

1935.

Kenya

No. 38005/3.

SUBJECT C0533/453

Land Commission Report.

White Highlands.

Position of Indians & Natives.

Previous

Subsequent

1936.

P.S. 1 To Governor 182 _____ 16 February '35
Land Comm. Report

Highlands 2 To F.O. - (see 1) 4/7 _____ 19 February '35

Indians _____
3 To Governor Feb. 47 - cons _____ 22 February '35
W.P.

4 India Office _____ 20 February '35

Trans a copy of a let. from Govt. of India regarding the effect of the Land Commission Report on Indians on the Highlands & requests that Govt. of India may be given an opportunity of expressing their views before the promulgation of the O.C.

5 Governor Byrnes Feb 25 _____ 25 February '35

Transmits details of the removal of natives from the Bushman Highlands under the records of the Land Comm. Report.

6 To Gov. Feb _____ 25 Feb. '35

1 Sent by tel. seen for insertion to 8 - No copies made.

7 To Gov. Feb 25 _____ cons _____ 25 Feb. '35

8 Governor Byrnes Feb. 31 _____ 26 Feb. '35

State seen of Land Comm. should read 811 not 814; that no compensation was necessary & that there was no objection to the award of the awards.

to

Mr. C. Bottomley

Mr. Mayle would

~~Not~~ be grateful for your advice
in this.

DESTROYED UNDER STATUTE

perhaps
15/2/55

Mr. Mayle.

I find that we have no correspondence at all recent with the Indians Overseas Association about Kenya (there was a fairly recent letter about Zanzibar cloves).

Possibly what has interested Mr. Polak is Mr. McGregor Ross's recent letter to the Manchester Guardian which formed the subject of yesterday's questions in the House about the Carter Commission and the Highlands of Kenya. I daresay that he feels that he has missed an opportunity.

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Mr. Polak is the sort of professional politician whom I personally dislike meeting; they are usually so much more virulent than the people they undertake to represent. But I am afraid that it was a case where a refusal does more harm than good, and as there is no outstanding matter with the Association, it will be possible for you simply to listen without discussing anything he may put forward. But I am rather glad that his recollection is of a previous meeting with you and not with me.

W.H.S.
15.2.55. 15 Feb 55

To Mr. S. Polak (S.O.) - regard
the talk with Mr. Polak ranged over
whole of India or part of it would. But
to wish to call for specific attention to
the attention is to high position
regard to holding of land - to white
Highland cause of administration
& Home-Carter report - to S.O.
provisional of the land is
about this "attention" the

DESTROYED UNDER STATUTE

P.S.
Nominal

States his views on the position of Indians in the Highlands under the auspices of the Land Comm. Report & the probable effect of the proposed O.C.

Nos 4 & 12 heron have necessarily awaited the return of the P.Q. file from urgent circulation

Drafts submitted for comment.

[Signature]
6/3

In view of the fact that the O.C.

It is really rather dreadful that we should have to conduct correspondence with the Indian Associations in Kenya through the Governor with Mr. Polak and his friends in this country and with the Government of India through the India Office all on the same subject. However, it seems impossible at this stage to get the thing back to the proper line, viz. that no attention will be paid to any communications in regard to the Indian community in Kenya save those which are forwarded through the Governor of that colony.

The general position, of course, is that the recommendations of the Morris Carter Commission have been accepted by H.M. Government in the hope that they will provide a definite and final settlement of questions relating to land in Kenya, whether that land be in the occupation of European, Indian or native. That view has been accepted by the Cabinet and I do not see how we can go back upon it now. There will, of

of course, be plenty of time for the Government of India to make any representations they wish and I think that the draft replies put forward will do quite nicely.

J.L.W. Hand 6-3

Sir J. Malley

Yes - except that I do not quite like Mr. Polak being told that these matters are "very difficult". Have suggested "controversial".

J. Hand written J.M.

W.C.S. 7.3.35

J.M. 7/3

13 To H.L. Polak (12 words) - 10 7/3/35
(w/ amend. - 4 p.c.)

14 To I.O. (with 12 + 13) (4 words) 8/3/35

Handwritten initials

Am. mail 12/2/35

To Kenyon 190 (w/cos H.L. 12, 13 + 14) A/1/12 1935
No. 15. Answered by No. 29.

DM H.S.L. Polak (5.0) 8 March 35.

Note. No 13 points out that the S.O.S. continues to draw no distinction between a privileged position by administrative action & an exclusive right.

I understand from Mr. May's that Sir J. Malley has seen this letter, & that a reply is unnecessary. But by C.P. 12/3/35

DM

W. Straton 12.3.35

17. Extract from Resolutions of 15th Session of the E. A. Indian National Congress held on 25th Dec. 34

(high in accordance with minute of 15.1.35 on 38065/35)

No 7 is registered for secret.
(The whole of the resolutions of the Congress of 25/26 December 1934, were circulated on 28.1.35)

Pubby
C. F. Farnsworth
15/3
1874/31
etc

DESTROYED UNDER STATUTE

AM

18 H.S.L. Polak. 18th March, 1935
Draws attention to minority report signed by Mr. S.S. Luri, India member of the Economic Development Committee

Kenya Department.

DESTROYED UNDER STATUTE Please see the attached letter from Mr. Polak.

? It will be sufficient to acknowledge and thank, as in the accompanying draft.

Ymark
19.3.35.

yes
S.S.W. K. 2
10.5.

To Polak (18 ans) 20 March, 1935

DESTROYED UNDER STATUTE

18/3/35
copy 18/3/35
18/3/35

20. Extract from The Manchester Guardian of 19 March 35

I had this registered, as it may give

DESTROYED UNDER STATUTE

me to P99.

? Pubby
S.S.W. K. 2
20/3

yes: it is the usual distortion & misrepresentation.

S.S.W. K. 2
25
admit

AM

DESTROYED UNDER STATUTE
21. Extract from Manchester Guardian of 28 March '35.

DESTROYED UNDER STATUTE
22. Extract from Manchester Guardian of 28 March '35.

DESTROYED UNDER STATUTE
20A. Extract from The N.A. Standard of 26 Feb. '35

23. Copy of Minutes of 30 March 1935 on 2200/1007
Indian Legislative Assembly on the white reservations in the Highlands.

We shall hear all about it from
I.O. in due course.

Pit-By
MacGregor
1/4

Yes. India may make a full dress petition over it
and then poor Kenya may suffer.
1.10.35

At case
MacGregor
3/4

Parliamentary Question by Sir R. Hamilton - Nov 11 on P.9 p.16

24. The Anti-Slavery & Aborigines Protection Society - 5 April '35
considers that native rights are to suffer further restriction
in the Highlands. Suggests that rights of Africans at present in the
Highlands should be safeguarded & that Africans should be
allowed to purchase land advertised for sale. Trusts that sanction
will not be given to the allocation towards the cost of the Land
Commission of £7000 from an grant.

Draft herewith for comment. 1
Think the argument in para. 2. is
quite fair. Lord Elgin's 1908 doctrine
of 1908 (It is not consistent with the

policy of H.N.C.E. impose legal restrictions
on any particular section of the community")
was not allowed to militate against
the enactment of the Native Lands Trust
Ordinance in Kenya (1930), or, for
that matter, to the Native Lands Acquisition
Ordinance of Nigeria (1917!)

MacGregor
16/4

I don't particularly like arguing with the
Anti-Slavery and Aborigines Protection Society
because bitter experience has convinced me that they
are unsusceptible to argument. To write to them as
Mr. Freeston proposes in the second paragraph of his
draft would in my opinion simply lead to further
correspondence and attacks both in the House of
Commons and in the press. The point is a good one
but, having regard to the facts of the case, it is
more a debating society point than one that can be
used in official correspondence.

I have little doubt that this letter is
inspired by Mr. MacGregor Ross as will be seen from
No. 20 on this paper. What the whole lot have
forgotten is that the Secretary of State gave no
orders or anything, but on being asked to define what
"a privileged position meant, gave a definition in the
only terms possible.

The Committee raise a new hare when they
talk about "actual and potential" native rights in
the highlands. By dragging in 'potential' they seem
to contemplate that at some date in the future the
native

native population ought to be let loose again in the highlands. This is not reasonable any more than it would be for them to protest if I, owning a block of flats in London, made it a condition of sub-letting that no coloured person was to be admitted as a tenant. It is hardly necessary to go once more into the old controversy about the Kenya highlands where when the white man arrived there was no population at all and where it is only thanks to the white man that the black has any security of life or property or any desire to inhabit the area. In the circumstances it is ridiculous to talk about the interests of the natives of the soil being sacrificed for these of the immigrant and dominant races.

With regard to the £50,000 grant the Society has fallen into the same error as most other people and has not realised that the £50,000 does not represent merely the money due to the missing carriers but is in the nature of a consolidated grant from H.M.G. partly on other accounts and partly as a general help to implement the Land Commission. Anyhow if the cost of the Commission is not to be charged to the £50,000 it will have to come off Kenya somehow or other, and it does not really matter whether it is said to be a charge against the £50,000 or said to be a charge against the Native Hut and Poll Tax or against any other source of revenue which Kenya may have. From my own point of view I think that it is rather sharp practice to charge the cost of the Commission

X
Commission to the £50,000 but as I have said above I don't think it matters.

I submit an alternative draft.

v.v.g. 16/2
18/4

X This could be defended on the ground that ^{as} the Defunct Govt. sent out the Commission the Govt. should be bound on the Defunct Govt's part

S. J. Maffey

I agree to the above draft

v.v.g. 18/4

At cc.

Jan 18/4

25 To Anti-Slavery & Aborigines Assoc. Socy. 23/10/55
(24th ann.)

DM

*and it was carefully
described as an "ex gratia
payment."*

28 The Anti-Slavery & Aborigines Prot. Socy. — 10th July 35

States that it is understood that it is proposed to issue an O.C. by which it will be made illegal for any aliened British subject to own land on the White Highlands, & seeks an assurance that this is not the case.

29 A/Governor Wade 657 (Am. Mail) — 11 May 35

States his views regarding consideration of representations of the Govt. of India on the proposed O.C. & enclos. a copy of a memorandum from the European Settled Members & states that his remarks thereon will be transmitted as soon as possible.

30 A/Governor Wade 206 — 27th April 35

Reports that the removal of the Lushai Dorlos & the Lushai Khasi has now been completed.

31 To Kenya, 377 (v/c 12 on P. a file) Com — 25/5

30 August 25 MAY 1935

By air mail 25/5/35
Recd of 28+29.

Sir C. B. D. B. B. B.

32 I submit a record of the S. of S.'s interview with Sir Joseph Bhoré yesterday.

If you concern in it copies should go on the two files concerned, & you may perhaps think that they should also be sent to Secret to the Reside in Z'bar & the O. A. B. of Kenya.

Copy to Ken 15033/15
arranged for close marketing

G. L. M. Pearson
22/5/35

Have made one small alteration in the Z'bar portion: it can be altered by hand in the copies. Put on files as proposed & under or otherwise as appropriate.

See 28/5/35
P. 47 3/5

23.5.35
5th June 35
India Office
Forward Extract from Indian Legislative Assembly Debates

No. 28 - ? reply as in the draft herewith.
Nos. 29, 32 and 33. I understand from Mr. Silver of the India Office that Sir Joseph Bhoré's version of the interview recorded in No. 32 has been sent to Delhi; and that we must expect no further communication from the India Office until the Government of India has had time to consider and formulate its next step. As for other reasons for ~~our~~ ^{we are} deliberately playing for time in the matter of the Highlands Order-in-Council, it seems unnecessary ^{to} do more with this correspondence than let it rest until we receive either the Government of India's views or the further communication promised in Mr. Wade's despatch of May 4th. (No. 29).

