Act.

3. As regards the Swiss treaty Article 2 clearly contemplates the deportation of Swiss citizens from British territory in the circumstances there indicated. As British subjects could not be deported from at any rate the United Kingdom in any of these circumstances, it follows that the treaty must have contemplated the deportation of Swiss citizens in circumstances where British subjects could not be deported, and, therefore, that Article 1 could not have been intended to give national treatment as regards deportation.

Yours ever

(Sgd) Patrick Roberts.

R.V.VERNON, ESQ., C.B.



10389/1/33

8  
DOWNING STREET,  
20th December, 1933.

Dear Warner,

With reference to your letter of the 27th of July (T7668/5601/388) about the report of the Colonial Office Committee which has been examining the question of deportation of British subjects from the Colonies etc. the question has arisen whether there is any objection to discriminating between British subjects and aliens in the matter of deportation, particularly in those territories to which the Convention signed at St. Germain-en-Laye on September 10th, 1919 or its forerunners apply.

This point is referred to in our official letter No. 5510/33 of the 16th of May and in the minutes of the 5th meeting of the Committee held in the Colonial Office on the 19th of May in connection with deportations from Northern Rhodesia. The Foreign Office was represented at that meeting by Dodd and my recollection is that the Foreign Office were inclined to agree with the suggestions made in our letter of the 16th of May as regards the legal position, but that you agreed to the terms of the Northern Rhodesia Ordinance without expressing any definite opinion on the point.

We are disposed to think that it is safe to proceed on the assumption that Article 3 of the St. Germain-en-Laye Treaty Convention, and Article 1 of the Treaty of 1865 with Switzerland do not preclude differentiation in the matter of deportation. We should however be grateful if the point

G. R. WARNER, ESQ., C.M.G.

could

9  
could be considered in the Foreign Office and if you could let us have your considered opinion on the subject.

It will be seen that the effect of clause 2(2)(b) and (3) of the model ordinance annexed to the report of the Committee is to limit the liability to deportation to comparatively recent arrivals. It would not extend to any British subject who has been in the territory concerned for seven years, or to a person who has been there for two years unless the special approval of the Secretary of State is obtained.

Yours sincerely,

(Sgd) R.V. Vernon.

Mr Parkinson.

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Clause 14 of the Kenya draft Expulsion of Undesirables Ordinance is not, I think, correctly summarised on page 1 of Mr Roberts-Wray's memorandum (No.4 in 17385/31). The Clause does not require the Master of a ship to give the departed person a passage "to its next port of call". The wording is that

"The Master of any ship about to call at any port outside the Colony shall, if so required by the Commissioner of Police, receive any person against whom an expulsion order has been made.....and afford him.....a passage to that port and proper accommodation and maintenance during the passage".

I have verified that a similar provision occurs in the U.K. Aliens act.

The passages of deportees would in the ordinary course be taken by the Government, and there is no reason why the Captain of the ship, or the shipping company, should refuse to take him (the Captain might not even know that the passenger was a deportee). In case there should be difficulty, it is right that the departing Government should have power to insist on the grant of a passage; but this does not, of course, mean that E.M.G., or a Colonial Government, is entitled to place a deportee on any old boat going to any old port. The established rule on this point (as F.O. have frequently pointed out) is that a State is only bound to accept deportees whose nationality is established beyond doubt, e.g. by the possession of a valid national

national passport, and that where there is any doubt, the deportee must not be shipped to his supposed country of origin until agreement has been reached with the Government of that country.

I discussed this with Mr <sup>o</sup>Hore of the H.O., who deals with the deportation of aliens from the U.K. He confirmed emphatically the view expressed above, and said that it had hardly ever been necessary in this country to use the power to compel the Captain of a ship to take a deportee. Passages were booked by the Government as in the case of ordinary passengers.

*J. W. Wain*

16. 3. 33

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*J. W. Martin*

16. 3. 33

KENYA.

NO. //

CONFIDENTIAL.



GOVERNMENT HOUSE. //

NAIROBI.

KENYA

24 January, 1933.

RECEIVED  
13 FEB 1933  
COL. OFFICE

Sir,

I have the honour to refer to correspondence terminating with your Confidential despatch of the 1st July, 1932, regarding a draft Bill to make provision for the expulsion of undesirable persons.

No 6

M 355/11

2. A case has recently been brought to my notice in which a European has been found guilty of indecent assault on a native and sentenced to two years Hard Labour. In returning an unanimous verdict of guilty the Jury recommended the deportation of the accused from the Colony. This recommendation cannot be carried out under the law as it now stands.

3. Though such cases are, I am glad to say, not of frequent occurrence it is in my opinion most desirable that the Government should be able to deal with them promptly, where a case for deportation is established. The Ordinance would also assist the Government in dealing with undesirables, should there be any increase of such offences as the result of the opening up of the Kakamega goldfields - a contingency which, though I hope it may prove remote, should not be discounted altogether.

THE RIGHT HONOURABLE

MAJOR SIR PHILIP CUNLIFFE-LISTER, P.C., G.B.E., M.C., M.P.,  
SECRETARY OF STATE FOR THE COLONIES,  
DOWNING STREET, LONDON, S.W.1.

12  
END

4. In the circumstances, therefore, I would ask whether you are now in a position to give this Government any information as to the progress of the general review of the powers of Colonial Governments in relation to deportation from their territory referred to in your despatch quoted, and whether you are now in a position to formulate a decision ~~on~~ <sup>on</sup> the points in my Confidential despatch No. 162 of the 6th November, 1951.

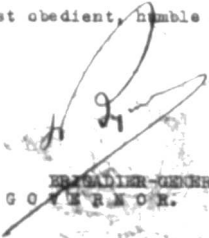
No 1

17385/31

I have the honour to be,

Sir,

Your most obedient, humble servant,



BRIGADIER-GENERAL.  
GOVERNMENT OF N. C. N.

**PUBLIC RECORD OFFICE**

**END**

**TOTAL EXPOSURES →**



# PUBLIC RECORD OFFICE

C0533/433

ORDER NO.       ⇨ FN/E474

CAMERA NO.      ⇨ 19

OPERATOR.       ⇨ MT

REDUCTION.      ⇨ 12

EMULSION NO.   ⇨ 321061

DATE.           ⇨ 25/5/72

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