G. L. M. Pearson
12/6

The Indian debate enclosed in 33 is quite interesting and in a way important. It shows quite clearly that the assembly at Delhi was looking upon the questions of the Indians in Kenya in a very temperate and on the whole reasonable frame of mind. This is all the more annoying from a political point of view because it is easier to deal with wild and intemperate statements than with sober argument, and I fear we have not heard the last of the Indian controversy.

No.29 on the file should be read. It appears from this that the ^{European} ~~Indian~~ members of Kenya attach ^{an excessive} ~~undue~~ importance to having the Highlands defined by Order of Council because they think that that will make the matter final. The curious feature about it is that if they are really so race-conscious and so solid as they claim to be there would be no need for anything because Government has no intention of alienating ^{4 Indian} ~~settlers~~, and it is to be presumed that no white settler would ever sell his farm to an Indian. In fact, however, I fear that the exact contrary is the case, and that many of the whites would be only too glad to sell to any Indian who would pay a price. I would also call attention to the fact that the European settlers' memorandum claims the Leroki Plateau for the "white Highlands". This is contrary to the express recommendation of the Morris Carter Commission. It was pointed out that the Plateau in question is in the

occupation of the Samburu. ^{3rd & 4th}

With regard to the ^{Wade} paragraph of No.29, I think that the principle of the white Highlands has now been definitely accepted by the acceptance of the Morris Carter Report, but as Mr. ~~Weymouth~~ ^{Wade} thinks, it is quite possible that the Government of India will wish to attack the whole principle of defining the "European Highlands".

As to the reply to No 28 Mr. President is of opinion that it is a good thing to make the point in para 3 of his draft - that the Society doesn't mind discrimination against Europeans. I am doubtful, because it may provoke a reply that Europeans have no business in Kenya at all & should not be protected in their holding of the land they stole from the innocent natives. However I fear we are in for trouble whatever we do and the balance of right is on the side of the Government proposals. So we may as well try it.

J. T. O. P. H. 13.6.

Sir C. Bottomley.

You asked me to look further into the question raised by paragraph 2 of Mr. Freeston's draft. Paragraphs 9 and 10 of the White Paper (Cmd. 4580) make it clear that what has been approved is the definition by Order-in-Council of the boundaries of the European Highlands, it being stated that "this will give an added sense of security in that these boundaries could not thereafter be altered by local Ordinance". The question whether the Order-in-Council should ^{itself} provide for regulation of the transfer of land is more difficult. The Elected Members in their Memorandum to the Acting Governor produce ~~an~~ alternative courses. One ~~was~~ ^{is} to issue an Order-in-Council defining the boundary and at the same time vesting the land in a European Lands Trust Board with power to veto all transactions which might lead to alienation of any part of the land to persons other than Europeans and the establishment of townships. The alternative course ~~was~~ ^{is} that the Order-in-Council should be issued coupled with legislation forbidding and declaring null any alienation of land to non-Europeans within the boundary.

It is therefore entirely doubtful whether the Order-in-Council will ^{itself} formally forbid alienation to non-Europeans. There is no real necessity for it since existing practice can quite easily be maintained. In the House of Commons on the 14th February, the Secretary of State stated that the effect of the proposed Order-in-Council so far as the White

Highlands are concerned will be merely to confirm what has been an administrative practice for the past quarter of a century. In reply to Sir Robert Hamilton on the 27th February, he referred to his previous answer and said that the proposed Order-in-Council will merely confirm a policy which has not been challenged by any Government in this country since its inception in 1906. In a supplementary Sir Robert Hamilton assumed that the Order-in-Council would legalize the position. It appears from this that it ^{was} contemplated that the Order-in-Council ^{might} ~~shall~~ expressly provide that land must not be transferred to non-Europeans, but I can't find that it has ever been so decided, and anyhow the point will come up for consideration when the said Order-in-Council is being drafted. It is almost impossible, however, to imagine what the Order-in-Council could define, unless it did say something to the effect that the area specified was that within which non-Europeans might not hold land.

On the whole, I think it might possibly be better to substitute for paragraph 2 of Mr. Freeston's draft the following:-

"As has been repeatedly stated in Parliament, in particular by Sir Philip Cunliffe-Lister in reply to questions on the 14th February, the effect of the proposed Order-in-Council so far as the Highlands are concerned will be merely to confirm what has been an administrative practice for the past

quarter

quarter of a century. This practice was formally re-confirmed by H.M.G. in the White Paper of 1923 and has not been challenged by any successive Government. It follows that even should specific provision be made in the Order-in-Council against the acquisition of land by non-Europeans, no existing rights or interests of individuals can be affected.

J. E. G. Reid

14.6.35.

Sir J. Mackay

I think you should see the draft - be sure to be careful over these matters.

As to para. 2, I much prefer Mr. Hood's alternative - it is not necessary to define and, as a matter of fact, I do not see "occupy" in the 1923 White Paper.

I do not object to para. 2, but I fear we shall get little good out of it. The only way to "it" is one thing to protect the natives on the land you have been good enough to have them: it is quite another to protect the Europeans on the land

and the S. of S. remarks to Sir J. B. H. (No 32) leave it wide open.

You have given them the
reference of the natives. We are
not dealing with dispossessed
people. But how is it stand?

W.C.B.
17.6.35.

J.H.M.
19/6

34. Secy. of Friends Centre on Slavery etc — 14 June 35

Make further protest against the introduction
of the O.C. as it is considered that it would be making
an important departure from the present Imperial policy
in colonial rule.

34a.

Sir C. Bottomley

I attach a note about this point
and a draft. Mr. Maxwell & I have discussed
it and we think it will do. It is admissible
if we can not to say anything definite or indulge
in controversy if we can avoid it and the longer the
O.C. is held up the better for all concerned.

I am coming down in favour of letting the
O.C. simply define boundaries & not say anything
about tenure of land in the Highlands. The practical
effect will be nil of course but it will make it
impossible to take land from the Highlands & turn
it into Native Reserve.

If we stick to administrative action to regulate
land ownership we shall apparently satisfy (I want say
please) the Govt. of India and the Anti-Slavery Societies
and the people who will object are the Kenya settlers. But
they won't be damaged as long as the administrative rule
is maintained.

Sir C. Bottomley
10.7

Sir J. Mackay

We are committed to an O.C. in
Council. I should much prefer
that it should define boundaries
and not the principle within those
boundaries; the more people
know the point that there is all
the difference between legal
authority and executive practice
the longer we shall be able, if
we avoid turbulence, to
maintain the latter.

There would be strong
protests from the Settlers, but
they would lose nothing if
what they have had.

So I support Sir Hood's
draft to the S/P - his
other draft would need
revision.

Jagg

J.H.M.
10/7

10.7.

35. The Anti-Slavery & Aborigines Protection Society. — 3rd July 35

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State let reply to No 28 has not yet been received.

36. To Anti-Slavery & Aborigines Protection Society. (35 answered) — 8 July 35

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37. India Office — 1st July 35

Trans. copy of a memo embodying the views of the Govt of India regarding the reser. of the land comm. in connection with the European Highlands. Supports representations of Govt. of India & trusts that the existing position may remain undisturbed.

38. Marquess of Zetland — 1st July 35

Suggests a meeting for discussion of the question of the European Highlands.

39. To Marquess of Zetland — 38 answer — 3rd July 35

40. A. Governor Wade ^{Conf 92A} 230 (Am Mail) — 4 July 35

Wishes further views regarding the reser. of the land comm. respecting the European Highlands.

41. Memo on Kenya Order-in-Council 4/19 July 35

42. Note on discussion between the S. of S. for Ido. & the S. of S. for India; 20th July 35

43. Map showing Mahoroni Farms

44. Note on discussion between the S. of S. & Sir J. Byrne on 30th July 35

45. O.A.S. Feb. 188 — 4th August 35

DESTROYED UNDER STATUTE

Request for despatch 380 (No 40) may be re-issued

Conf 92A.

46. Extracts from land comm. Report regarding European Highlands

47. Report by S. of S. regarding the Kenya Highlands

48. Statement regarding the Highlands Report

49. Order-in-Council

50. W. A. Giff (s.o.) — 21st July 35

Enquire whether enclosed note can be accepted as an accurate record of the conversation between Lord Zetland & Mr. MacDonald.

51. To The Marquess of Zetland — 21st July 35

52. To W. A. Giff (s.o.) — 50 answer — 13 Aug 35

DESTROYED UNDER STATUTE

The question of the European

Highlands in Kenya was further discussed between the Secretary of State and Sir Joseph Byrne on the 7th of August. Lord Plymouth and I were present, and for part of the time Mr. Freeston also. The Secretary of State observed that it would almost certainly be necessary for him to refer to the Cabinet the question of avoiding giving statutory effect to the Highland reservation in the Highlands Order-in-Council and that he had already consulted Sir Philip Cunliffe-Lister, who was clear that there was no commitment, so far as to giving the reservation statutory effect.

Sir Joseph Byrne, while repeating that the omission of statutory effect would be resented by the ^{European Residents} local elements in Kenya, expressed the view that it would probably be in the best interests of the Europeans themselves. Any legalisation of the administrative practice would be in the scope of the Courts, with consequences which could not be foreseen.

He advocated that provision should be made in the Order-in-Council for the establishment of an Advisory Board which the Governor might consult as questions arose involving the administrative practice, with the proviso that cases in which the Governor did not accept the advice of the Board should be referred to the Secretary of State for decision.

The Secretary of State considered that when the position was further developed it would be desirable to arrange by means of question and answer for the Government ~~to~~ ^{to} statement ~~of~~ its intentions, in order to give the opportunity for comment, and he promised that he would let Sir Joseph Byrne know our ideas as to the form of the Order-in-Council before any such statement was made.

As regards the time table, Sir Joseph Byrne deprecated any undue haste as he would be glad to get past his difficulties over the budget for 1936 before dealing with this question. The Secretary of State pointed out that the necessity for reference to the Cabinet would in any case delay the matter for some time and it was also observed that the date of the final issue of the Order-in-Council would be dependent on that of the Native Land Order-in-Council, which could not possibly be got into final form for some time.

The question of "change of user" was mentioned in general terms as an additional reason for preserving some elasticity in the administration of the reservation. The matter was not fully discussed and it has not previously been before the Secretary of State.

W.C.S.
12.8.35

53 Acty. Gov. Wade - No. 361 - 23.7.35

Reports that no remonstra have been offered apart from the Laislipi Dorobo. And that the removal of the Tigoni Natives is being referred into a separate dispatch & that the removal of the Dorobo to Chopalunga is contemplated but will not take place for ~~some~~ ^{some} months.

54 India Office - 29.10.35

Tr. copy of letter from the Govt. of India purvly. copy of Debate on 20.9.35 regarding the recommendation in the Kenya Land Com. Report that the boundaries of the Emergency Highlands should be safeguarded by an Order in Council.

55 Govt. Deputy Wade - No. 532 - 10.10.35

Refers to a resolution passed in Sep. 1935 by the Convention of Associations concerning the "Security of the White Highlands" and suggests whether the suggestion indicated can be entertained.

56 Society of Friends - 31 Oct. 1935

DEstroyed UNDER STAMP ~~of~~ ^{of} "Highlands" O-in-C.

57 I.O. (so. to Mr. Burke - 24 Mar. 1935

Comments on distinction between statutory "protection" Orders - Council

58 I.O. - 22 Mar. 1935

Tr. copy of letter from Govt. of India asking that draft O-in-C. may be communicated.

This paper has been circulating for some time in connexion with the draft Cabinet memo. on Kenya.

If the S.F.'s recommendation regarding the Highlands O-in-C. in that memo. is

accepted, the ground for Indian effluence
will disappear; but the Emperor in
Kangri will be informed.

The question of publication in
draft was fully explained on 38005/6A (below),
& there can presumably be no special case
for re-opening it.

53 & 54 call for no answer, & may
be put by.

55. The honoree corrects the account
misapprehension that he had promised to
support the editor's request. He should
now be informed (in a despatch to be
published at his discretion) that S.P.S.
is advised that the prior publication &
discussion of such a draft Order would
be contrary to constitutional practice.

An extract from 55, & the reply
suggested above, shd. go to IO in
reply to 58.

If an answer to the Society of
Friends is thought necessary (the letter

6568

3 on
38005/6A

A

from the Aborigines Protection Society on the
same subject - on 38005/6A - was put by)
it should follow the lines of 5 on 6A.

The suggestion at the end of 57 will
no doubt be borne in mind, & Mr.
Bucke may wish to reply to that effect.

Director
11/12

As to 57 Mr Bucke might perhaps tell Sir Vernon
Dawson that some legal knowledge has penetrated this
Dept and that the point has not been unfamiliar to us
and hint that the I.O. would be better occupied in dealing
with Mr. Baidi & the Bengal terrorists, than in butting
into the affairs of Kenya.

As to 58 we can proceed as Mr. Freiston
proposes. You have already told Sir F. Stewart so.

J.S.O. filed
15.12.

* Not quite fair. Sir V. Dawson
expects that we shall be asked
"Why don't you consult the Hq. as
to I.O. do?" and is supplying
the reply from the kind of origin
"Why do I.O. exist?". This is
reasonable.

58a

Just ask why of my account
"Why don't you consult the Hq. as
to I.O. do?" with Sir F. Stewart
on Friday. A. A. A.
W.S.B.

See reply to Mr. Atax
16.12.25

It might be desirable
to explain this
point to
Governor.

59 To I.O. (att 60) — 31/12/35
(53 and)

60 To Kenya 1035 (w/2's 58-59) 31 DEC 1935
55 answered

61 Sir V. Dawson (I.O.) (57 and) etc 31/12/35

~~Action required on 28/12/35~~
~~31, 32, 40, 51 DESTROYED UNDER STATUTE~~
~~on 1/1/36~~

Society of Friends 23 Dec.
(Remainder of 56)

100 letters 38, 50, 56, 57

107 letters 36, 39, 51, 52, 58.

We replied to the Anti Slavery Society by
referring them to Lord Sumner's reply to a P.Q.
(No 6 on 23034/34) — see letter to them of
12 Aug on 38005/6A.

There is no need to be hush, hush over it
so I submit draft.

J. H. H. 19-36

all series again
from No 31

Not so that Sir J. Mackay of row
to original was 56

W. H. 7.1.36

1.3 To Society of Friends (62 and) 4/1/36 ✓

Milfoss with

'nos. 28, 34, 37 + 56 can
be put by W. H. H. rps.

at
No 36
No 56
No 63
No 37
Kenya
cases

C. O.

38005

155

63

Mr. Flood 1-1-36

Mr.

Mr.

Mr. Parkinson.

Sir G. Tomlinson.

X Sir C. Bottomley 24.36

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

SAG

C. O.
R 2-JAN
D 3

8 Jan 1936

Sir

DRAFT.

The Christian

Committee on Protection of Native Races

Society of Friends

I am so to refer to your letter of the 23rd of Dec. and to inform you that it was as not proposed to communicate the terms of the Order in Council to define the Highlands of Kenya in its draft form to any other unoffical body or individual. Sir Philip Cunliffe-Lister (now Viscount Sominster) stated in Parliament on the 14th of Nov. 1934 that it would be entirely unconstituted to lay such an Order in draft before Parliament and similar considerations apply to communication to private or public bodies or individuals.

Thank you to request

very

FURTHER ACTION.

(Signed) J. E. W. FLOOD

61/18

C. O.

Mr. Flood. 15 12

Mr. Bunde 19

Mr. [unclear]

Sir C. Parkinson.

Sir G. Tomlinson

Sir C. Bottomley.

Sir J. Shuckburgh

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

For Mr. Bushe's signature.

Downing Street,

31 December, 1935.

Dear Dawson,
.....

sets 2

DRAFT.

SIR VINCENT DAWSON, K.C.I.E.

(INDIA OFFICE).

Thank you for your letter of
of the 21st of November about the
suggestion that the proposed Order-in-
Council regulating the boundaries of
the European Highlands in Kenya should
be communicated to the European or
other Unofficials in draft form before
issuing. *In the Council - have understood*
~~We were~~, of course, fully
your view
aware of the constitutional practice
in regard to such a Prerogative Order
as it is proposed to issue, and the
point that some Orders-in-Council are
of necessity laid in draft form had
not altogether escaped us. We are
answering the India Office letter
officially and you will see from the
reply that we have put in it a
~~draft~~
draft to the Governor of Kenya a

FURTHER ACTION.

60

statement on the lines you suggest about
the difference between Prerogative Orders
and those which are required to be laid.

YOURS SINCERELY

(Sgd.) H. Gratian Burke

C. O.

Mr. Flood. 18/12.

Mr. Bunde 19

Mr. *Hand 20*

Sir C. Parkinson.

Sir G. Tomlinson

X Sir C. Bottomley *10/11*

Sir J. Shuckburgh

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.



Downing Street,
31 December, 1935.

Sir,

I have etc. to acknowledge
the receipt of your despatch No. 532 of
the 10th of October in which you
forwarded for my information a list of
resolutions passed by a Convention of
Associations held in the autumn in
Kenya.

2. With regard to the question
raised as to the "white highlands" I
note that it has been suggested that
representatives of the European
settlers should have the opportunity of
examining the proposed Order-in-Council
in draft and I wish to address you on
this point.

3. While I am naturally
anxious to meet the wishes of all
sections of the community so far as

DRAFT.

KENYA.

NO. 1035

GOVERNOR.

From India Office 22/11/35
58

To I. O. 31 DEC 1935
Handwritten initials
(59)

FURTHER ACTION.

Copy to I.O. (59)

may be possible yet I am advised that the prior publication and discussion of a draft Order such as that in contemplation would be altogether contrary to constitutional practice, and accordingly this suggestion cannot be adopted. I enclose for your ^{con^{ce} with} information a copy of a letter from the India Office from which you will notice that the Govt. of India has enquired whether it is proposed to publish the Order-in-Council in draft and that I have caused the Secretary of State for India to be informed that such is not the intention.

4. I think it well to explain that Orders-in-Council fall into two classes. The Order-in-Council contemplated to define the boundaries of the European Highlands would fall into the category known as a Prerogative Order, since it will not be derived from any Imperial or Local Statute other than the British Settlements Act. Such Orders, which are made by virtue of the power inherent in His Majesty, are distinct in

character

C. O.

Mr.

Mr.

Mr.

Sir C. Parkinson.

Sir G. Tomlinson

Sir C. Bottomley.

Sir J. Shuckburgh

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

DRAFT.

FURTHER ACTION.

10

character from Orders made under some statutory enactment, such as many which will be required under the provisions of the recent Govt. of India Act, and in the latter case, it is frequently expressly provided that any Orders-in-Council made by virtue of the Statute shall be laid on the table of Parliament before enactment or even shall be published in draft form for general information before their enactment proceeds. The

proposed Kenya Order will fall in the first class and its prior publication is would accordingly contrary to all sound practice.

(Signed) J. H. THOMAS

C. O.

- Mr. Flood. 18.12
- Mr. Buxle 19
- Mr.
- Sir C. Parkinson.
- Sir G. Tomlinson
- X Sir C. Bottomley 20.12.
- Sir J. Shuckburgh
- Parli. U.S. of S.
- Parly. U.S. of S.
- Secretary of State.

Downing Street,

31 December, 1935.

DRAFT.

THE UNDER SECRETARY OF STATE,
INDIA OFFICE.

3/12/35
[Signature]

To Governor, Kenya:
(Dit. h/w.)

W. K. Kempa (C.O.)

FURTHER ACTION.

Sir,

I am etc. to refer to your letter No.P/J.4449/35 of the 22nd of November on the subject of the Govt. of India's enquiry as to whether it is the intention of H.M.G. to communicate the terms of the proposed Order-in-Council relating to the European Highlands in Kenya to the European Settlers before it is submitted to His Majesty.

I am now to transmit to you, to be laid before the Marquis of Zetland, the enclosed copy of a despatch which Mr. Thomas has addressed to the Governor of Kenya on the subject of the question put by Major Cavendish-Bentinck, a copy

of

of which was enclosed in your letter under
reference.

Mr. Thomas has no objection to this

information being communicated to the Govt.

of India.

(Signed) J. E. W. FLOOD

587.
12

16th December, 1935

Dear Stewart

on Friday

Central Commission

Since our talk yesterday I have looked into the question of the Muboroni farms. The pages shown under Muboroni in the index to the report relate to different things and in particular Indian farms at Kibos in paragraph 1131 are not in point.

The position shown in plan 1.A. at the back of volume three of the ^{in index} index is referred to on pages 8837-8841 of that volume. Taking the right hand third of plan 1.A. we have three suggested variants of the Highlands boundary, one of which (the dotted line) excludes all the Indian farms from the definition but also excludes a large number of European owned farms, while another (the solid black line) includes both the Indian and the European farms. The intermediate suggestion separates Indian from Indian and European from European.

The

Sir Findlater Stewart, K.C.B., C.I.E., C.B.I.,

The definition to be put in the Order-in-Council is ^{being} the one drafted in East Africa and it will clearly require very careful consideration when it is received here.

There can be no doubt that from the point of view of having an absolutely colourless Order in-Council the dotted line would be the best to choose but there would be strong protests from the European farmholders who would find themselves excluded from the High-lands.

Actually there will be no difficulty in practice in maintaining the present status of these European farms or in applying the suggestion of the Commission to the Indian farms since, quite apart from the "administrative practice" relating to the High-lands there is the Governor's general power under the Crown Lands Ordinance of controlling transfers between people of different races.

Yours sincerely,

W. C. D. Stanley

On Friday afternoon I went to the India Office to discuss various points arising out of the Cabinet Paper on Kenya. It appeared that there was no chance of getting the Paper before the Cabinet next Wednesday unless India Office doubts can be resolved.

understand that it is how important it may be well

1. Sir Findlater Stewart asked as to the nature of the Highlands Order in Council. Would it be merely defining a line or would it refer to the "privileged position" mentioned in the terms of reference to the Carter Commission. I said it would simply define a line and that no reference to the Carter Commission report was necessary or was intended.

2. I was asked if there would be a debate in the House of Commons. I said that the matter could of course be raised on a special Motion or on the Colonial Office Vote but that the Order, as a prerogative Order, would not be submitted to the House.

3. As regards the Convention of St. Germain, Sir Findlater Stewart asked what the position was with regard to the natives who were British nationals under the terms of the Convention. I said that so long as the natives had their reserves and were safeguarded in them, I saw no practical difficulty, either as regards Japanese etc., making a claim under the Convention for land in the reserves, or as regards natives making a claim for land in the Highlands. The institution of reserve land for the natives was fundamental in Kenya and the fact that they had land

of their own made it possible to construe the Convention without reference to them.

4. Sir Findlater Stewart saw much difficulty in not telling the Government of India about the St. Germain point, but he had no illusions as to the publicity which this would mean. I suggested that the point could only be decided by Ministers.

5. The Muhoroni farms. Was the boundary line of the Highlands area to be drawn so as to include them or exclude them? There were difficulties either way, but Sir Findlater Stewart was inclined to think that it would be better to draw the line so as to include the farms and then to except expressly in the definition the area of the farms themselves, even though the exception might attract attention to the underlying purpose of the Order in Council. [The purpose of the Carter Commission with regard to these farms would be fully met by the administrative practice as, supposing that an Indian holder wished to sell to a European and permission was granted under the terms of the Crown Lands Ordinance, the European holder, on wishing to sell to an Indian, would be bound to apply for permission, and that permission would no doubt be withheld.]

This point needs looking into and I may have to send him a note before the matter comes up in the Cabinet. I was not absolutely certain

certain of my ground and, in particular, as to whether the Indian farms are actually surrounded by European farms.

See now my letter to Sir Findlater Stewart of to-day - copy attached.

Handwritten signature
G. S.

Government of India.
Department of Education, Health & Lands.

New Delhi, the 9th November, 1935.

From: The Honourable Mr. Ram Chandra, CIE., MBE., ICS.,
Offg. Secretary to the Government of India.

To: His Majesty's Under Secretary of State for India,
Public & Judicial Department,
India Office, London.

Kenya Land Commission Report - Proposal
to issue Order in Council.

Sir,

With reference to the correspondence ending with the India Office letter No. P. & J. 2327/35, dated the 8th July, 1935, I am directed to enclose copy of an extract from the "East African Standard" of the 13th September, 1935, containing a report that the European settlers in Kenya have asked for an opportunity to see and approve the draft Order in Council defining the Kenya Highlands, prior to its submission to His Majesty the King, and that His Excellency the Governor of Kenya has agreed to support this request. The Government of India would suggest to the Secretary of State for India that, if he sees no objection, the intentions of the Colonial Office in this matter should be ascertained and that, if the intention be to accede to the Settlers' request, the draft Order in Council should either be published to elicit comments or communicated, for the purpose, to the Indians in Kenya and to the Government of India. This is without prejudice to the views that the Government of India have already expressed on the merits of the proposal that an Order in Council should be issued.

I have etc.

(Sd.) RAM CHANDRA

Offg. Secretary.

Any further communication on this subject should be addressed to—
The Under Secretary of State for India,
Public & Judicial Department,
India Office, London, S.W. 1,
and the following reference quoted:—
P. & J. 4449/35.



INDIA OFFICE,
WHITEHALL,
LONDON, S.W. 1.

22 November, 1935.

Telephone—
Whitehall 8140. L.O. Est. No. _____
Telegrams—
Rotaxantum, London.

RECEIVED
23 NOV 1935
C. O. REGY

3c

Sir,

(37)

(51)

Annex (59)

With reference to the letters from this Department

dated 1st July and 29th October, 1935, numbered
P. & J. 2327/35 and 4180/35 respectively, regarding the
recommendation contained in the report of the Kenya Land
Commission that the boundaries of the European Highlands
should be safeguarded by an Order in Council, I am
directed by the Secretary of State for India to transmit,
for the information of the Secretary of State for the

Dated 9th November, 1935,
with enclosure.

Colonies, copy of a letter received from
the Government of India on the subject.

2. The Marquess of Zetland would be glad to receive the
observations of Mr. Secretary Macdonald as to the reply
to be given to the enquiry of the Government of India
whether it is the intention of His Majesty's Government to
accede to the request made on behalf of the European
settlers that the terms of the draft-Order in Council
should be communicated to them for approval before
submission to His Majesty.

Copy to Kenya (60)

I am, Sir,

Your obedient Servant,

Handwritten signature

The Under Secretary of State,
Colonial Office,
S. W. 1.

Extract from an article entitled "Colonists' Vigilance Committee" in The East African Standard, Nairobi, dated the 13th September, 1935.

* * * * *

Major Cavendish-Bentick asked whether the representatives of the European settlers would have an opportunity of seeing and approving the draft Order in Council prior to its submission to His Majesty the King in that the securing of a satisfactory and adequate wording of this Order in Council at the present time must be of the most vital and fundamental importance to European settlement for all time.

His Excellency stated that this would be an unusual procedure but he would suggest that such action be taken in the despatch which he would be sending home enclosing the resolutions passed by the Convention.

* * * * *

India Office,
Whitehall,
London, S.W.1.

21st November, 1935.

Dear Bushe,

I have been shown the papers, in connexion with a reference which the Colonial Office will be receiving almost at once from this Office, regarding the report in a Nairobi paper that the Governor of Kenya would be recommending that the proposed Order in Council relating to the boundaries of the European Highlands should be communicated in draft to the European settlers.

Amick (61)

I understand that it is your view that there can be no question of acceding to any such request on the ground that it would be impossible, or at all events most improper, to publish for comment the proposed terms of a prerogative Order before it is made.

A distinction must, no doubt, be drawn in this respect between a prerogative Order on the one hand and, on the other hand, an Order which is required by Act to be laid in draft before, and approved with or without amendment by, Parliament before the draft is submitted.

H.G. Bushe, Esq., C.B., C.M.G.,
Colonial Office,
S.W.1.

to His Majesty in Council. As you are perhaps aware, the India Act of 1935 contains provisions to the latter effect which govern the numerous Orders in Council to be made under that Act. Not only, therefore, are we required to publish beforehand, by means of presenting them to Parliament, the drafts of all our Orders under that Act, but further we have found it expedient already in one case, and shall very likely also find it expedient in at least one other case, to publish as a White Paper some weeks or months before the final draft will have to be laid before Parliament for approval in pursuance of the Act, a provisional draft of an Order which must ultimately be made under the Act.

I venture to suggest, therefore, that, if the Colonial Office should find it necessary in connexion with the reference I have mentioned to take their stand upon the argument that it would be unconstitutional to publish in advance the terms of a proposed prerogative Order in Council, they should in so doing make quite clear the distinction in this respect between prerogative Orders and those to which, e.g. the provisions of s.309 of the

Government of India Act, 1935, apply, and further that it may be desirable to do so by more explicit means than the mere use of the term prerogative Orders, the implications of which will probably not be apparent to the layman.

Yours sincerely,

R. J. Dawson

AIR MAIL.

*orig. disp. note
on 30/2/33*

55
33

KENYA

NO. 558

Government House,

Nairobi,

Kenya.

10 October, 1935.

Sir,

I have the honour to transmit to you, for your information, a list of the Resolutions passed at the recent session of the Convention of Associations, together with a short resume of an interview granted by the Governor to a delegation from the Convention. I would invite your attention to the suggestion in the minute entitled "Security of the White Highlands" on page 5 of the resume, and I shall be glad to learn, in due course, if you are prepared to entertain the suggestion.

Answered (to)

I have the honour to be,

Sir,

Your most obedient, humble servant,

A. DE V. WADE

GOVERNOR'S DEPUTY.

THE DIRECTOR GENERAL,
H.M.S. COLONIAL OFFICE, P.O., N.F.,
SECRETARY OF STATE FOR THE COLONIES,
WHITE HALL,
LONDON, S.W. 1.

The Economic Position of the Colony.

The Economic Development Committee's Report.

- (a) Resolution No.1. by the Executive of Convention:-

"This Convention having considered the Report of the Economic Development Committee and Sessional Paper No.1. of 1935, considers that the measures proposed are inadequate to the existing situation in that the gravity of the position disclosed calls for the immediate introduction of far more radical remedial measures towards alleviation of the critical conditions effecting the bulk of the farming community."

Carried Unanimously.

- (b) Loan Conversion.

"That this Convention of Associations again urges upon Government the absolute necessity of effecting an equitable readjustment of the Kenya Loan position. Whilst realising that difficulties in effecting a fair solution are bound to be encountered, this Convention asserts that in common fairness we are entitled to some immediate relief."

Carried Unanimously.

- (c) Mortgage Relief.

"This Convention of Associations welcomes the announcement that a Committee is to be immediately appointed to explore means for lightening the crushing burden of agricultural indebtedness, an enquiry which in the opinion of this Convention is long over-due, but considers it essential that such a Committee should have strong farming representation amongst its personnel and that careful consideration will be given to the far-reaching steps that have been taken in other Territories to deal with these problems."

Carried Unanimously.

- (d) Government and Railway Overheads and Re-organization.

Resolution by the Executive of Convention:-

"This Convention wholeheartedly supports in principle the recommendations made by the Select Committee on Economy, and trusts that Government will see fit to implement the majority of these so that they may be incorporated in the 1936 Estimates. In particular Convention urges that a re-organization of the machinery of Government on the lines proposed in Chapter 9 of the Report should be undertaken without delay, and that an impartial Commissioner, approved by European Unofficials of Legislative Council, to give effect to this recommendation forthwith." (Carried Unanimously.)

(e) Civil Service Salaries.

Resolution by the Executive of Convention:-

"This Convention having studied Chapter 8 of the Report of the Select Committee on Economy considers that in view of present day conditions, the history of the post-war years and present day prices of primary products, an arbitrary revision of existing salary scales similar to that which took place in Great Britain, is considerably overdue, more especially in view of the fact that the Civil Service scales of salary have within recent years been drastically reviewed both in England and in the Dominions."

Carried Unanimously.

(f) Railway Policy.

"That in view of the unremunerative prices of all produce during the last few years, this Association strongly opposes the policy put forward in the General Manager's Annual Report entailing the building up of a reserve of £1,000,000 irrespective of any other consideration such as rates reductions, and demands that all freights on primary products be reduced forthwith."

Carried Unanimously.

Resolution by the Executive of Convention:-

"That this Convention expresses its disagreement with the Railway policy as outlined in Chapter 11 of the General Manager's Report for 1934, believing that, now that the financial position of the Railway has been restored such policy is not calculated to afford the ~~cheap~~ transport facilities for agricultural and industrial development, which are so vitally necessary during existing conditions."

Carried Unanimously.

"That this Convention of Associations dissatisfied with Government's inadequate reply to the various Motions put forward in Legislative Council by the European Elected Members and apprehensive of the wording of His Excellency's letter to the Chairman of Convention, gives it as its considered opinion that by the adoption of the foregoing measures a sum of not less than half a million sterling could be made available for the relief of the hard-pressed communities."

Carried Unanimously.

(g) Devaluation of Currency.

"That this Convention is of the opinion that some measure of devaluation is necessary in order to restore the economic foundations of the Colony."

Passed by a majority of 38 to 9.

GENERAL TAXATION.

"This Convention is of the opinion that Licensing Ordinance, 1934 and the re-introduction of the "Bill to make Provision for the Levy of a Non-Native Poll Tax" for 1936 is no longer necessary and the revenue which might accrue therefrom should therefore not be taken into account in framing the 1936 Estimates.

Carried unanimously.

NATIVE TAXATION.

"That, in the opinion of this Convention, the fall in the prices of native produce has had the effect of more than doubling the real weight of taxation on the native peasant, which, as a result, is now oppressive and ought to be reduced.

Carried unanimously.

SECURITY OF WHITE HIGHLANDS

"In view of the fact that the definite finding of the Morris Carter Land Commission, published and approved by the Secretary of State and adopted by the House of Commons more than a year ago, that the White Highlands of Kenya should be defined and safeguarded by Order-in-Council for the exclusive occupation of Europeans outside the boundaries of existing townships has not yet been implemented, this Convention affirms its determination to defend by every means in its power the integrity of our Highlands and demands the prompt adoption of the proposals of the European Elected Members as set out in their Memorandum of April 25th, 1935."

Carried unanimously.

LEASES UNDER CROWN LAND ORDINANCE.

"That this Convention also demands the immediate implementation of the recommendations of the Kenya Land Commission Report to render Section 31 of Crown Lands Ordinance 1902, and Section 26 of the Crown Lands Ordinance 1915 in-operative both in existing and future leases in that these recommendations are of vital importance to many land owners in the Colony."

Carried unanimously.

CROWN COLONY GOVERNMENT.

"That the time has come to appeal to other Dependencies controlled by the Colonial Office to consider to what extent they will longer submit to the unsympathetic control of their affairs by the Colonial Office.

Carried unanimously.

"That this Convention of Associations conscious of the widespread dissatisfaction and feeling of insecurity engendered by the present system of Crown Colony Government which is obviously no longer suited to our needs considers that in accordance with the principles traditional to our race, a change in the present system of Government is overdue and resolves to take such action as may be required to bring about the granting to European colonists of adequate and effective responsibility in the control of their affairs.

Carried unanimously.

CIVIL SERVICE.

"That this Convention demands that Government give a preference to the sons and daughters of residents in Kenya when filling vacancies in the Civil Service of Kenya."

Carried unanimously.

RESOLUTIONS PASSED BY THE CONVENTION OF
ASSOCIATIONS ON SEPTEMBER 12TH, 1935.

CLOSER UNION.

"Notwithstanding the reply received from the Secretary of State for the Colonies this Convention supports the Memorandum which was drawn up at the Arusha Conference held on the 15th and 16th March, 1935; copy of which Memorandum was duly sent to the Secretary of State for the Colonies."

Carried with 4 Dissentients.

WHITE SETTLEMENT.

"That this Convention urges that every assistance will be given by Government to new settlers, in order to encourage closer settlement in every possible way as is being done in other Colonies."

Carried unanimously.

"That this Convention of Associations is of the opinion that the present residents and the young men of Kenya possess a prior claim to the unalienated land in the Highlands of Kenya".

Carried unanimously.

COLONISTS' VIGILANCE COMMITTEE.

"That this Convention of Associations, in view of the further inadequate replies received to its urgent representations regarding the present intolerable economic situation, has come to the decision that drastic steps must be taken to enforce the just rights of the European settler community.

It therefore calls upon the elected Members and the Convention Executive to proceed to the immediate bringing into being of a Colonists' Assembly (or Safety Committee) which all Associations affiliated to the Convention should be pledged to support, such Assembly (or Committee) to be responsible for organisation and direction of such action as may be found necessary."

Carried unanimously.

"That this Convention of Associations, having absolute confidence in the Colonists' Vigilance Committee, gives them an absolute free hand and pledges itself to support the Committee in its actions."

Carried unanimously.

Those present at the interview were: His Excellency the Governor; the Hon. the Colonial Secretary; Mr. C. Kenneth Archer (Chairman of Convention); Lt. Col. the Hon. Lord Francis Scott, D.S.O., M.L.C.; Mr. Geoffrey Williams; the Hon. H. F. Schwartz, M.L.C.; Mr. A. Dykes; Col. B. N. Abbay, C.B.; Capt. E. L. Kenealy; Lt. Col. the Hon. J. G. Kirkwood, C.M.G.; D.S.O., M.L.C.; Mr. O. Bentley; Major the Hon. G. H. Riddell, M.V.O., M.L.C.; the Hon. Mr. E. H. Wright, M.L.C.; Mr. F. Biss; Mr. W. Evans; Mr. F. T. Bamber; the Rt. Hon. the Earl of Erroll; Capt. F. O. B. Wilson, C.M.G., D.S.O.; Major the Hon. F. W. Cavendish-Bentinck, M.L.C.; Sir R. de V. Shaw, Bt., M.L.C.

His Excellency, in welcoming the delegates assured them of his willingness to do what he could to assist the farming community, but hoped that the delegates to Convention would not expect him to achieve the im-

possible. He could assure the Delegation that both he and Mr. Wade were sympathetic.

Mr. C. Kenneth Archer thanked His Excellency for receiving the Delegation. He felt it was his duty to warn His Excellency that Convention were very apprehensive with regard to the present position in that the country was gradually being denuded of its capital resources, and it was felt that only drastic measures could remedy the situation. It had been hoped that His Excellency on his return would have taken the initiative in enforcing such measures.

His Excellency interpolated that he realised that the Delegation had come for the purpose of discussing such measures and the suggestions made in the various resolutions which had been passed during the last two days, and of which he had been given copies. He felt that the Delegation would desire to discuss them seriatim.

Mr. Archer, whilst agreeing to this procedure, said he did not think it was necessary to discuss the first resolution, which referred to the Economic Development Committee's Report, as it was merely a comprehensive resolution embracing the various remedial measures suggested by

Convention for the alleviation of the critical conditions affecting the farming community. He would therefore begin with the second Resolution.

Loan Conversion

His Excellency in referring to the resolution on loan conversion stated that this was no new matter. His predecessor, Sir Edward Grieg had taken it up strongly and he himself had also taken it up.

As recently as December 1934 and again in February 1935, the problem had been re-examined in all its aspects by the Home Government.

The Deputy Treasurer who had recently gone to England on leave had been instructed to put forward both to Sir Cecil Bottemley and to the Financial Adviser to the Colonial Office a proposal for a possible loan conversion scheme which had recently been submitted by Capt. Schwartz and Mr. Hansard. A letter had to-day been received from Mr. Sandford to the effect that he had had access to the Colonial Office files dealing with this subject which contained many very ingenious proposals for solving this problem. None of these proposals, however, appeared workable, in that in most cases, after actuarial examination it was found that the country would lose rather than gain by their adoption.

Mr. Sandford was sending a summary of these papers to the Hon. The Colonial Secretary. His Excellency therefore stated that everything that could be done had now been done, and that no further action could be taken until this summary arrived.

Mr. Biss asked whether we could not arbitrarily reduce the amount of interest the Colony paid.

His Excellency asked whether by that he meant defaulting, or applying for a grant-in-aid, either of which course would be highly undesirable and would ruin our credit. Indeed, he felt that a large proportion of the unofficial community would be adverse to the adoption of any such course.

After further discussion His Excellency agreed to make further representations to the Secretary of State but he frankly stated that he did not anticipate very much result.

Mortgage Relief

Mr. Archer pointed out that the Convention was much perturbed over this question, so naturally welcomed the announcement that a committee was to be appointed to enquire into the subject. They felt, however, that it was essential that there should be farming representation on this Committee.

His Excellency asked whether the Delegation were prepared to submit names.

Mr. Archer said that there were suitable men amongst the delegates to Convention, and names could be supplied to-morrow.

His Excellency said that he would be glad to have a number of names submitted from which he would select one.

Mr. Archer pointed out that it was felt that strong farming representation was required and that he thought it would be desirable to appoint more than one farmer to this Committee.

His Excellency pointed out that there were other interests besides agricultural interests to be taken into account, but agreed to consider this matter. He did not want the Committee to become too big.

Major Gerald-Bentley pointed out that the resolution envisaged considerably wider terms of reference than originally suggested, as the whole question of mortgages, and even the possibility of mortgages, and other far-reaching steps which had been taken in other countries would have to be considered.

His Excellency agreed also to consider the granting of wider terms of reference, and to have the whole question brought up at the next meeting of the Executive Council next Friday.

Economy Committee

With regard to the resolution referring to the Economy Committee His Excellency informed the Delegation that as he had stated in his letter to the Chairman of Convention, the recommendations of the Select Committee on Economy were now being considered item by item by the Executive Council. He had little doubt that a number of economies suggested by this Committee would be implemented in the forthcoming Budget. Some, however, had been found to be impracticable, and as an example he referred to the recommendation abolishing District Councils, which recommendation had not been accepted in view of the opposition of the unofficial community. This meant foregoing an economy of £15,000. It was pointed out that equal economies under this head could be achieved in other directions.

Mr. Archer then drew attention to the second portion of the Resolution and His Excellency stated that he would be prepared to ask that a special Commissioner such as Sir Alan Pim be sent out as Commissioner to make the desired investigation.

Capt. Kenya asked to whom Sir Alan Pim would report, whether to the Secretary of State or to the Governor of the Colony, in that he thought it would be preferable, as Sir Alan Pim was engaged by and his report made to the Government of Kenya.

His Excellency said he would consider this matter. Other members of the Delegation expressed the hope that the matter would be dealt with expeditiously.

Civil Service Salaries

With regard to the resolution on Civil Service salaries His Excellency informed the Delegation that he was as anxious as any one to endeavour to effect economies. The difficulty, however, was, especially as regarded technical officers, that the Colony had to go into the open market to engage suitable candidates, and here our salaries below those of other Colonies we would find it difficult if not impossible to obtain suitable and satisfactory candidates. If the necessity arose the solution he felt lay more in reducing the number of officers employed, which would entail drastic reductions in services.

A long discussion ensued during the course of which certain members of the Delegation stressed the fact that they knew of many cases in which the sons of personal friends who appeared to be suitable candidates for such posts had found it difficult to secure employment. They therefore felt that suitable candidates would nevertheless still be forthcoming.

His Excellency pointed out that this would mean divorcing the Kenya Civil Service from the Colonial Civil Service.

A long discussion ensued at the end of which it was agreed that possibly Sir Alan Pim might also investigate this question when and if he came to the Colony.

Railway Policy

His Excellency felt that the subjects referred to in the leading with Railway policy could properly be said to come within his province in that the Railway was the property of the Colony. He said that the Policy of the Railway was guided by a joint Railway Advisory Council.

Lord Pringle Scott expressed the conviction that in a matter of such importance to the well-being of the Colony the Official Kenya Representatives on the Railway Council might justifiably be given definite instructions. His Excellency felt that this would be an unwise procedure in that it had always been the invariable custom to happen free debate on the Railway Council.

Capt. H. E. Schwartz and other members of the Delegation asked His Excellency for an assurance that both he and the Kenya Government strongly favoured the granting of all possible freight reductions on primary products.

His Excellency replied that he wished to render all possible assistance to the primary producer but that he could not, in his personal capacity, say that he would give any rebate. He felt it would be very wrong if he were to do

so in that any such action on his part might cause unnecessary friction between the Kenya and Uganda representatives on the Railway Council when they were endeavouring to come to an agreement on the reduction in rates. He added that he hoped that the proposed alleviations in railway rates for 1936 would not prove to be altogether unsatisfactory to the primary producers of Kenya.

Devaluation of Currency

His Excellency much regretted the passing of the resolution on devaluation, which he considered would do the Colony harm. He referred to the letter he had addressed to the Chairman of Convention and stated that he had had strict instructions not only from the Secretary of State but from the Home Government in this connection.

Mr. A. Dykes and other Members of the Delegation asked why this measure of relief should be negative without adequate reasons being put forward and urged that the Secretary of State should be asked to make some comprehensive statement of the "case" against the adoption of this measure of relief.

General Taxation

His Excellency asked whether he was to gather from the resolution on taxation that which the revenue figures which were now being compiled show a possibility of making reductions in taxation. Convention stated that such reductions should be made by withdrawing what were by some alleged to be either "temporary" or "emergency" taxes. He did not admit that they could be definitely considered as "temporary" or "emergency" but he did not feel that an argument on this subject could serve any useful purpose. The real point at issue was that he felt that possibly greater benefits would accrue to the farming community by giving alleviations if such were found possible when the time came, in other ways.

Mr. Archer said that quite definitely Convention not only desired but maintained that Government were pledged to take off these taxes.

His Excellency was then asked by several members of the Delegation whether he would give an undertaking that these taxes would not be introduced after this year.

His Excellency declined to give any such undertaking. Capt. H. E. Schwartz asked whether His Excellency would be prepared to undertake definitely to give some alleviation in taxation during 1936 either by the method suggested in this resolution or in other ways.

His Excellency replied that he could give no undertaking whatever at the present time.

Mr. Archer asked His Excellency whether in his letter he had meant to suggest the submission of the Budget to the Standing Finance Committee prior to the Budget Session of Legislative Council.

His Excellency stated that this was not intended.

Native Taxation

His Excellency stated that this subject had been on various occasions carefully considered by Government but he pointed out that he had powers, of which he largely availed himself, of giving remissions in taxation where necessary.

The Hon. Mr. Wade pointed out that were Native taxes to be materially reduced it would, under the present system, of necessity entail considerable if not drastic curtailment in Native services, services in Native areas which were such a major factor in the development of the Native areas. Such a procedure was considered undesirable in the interests of the Natives. He referred the Delegation to Lord Moyne's Report.

Security of White Highlands

His Excellency re-affirmed the statement contained in his letter to the Chairman of Convention of the Associations to the effect that he had had interviews both with the Under Secretary and the Secretary of State for the Colonies on the subject of the implementing of the recommendations of the Carter Commission's Report. These

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 bers Times," Mombasa.

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 tainable. State rent for month,
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 good make; also winnower to
 any condition. Particulars to
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matters were being actively considered by the Home Government. He could say no more than this.

Major Cavendish-Bentinck asked whether the representatives of the European settlers would have an opportunity of seeing and approving the draft Order-in-Council prior to its submission to His Majesty the King in that the securing of a satisfactory and adequate wording of this Order-in-Council at the present time must be of the most vital and fundamental importance to European settlement for all time.

His Excellency stated that this would be an unusual procedure but he would suggest that such action be taken in the despatch which he would be sending home enclosing the resolutions passed by Convention.

Lord Francis Scott stressed the danger which further delay might entail especially with regard to a possible change in Government in England.

Mr. Archer asked whether the recommendations contained in the Memorandum submitted by the Elected Members had been agreed to *in toto*.

His Excellency replied that he was of course unable to commit the Secretary of State. Nor was he at liberty to disclose the contents of the various despatches on this subject which were all of a highly confidential nature. He assured the Delegation however that he was most anxious to get this matter satisfactorily settled at the earliest opportunity.

Leases Under Crown Land Ordinance

His Excellency pointed out that this resolution equally referred to the implementing of the recommendations of the Carter Land Commission and therefore he could say very little more than he had said on the subject of the previous Resolution.

Mr. Archer referred to the recent happenings on a farm at Limuru, pointing out that when similar type of occurrences had occurred in Native Reserves (i.e. by Europeans) that immediate and drastic action had always been taken.

The Hon. Mr. Wade replied that Government were sympathetic to the owners of the farm concerned and had endeavoured to render them every possible assistance, but this particular case was an extremely complicated one.

Crown Colony Government

His Excellency stated that he did not think the resolution on Crown Colony Government could in any way be dealt with either by himself or by the Kenya Government.

Mr. Oswald Bentley and other delegates asked His Excellency whether he would collaborate with the unofficial community in devising some scheme which might grant to the European colonists a further measure of responsibility in the control of their own affairs.

His Excellency replied that he had been appointed to govern this Colony under its existing constitution, and any change in such constitution would necessitate most careful consideration by the Home Government. The whole question had been gone into fairly recently by a Committee of both Houses of Parliament and he did not see how any immediate change in the existing system could be brought about. He felt that any appeal would have to be made either to His Majesty the King, or to the Secretary of State.

Civil Service

His Excellency stated that he concluded that the resolution on the Civil Service referred to vacancies in the Administrative Service. Steps had already been taken to inaugurate a Local Civil Service.

The Hon. Mr. Wade informed the Delegation of the methods now adopted to fill vacancies in the Administration. This matter did not really rest with the Kenya Government but he gave an assurance that where the Kenya Government had an opportunity, they would invariably give preference to a Kenya born young man.

1800573
4006
I 54

INDIA OFFICE,
WHITEHALL,
LONDON, S.W. 1.



Any further communication on this subject should be addressed to—
The Under Secretary of State for India,
Public & Judicial Department,
India Office, London, S.W. 1,
and the following reference quoted:—
P. & J. 4180/35

Telephone:—
Whitehall 8140. I.O. Ext. No. _____
Telegrams:—
Ratasandam, London.

29th October, 1935.

RECEIVED
OCT 30 1935
C. O. REGY

Sir,

(37)

With reference to correspondence ending with the letter from this Department of the 1st July, 1935, P. & J. 2327/35, I am directed by the Secretary of State for India to transmit, for the information of the Secretary of State for the Colonies, copy of a letter received from the Government of India forwarding copy of a Debate in the Council of State on 20th September 1935 regarding the recommendation contained in the Kenya Land Commission Report that the boundaries of the European Highlands should be safeguarded by an Order in Council.

Dated 10th October 1935
with enclosure.

I am, Sir,

Your obedient Servant,

Handwritten signature

The Under Secretary of State,
Colonial Office,
S.W.1.

No. F. 314-B/35-L.S.O.
Government of India.
Department of Education, Health and Lands.

43 P & C
4180
1935

Sivia, the 10th October 1935.

From

The Hon'ble Mr. Ram Chandra, C.I.E., M.B.E., I.C.S.,
Offg. Secretary to the Government of India,

To

His Majesty's Under Secretary of State for India,
Public and Judicial Department,
India Office, London.

Kenya - Proposed reservation of Highlands for
Europeans - Resolution in the Council of State -
Debate

Sir,

With reference to the correspondence ending with
the letter from the India Office, No.P.&J.2327/35, dated
the 6th July, 1935, I am directed to forward, for the
information of His Majesty's Secretary of State for India
a copy (with two spare copies) of the debate on the
Resolution moved by the Honourable Mr. P. N. Sapru in
the Council of State on the 20th September 1935, regard-
ing the proposed reservation, by Order in Council, of
the Highlands in Kenya for Europeans.

I have the honour to be,

Sir,

Your most obedient servant,

Sd/- K.P.S. Menon.

for Offg. Secretary.

The Council met in the Council Chamber, Simla, on Friday, the 20th September, 1935.

RESOLUTION *RE* PROPOSED RESERVATION OF THE HIGHLANDS
IN KENYA FOR EUROPEANS.

THE HONOURABLE MR. P. N. SAPRU (United Provinces Southern : Non-Muhammadan) : Sir, I rise to move the following Resolution :

"This Council recommends to the Governor General in Council to communicate to His Majesty's Government the deep dissatisfaction of the people of this country with the recommendation of the Carter Commission that the highlands should be reserved by Order in Council for the European settlers in Kenya."

Sir, the question of Indians overseas is one on which there is happily no difference between the people of India and the Government of India. My Resolution therefore is not directed against the Government of India. I appreciate what they have done in regard to Indians abroad and would not like to increase their difficulties. Rather I wish by this Resolution to strengthen their hands in their fight for certain elementary rights for our countrymen in Kenya. I hope therefore that the Government will not misunderstand my object in moving this Resolution.

Now, Sir, the position of Indians in Colonies administered directly by the Crown is very unsatisfactory. Kenya is a directly administered territory. It is under the Colonial Office and the Kenya issue is really a test issue. Is there going to be racial equality in the British Commonwealth of Nations or not? That is the real Kenya issue and I say therefore it is a test issue. The British Commonwealth cannot afford to follow a racial policy in directly administered territories. Sir, the House will permit me to go a little into the history of this question. Indians have been established in East Africa even before the British advent. With the opening up of Uganda and with the development of British administration in the Colony during the last 38 years Indian traders have been going into the interior. After the construction of the Uganda railway many Indian artisans and labourers engaged on the building of the railway remained in the Colony and engaged in commerce. In their wake followed artisans, clerks and small traders. The point, therefore, that I wish to make is that Indians have helped to build up modern Kenya. Now, Sir, the question of ownership of land in the highlands is one of those questions which has brought Indian settlers and European settlers into conflict. The highlands amount to more than one-tenth of the total area of the Colony—the Honourable Mr. Ram Chandra will correct me if I am wrong. There were few European settlers till 1897, but after 1902 the numbers of Europeans in the highlands increased as a result of a deliberate policy. The history of the question is this. In 1905 a Land Commission reported in favour of the maintenance of a European reserve and accepted Kin to Fort Terian as a suitable definition, "without wishing to bind themselves too closely to that area or restrict its limits." In 1906 Lord Elgin, who was then the Colonial Secretary in the Liberal administration of 1906, expressed his approval of the practice then in force of limiting land-holding by Indians to the closed areas east of Kin and west of Fort Terian. In 1908 Lord Elgin went a little further and he decided to reserve for the purposes of administrative convenience as a matter of administrative arrangement lands in the highlands for Europeans. No legal restriction was however imposed. The decision as understood in 1908 was confined to the initial grant of land. That was the interpretation that the Government of India put upon that decision, that it did not preclude transfer of land from European to Indians; it referred to original allotments only. Now, Sir, we come to 1915. In 1915 we have an Act which gave power to the Governor General to veto all sales of land and transfer to Asiatics in the highlands. The Government of India protested against this Act of 1915. Under the original arrangement of 1908 all the lands belonged to the Europeans and original allotments were to be made to Europeans only. There was no question of any restriction of a transfer by an European to an Indian under the original arrangement of 1908. If land was transferred by an European to an

Indian, then it was transferred without any restrictive covenant. Now the Government protested against this Act of 1915 and in 1920 they addressed a despatch to the Secretary of State. In 1923 we had the memorable White Paper—I shall call it the notorious White Paper—which evoked a strong protest from my revered leader the Honourable Mr. Srinivasa Sastri. Sir, the White Paper, in spite of the protests of the Government of India, went wholly against us. At page 17 the White Paper, after reviewing the history of this question and taking into consideration the facts that during the last 15 years European British subjects have been encouraged to develop the highlands and during that period settlers have taken up lands in the highlands, said that His Majesty's Government have decided that the existing practice must be maintained as regards both initial grants and transfers. Well, Sir, that was the position in 1923. But in this White Paper no reference was made to boundaries. It was clear that the decision contemplated the land lying between Kin and Fort Terian. That was I think the basis of the decision. But the European settlers wanted His Majesty's Government to go a little further. They had been pressing His Majesty's Government to this end, and of course they have their supporters in His Majesty's Government, and as a result of their activities the Land Commission was appointed in 1932. I may mention that so far as the Government of India is concerned it accepted the White Paper decision only under protest and reserved to itself the right of reopening the question. Well, Sir, in 1932 a Commission was appointed. Their sixth term of reference related to the highlands. I will read that term of reference:

"To define the area generally known as the highlands within which persons of European descent are to have a privileged position in accordance with the White Paper of 1923."

Sir, this Commission reported in September, 1933 and the Command Paper, which practically accepts the recommendations of this Commission, was issued in May, 1934. Now, I have read out the terms of reference of the Commission. It will be seen that the Commission went beyond its terms of reference and it suggested that land should be reserved statutorily by Order in Council. The effect of an Order in Council would be practically the same as that of a statute. It went further and whereas the area reserved for Europeans in the highlands was about 11,000 square miles before it suggested that the area should be a little over 16,000—I do not exactly remember the exact figure, but I think it is about 16,500 square miles. Therefore it suggested extension of the area originally contemplated by Lord Elgin. The White Paper suggests that this area should be reserved by an Order in Council; and not only this, they go further and as was pointed out by the Honourable Sir Girja Shankar Bajpai in the other place, they further recommend that restrictions on land should apply to land transferred by an Indian to an European; that is to say, if an Indian who acquires his land through transfer from an European transfers it to an European then the European to whom the land is transferred should not be able subsequently to transfer it to an Indian. That is the arrangement; that is the recommendation that they have made. Now, Sir, the position is that for the first time there is to be statutory discrimination against Indians as Indians; there is to be for the first time a racial discrimination against Indians in a Colony administered by the Colonial Office. The Colonial Office cannot say that they cannot interfere with Kenyan affairs; they are directly responsible for the administration of Kenya. Kenya is not a Dominion; it is under the administration of the British Crown and therefore, Sir, the issue raised is of fundamental importance to us Indians. We Indians, Sir, have got a great feeling in this matter. "It is a matter of honour with us. It is one of those issues which affects our allegiance to the British Crown; it is one of those issues which affects our unity. As a very distinguished Leader said, we want a place in His Majesty's household, we do not want a place in His Majesty's stables. Therefore, Sir, I would say that strong representation should be made by the Government of India in regard to this matter to His Majesty's Government. The highlands represent the best lands in Kenya and why should our countrymen, who have helped to build up this Kenya, why should they be deprived of the opportunity of acquiring land in Kenya? Why should further restrictions be placed upon them? Kenya one day or other will become a responsibly governed State and if it becomes a responsibly governed State, probably this highland area will be the centre of this responsible Government. It is therefore a matter of some importance for our countrymen there. I do not think that by reserving these highlands for European settlers His Majesty's Government will be helping the natives of Kenya, natives for whom His Majesty's Government profess so much solicitude.

They will be merely depriving our countrymen of a most elementary right and they will be establishing a principle which may well destroy the very foundations of this Commonwealth. Sir, we should like the Government of India, if I may make this suggestion, to publish their despatches to His Majesty's Government and the correspondence, if any, which they have had in regard to this question with His Majesty's Government. With these words, I commend this Resolution to the unanimous acceptance of the House. Before I close, may I make an appeal to the European non-official Members of this House? Sir, the European non-official Members have always taken a very keen interest in the welfare of Indians abroad. The services of Sir Darcy Lindsay are too well known to be mentioned here. I hope, Sir, that they will show their sympathy with the principle of racial equality by supporting my Resolution.

THE HONOURABLE MR. RAM CHANDRA (Government of India: Nominated Official): Sir, the other day when I was speaking on the Resolution about arrangements in the Secretariat for dealing with problems relating to Indians overseas, I said that the safeguarding of the interests of Indians who have left their homes and who have settled in other parts of the British Empire was a matter on which there was identity of outlook between the Government of India and the fair-minded section of the Indian public. I am glad, Sir, to have this opportunity of substantiating that remark by reference to a particular instance. The history of the question of restricting the grant of land to Europeans only in the highlands of Kenya goes back to more than a quarter of a century. The history has been given in brief outline by the Honourable mover and I do not think I should weary the House by repeating it; but there are just one or two points on which I would like to lay special emphasis. It was in 1906 and again in 1908 that Lord Elgin who was then Secretary of State for the Colonies decided to continue the past practice of reserving these areas in the highlands for Europeans, but he made it clear that this was being done only as a matter of administrative convenience and that it was not the policy of His Majesty's Government to impose any legal restrictions upon any section of His Majesty's subjects in the matter of holding land in the British Protectorates. Fifteen years later, Sir, the White Paper of 1923 was issued. This White Paper may be said to be the foundation of the policy in regard to Indians in Kenya. The White Paper re-affirmed the former decision that the practice in regard to the initial grants of Government land in the highlands and in regard to transfers between persons of different races must be maintained. Indian public opinion which is extremely sensitive in regard to racial discrimination was greatly agitated over this decision. The decision was not in conformity with the declaration that had been made in 1920, that is to say, three years before the publication of the White Paper, by the then Secretary of State for the Colonies, Lord Milner. He, speaking in the House of Lords on the 14th July, 1920, said:

"In East Africa, as in other countries under the administration of the Colonial Office, it has been the avowed principle and it is the definite intention of the British authorities to make out even-handed justice between the different races inhabiting these territories. The Government of India were also greatly disappointed over the decision and they gave public expression to their disappointment in the Resolution which they issued shortly after the publication of the White Paper. The Resolution was issued on the 18th August, 1923 and in this Resolution the Government of India said:

"In particular they take note that the exclusion of Indians from the highlands has not been embodied in legislation. At the same time they cannot but record their deep regret that His Majesty's Government did not feel justified in giving greater effect to the recommendations made by them and the Secretary of State for India. They are conscious, however, that they are under obligation to accept the decision of His Majesty's Government and that His Majesty's Government cannot now be asked to reconsider and revise the decision which was reached after protracted deliberation. Nevertheless, they must reserve to themselves the liberty of making such representations as may be necessary whenever in future a legitimate opportunity should present itself, either as a result of the experience gained, or by change of events, or otherwise."

This statement made by the Government of India in a public Resolution showed that they accepted the decision contained in the White Paper under protest. Twelve years have now elapsed since that Paper was issued and I need hardly assure the House that the position taken up by the Government of India then still remains unchanged and unaltered. They adhere to the view that there should be no discrimination against Indians in East Africa.

I now come, Sir, to the recommendations made by the Carter Commission. As pointed out by the Honourable mover, one of the terms of reference

of this Commission was, if I may be permitted to read it again :

" To define the area generally known as the Highlands, within which persons of European descent are to have a privileged position in accordance with the White Paper of 1923 "

The words " privileged position " which occur in this term of reference were not defined but the Secretary of State in replying to a question in the House of Commons early this year said that he had informed the President of the Commission that the words " privileged position " implied that no person other than an European shall be entitled to acquire by grant or transfer agricultural land in an area now to be defined or to occupy land thereon. Now, Sir, it is abundantly clear that, if such a provision were incorporated in an Order in Council, the existing position of Indians in Kenya will change and will change for the worse. The restrictions which were originally considered necessary on grounds of administrative convenience will have been imposed by statute. Coming again to the White Paper of 1923, which made it clear that it was only the principle of past practice which was being maintained and that it was not sought to impose any legal restriction,—the White Paper in referring to the provisions of the Crown Lands Ordinance of 1915, to which objection had been taken by Indians, said :

" It cannot be claimed that they amount to legal discrimination against Indians, for it would be possible for the Executive Government to grant land in the highlands to an Asiatic, or to approve of the transfer of land from an European to an Asiatic, without any alteration in the existing law "

With the proposed provision in the Order in Council, this possibility of the Executive Government granting land in the highlands to Asiatics will have entirely disappeared.

I now come, Sir, to another point which is a point to which objection may rightly be taken in the Carter Commission's recommendations. It is proposed now to reserve for Europeans a larger area than has already been alienated to Europeans or is available for alienation. The increase amounts to about 5,000 square miles.

A third point, Sir, which arises out of the Commission's recommendations is that there will be a further restriction placed on the transfer of land to Indians. Before 1906 land had been allotted to Indians in certain farms which are included in these highlands. If the Commission's recommendations are accepted, the transfer of any area in those plots by an Indian to an European will operate in such a way as to prevent its re-transfer to an Indian ever again.

These are the three points, Sir, which the Government of India have been considering. They have engaged their earnest attention. They were under their consideration when there was a full dress debate in another place in March last. Since then, they have made their representations through the Secretary of State for India and the intensity of the feeling in this country on this subject has been brought to the notice of His Majesty's Government. In point of time, therefore, Sir, my Honourable friend Mr. Saprú's Resolution is belated as the representations have been made by the Government of India and the deep dissatisfaction which he wants the Governor General in Council to communicate to His Majesty's Government has already been communicated. In this dissatisfaction I can assure the Honourable mover that he has the support of Government. As regards his request for publication of the correspondence that has passed between the Government of India and the Secretary of State, I am afraid, Sir, the subject is still one of negotiation and the Government of India cannot consider the question of publication until the negotiations have been completed.

The Resolution was, by leave of the Council, withdrawn.

KENYA.

No. 361



36045/3/25
38005/7/15 46
GOVERNMENT HOUSE,
NAIROBI,
KENYA.



25 July, 1955.

Sir,

(31)
With reference to the request contained in the third paragraph of your predecessor's despatch No. 577 of the 25th May, for information regarding the removal of native occupiers of land in the Highlands, I have the honour to inform you that, other than the Laikipia Dorobo, no removals have been effected.

2. The removal of the Tigoni Natives, recommended in Sections 595 to 598 of the Kenya Land Commission Report, is contemplated, but, as certain modifications of the Commission's recommendations in connection with this removal are proposed, this matter is being referred to you under a separate despatch.

3. The removal of the Dorobo to Chepalungu (Section 1176) is also contemplated, but will not take place for some months.

I have the honour to be,

Sir,

Your most obedient, humble servant,

Adm. Wadz

ACTING GOVERNOR.

The Right Honourable,
Malcolm McDonald, M.P.,
Secretary of State for the Colonies,
Downing Street,

LONDON, S.W. 1.

51
47

31st July, 1935.

Dear Secretary of State,

I promised to let you know the result of the talk which I had last evening with Sir Joseph Byrne, the Governor of Kenya, concerning the proposed Order in Council about the European Highlands in Kenya.

I had a long talk with Byrne about this, as a result of which certain aspects of the matter will have to be explored further in this office. I shall have a further talk with Byrne next week. The present position is as follows. I can assure you that I have great sympathy with the representations which you made to me yesterday regarding the offences which would be given to Indians, not only in Kenya, but in India also if the privileges which Europeans enjoy in the Kenya Highlands, and which have depended upon administrative practice hitherto, should be confirmed by statute. I am anxious if possible to avoid this. On the other hand, in a White Paper which was published last year the Government have given a pledge to the white settlers in

KEN/5

THE MOST HONOURABLE THE MARQUESS OF ZETLAND, OCSI., OCIN.

Kenya with regard to this matter, which I could not, of course, contemplate breaking. One matter which needs further careful examination is the exact extent of this pledge which was couched in language susceptible of different interpretations. Also, I am bound to take into consideration the effect of any decision that I might make on settler opinion in Kenya. Sir Joseph Byrne told me frankly last night that there would be opposition of the most violent kind to a mere continuation of the present administrative practice. Indeed, he anticipated an outburst similar to that which followed the Wood-Vinterion proposals in 1922, when the Government actually had to "climb down".

Nevertheless, as I say, I have a great deal of sympathy with the point of view which you put forward yesterday. Therefore I would like to give the matter further thought, and I shall not reach any decision contrary to your representations without a further talk

- 3 -

with you. In any case I will, of course, keep you informed of developments.

Yours sincerely
M. M. M. M. M.

L. C. Brundage

I am afraid to keep
 Mr. ^{Aggs} ~~Phill~~ too long held up: I take it
 I can now write and ask him
 to have his own attention
 made as suggested?

For Luke

9/8

W. C. C.

Jayne: Pl. let us have my
 notes back and we ought to have
 a departmental note of the S. O.'s
 minute as to reminder.

W. C. C.

10.8.75



point about announcement
 is I think rather on the - it
 was more action than
 announcement, but it doesn't
 matter.

? get a copy for one to
 G.K.'s records

Lewis

1.8.35

I have made a draft (p. 2)
 reference indicated by R.C. document

Ed Lloyd

1/8/35

Please remind us to keep Lord Zetland
 informed of any further developments in
 any of these cases.

M.M.

38005/3/35 King

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India Office.
Whitehall

31st July 1935.

Dear Boyd,

Lord Zetland had a note made of his talk with Mr. Malcolm MacDonald yesterday, and I enclose a copy of it. He would like to know whether Mr. MacDonald accepts it as an accurate record of their conversation or whether he would like to suggest any corrections. Lord Zetland only proposes to treat the note as a personal and confidential memorandum.

Yours sincerely,

W.D. King

13 Aug
Award
1935

E.B. Boyd, Esq., CMG.

Note of discussion between the Secretary of State for India and Mr. Malcolm MacDonald on the Zanzibar Clove Legislation and the Kenya Highlands, on the 30th July 1935.

The Secretary of State started by referring to the sensitiveness of Indian opinion where any matters affecting the interests of Indians in other parts of the British Empire are concerned, and explained that the Viceroy had pressed on him very strongly the effect on Indian opinion of the two recent decisions in Zanzibar and Kenya. Taking the less important question first, Lord Zetland said that he felt that the Clove Legislation in Zanzibar had been rather rushed through without this office having a fair chance of considering its effects. This was, of course, before either Mr. MacDonald or he himself had taken over their respective offices, and he expressed the hope that there might in future be the closest co-operation between Mr. MacDonald and himself on questions affecting the position of Indians in the Colonies. As regards the merits of the Clove Legislation he was prepared to admit that it was quite possible that though it might adversely affect Indian money-lenders and speculative middlemen, it would in the long run work for the general good, and would also perhaps be to the benefit of Indian exporters; but what the Government of India objected to was the composition of the Board of the Clove Growers' Association, which is in effect an official Committee on which the various interests concerned are not represented. This would appear to be contrary to the recommendations of Sir Alan Pym and Mr. Strickland, who took the view that such an Association should be a co-operative one in the full sense of the term.

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Mr. Malcolm MacDonald said that so far as he was concerned he welcomed the idea of closer co-operation, and he explained that action in Zanzibar had had to be taken in a great hurry in order to get things done before the start of the new season. The

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Colonial Office would agree that the sooner the Clove Growers' Association becomes a true co-operative body the better, but at present the producers are not ready for it. As regards the position of Indians, he felt convinced that they will gain in the long run. Certainly reputable Indian exporters will benefit, and it is probable that the majority of other Indians who are more interested in general trading, and have taken up dealing in cloves more or less as a side line, will find in the end that they are better off owing to the increased purchasing power of the native producers who are their chief customers. The fact that agitation on the subject is dying down, would appear to be an indication that the Indians themselves are beginning to realise this. Lord Zetland said that he was inclined to agree, provided that the Clove Growers' Association becomes a real co-operative body, and he did not wish to press the case further than that. He asked whether he could go so far as to tell the Viceroy that Mr. MacDonald would ask the Resident in Zanzibar to do all that he could to encourage the development of the Association as a real co-operative body. Mr. MacDonald agreed to this, though he added a warning that such a development would necessarily be a slow process. He also referred to the promise made by Sir Philip Cunliffe-Lister to Sir Joseph Bhole, which he desired to confirm, that any cases of hardship which, in the light of the experience of the working of the decrees, could be shown to have been caused to Indian traders, would be investigated.

Lord Zetland then turned to the question of the Kenya Highlands, and said that the two points which were of concern to the India Office were -

1. The considerable addition which it was proposed to make to the Highland reserves, and
2. The proposal to make statutory the discrimination against Indians.

He laid stress on the very serious political consequences in India of action of this kind, and made it clear that the

fundamental objection of the Government of India is to the proposed Order in Council itself, which embodies in statutory form the racial discrimination against Indians. In this connection he drew attention to the fact that the Government of India Bill makes statutory provision for safeguarding the position of European British subjects domiciled in India, and pointed out that Indians would be quick to emphasise the difference between this provision and the position of Indians in Kenya if the proposed Order in Council is enacted. He realised that he could not at this time, of day ask that the existing administrative arrangements should be altered, but he would press very strongly the political effect of making statutory what is at present a purely administrative arrangement. Mr. MacDonald, in reply, disposed first of the Government of India's point that a considerable addition is being made to the area reserved for Europeans. He said that the addition was in fact a very small one, and he thought that the Government of India's figure of 11,859 square miles must have failed to include the Forest reserves. As to the general question, he frankly appreciated the India Office difficulties and the political objections, and he was prepared to agree that both from the point of view of expediency and on the merits, the Government of India's case is a good one; but the Colonial Office are largely committed in view of the fact that they have issued a White Paper accepting the recommendations of the Morris Carter Commission as to the Highlands. It is impossible for them to go back on this, and they are therefore pledged to issue an Order in Council. He suggested, however, that it might be possible in this Order in Council, not to go further than to define the boundaries of the area of the Highlands, which would avoid making statutory the administrative discrimination against Indians. Before committing himself on this point, however, he would like to discuss it with the Governor of

Government

Kanya, when he was seeing to-night. Lord Zetland welcomed this suggestion, which he thought would go some way to meet the Government of India's objection. He enquired whether it would be possible to avoid making any announcement as to the Mahoreni farms. Mr. MacDonald feared that it would be necessary to make an announcement on this point in some form or other in order to assure the European population that the recommendations of the Morris Carter Commission were being implemented, especially as his proposed concession on the main question would probably provoke a storm. Lord Zetland said that he would wait before saying anything to the Viceroy until Mr. MacDonald was able to give him more definite information after his talk with the Governor.

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KENYA HIGHLANDS. ORDER IN COUNCIL

809

WHEREAS by the Crown Lands Ordinances 1902 and 1915 power was conferred upon the Governor of the East Africa Protectorate to regulate the sale lease and transfer of lands within the said Protectorate

4 8/11/30

AND WHEREAS it has been the administrative practice of the Governor of Kenya, acting upon instructions of one of our principal Secretaries of State, so to employ the power vested in him by the aforesaid Ordinances as to ensure that no persons other than Europeans should acquire by grant lease or transfer agricultural land within the area generally known as the Highlands or ^{should} occupy land therein.

AND WHEREAS in April, 1932, Commissioners were appointed by one of His Majesty's Principal Secretaries of State to define the said area generally known as the Highlands

AND WHEREAS the said Commissioners have duly reported and have recommended a definition of the Highlands

AND WHEREAS it is expedient for the purpose of giving effect to the definition so recommended and ensuring the permanency thereof that such definition should be confirmed by an Order made by His Majesty in Council and should not thereafter be subject to any amendment or alteration save and except by an Order made by His Majesty in Council

NOW/

NOW, THEREFORE, His Majesty
by virtue and in exercise of the powers by
the British Settlements Acts or otherwise
in His Majesty vested, is pleased, by and
with the advice of the Privy Council, to
order and it is hereby ordered as follows:-

1. This Order may be cited as
the Kenya (Highlands) Order in Council, 1955.

2. The areas of land in the Colony of
Kenya ~~of~~ of which the boundaries are set
out in the Schedule to this Order shall be
and are hereby declared to be the Kenya
Highlands.

3. The boundaries of the Kenya
Highlands shall not hereafter be subject to
any amendment or alteration save and except
by an Order of His Majesty, his Heirs and
Successors in Council.

4. His Majesty, his Heirs and
Successors in Council, may from time to time,
revoke, alter or amend this Order.

SCHEDULE:

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Statements regarding the Highlands Pledge.

Extract from Demand (16) of 1st Nov. 1954 - No 6 on 23034/54P

(44) of 18th Dec. 1954 - No 8

(60) of 14th Feb. 1954 - No 1 on 38005/54P

(61) - - - - - No 2

(17) of 27th Feb. 1954 - No 6

(5) of 8th April 1954 - No 11

(45) of 23rd May 1954 - No 15

1. In April, 1954, Sir Philip Cunliffe-Lister circulated a memorandum to the Cabinet summarising the recommendations contained in the Kenya Land Commission Report, and recommending their acceptance with stated exceptions. The following is an extract

Reference:
C.P. 54. No. 5
on 23054/4.
Secret.

"Paragraph 11. The Commission recommend that the boundaries of the Reserves and of the Class C lands (native leasehold areas) and of the Highlands, should be declared by an Order in Council. This will give an added sense of security in that these boundaries cannot be altered by a local Ordinance."

The Cabinet approved and authorised the publication of a White Paper summarising their conclusions.

2. The relevant section of the White Paper (C.M.D. 4580) reads:-

"9. The Commission have defined the boundaries of the European Highlands and His Majesty's Government proposes to accept their recommendations in regard to this.

10. The Commission recommend that the boundaries of the Reserves of the Class C lands (native leasehold areas) and of the Highlands, should be declared by Order in Council. This will give an added sense of security in that these boundaries cannot thereafter be altered by local Ordinance. His Majesty's Government approve this recommendation and propose that in due course these boundaries should be declared by Order in Council".

3. In July, 1954, the Report was discussed in the House of Commons during the debate on the Colonial Office vote. The following are the relevant extracts from Sir Philip Cunliffe-Lister's speeches:-

The Commission make what I think is another wise recommendation. It is that the boundaries of the reserves as expanded by these great additions and the boundaries of the European Highlands shall be laid down by Order-in-Council. Frequent anxiety has been expressed that once land is put into a reserve people shall feel certain about it and it shall not be the subject of change. That is fair, and the Government accept wholeheartedly the recommendation made by the Commission that the boundaries as extended in this way shall be confirmed by Order-in-Council, which will give permanent security for the boundaries. 11 20

were doubted that we proposed to make those additions. It will be a very complicated business when we come to the details of making amendments to the lines suggested by the commission, and of dividing the work as between the Land Trust Board and the Government, in the way which I indicated in my speech. I was glad to note that the hon. Gentleman who spoke for the Opposition was in complete accord with the course which the commission laid down as to the functions of the Land Trust Board and the Government. Being in agreement on that, what we have now to do is merely a question of drafting, to get the ordinance into the form which we desire.

Another question of principle which has been raised in the Debate is whether the board should sit in London or not. The hon. Member for East Birkenhead put one view, while everybody else who spoke took another. It does not take very long for one to make up one's mind on this matter, because the arguments can be stated in a comparatively narrow compass. I stated in my opening speech the grounds on which the argument for a London board were, in the opinion of His Majesty's Government, constitutionally unacceptable. I do not want to repeat the argument, but it carried weight with everybody who has spoken during the Debate. It is a view which we formed after very careful consideration.

A further question which was independently raised by the hon. Member for East Birkenhead and the hon. Member for Rothwell, is quite new. It was whether we should reopen all the old pledges of 30 years' standing as regards the White Highlands. The Commission, in making their recommendations to satisfy native requirements, whether they be the requirements of the plan as at present organised, or whether they be the requirements for future economic development, have not been in the least fettered by the question of the Highlands. It was not a question of their possibly being inclined to make further recommendations if more land were available. The question of the Highlands did not come in; there is ample land, as the Commission have indicated, for making the additions which they think are necessary, both from a legal and equitable point of view and from the

point of view of economic development, and they have proceeded, as they were directed to do, to define the Highlands in their proper area, having regard to all the pledges which have been given in the past.

The suggestion of the hon. Gentleman is that we should do something quite different—that we should say we were going to reopen the whole policy with regard to the Highlands. We say that this particular area in Kenya should now be delimited, and delimited, as I have explained to the House, with a smaller area than those which have previously been put forward for consideration from time to time by different committees and other bodies. At any rate, I think that no one would say that the Commission have laid down an unduly Liberal boundary for the Highlands. What the hon. Gentleman is suggesting is that we should reopen the whole policy. That is an entirely novel and, I think, really an amazing suggestion. What is the history of this matter? Right back in 1905, or earlier—in the very earliest days in Kenya—this area of the Highlands was set aside for white settlement. That was affirmed in the despatches which have been quoted, and it has never been called in question. Above all, it was never called in question by the Labour Government. The Passfield Declaration—Lord Passfield's Memorandum on Native Policy in East Africa (Command No. 3573 of 1930) the Magna Charta of native policy to which the hon. Gentleman referred—made it clear that there was no question of going back on the decision come to by Lord Elgin in 1905, confirmed by the White Paper of 1923, with regard to the restriction of agricultural land sales in the so-called Highlands of Kenya to persons of European descent. That has never been called in question. What is now suggested is that we should reopen this policy of 30 years, and throw into the melting pot again the whole question of the Highlands. Do hon. Members who make that suggestion visualise the implications which would follow from its adoption? His Majesty's Government could not countenance the idea for a moment; they would regard it as being as much a breach of faith as the taking of a tract away from the reserves; but that suggestion is made at the moment when these enormous tracts are being added to the native reserves,

P.T.O.

1978. It has to be admitted that the provision which we have recommended for natives will entail some sacrifice on the part of the European community. Reluctance to make the concession would be natural, since it was generally believed that the gazettement of the native reserve boundaries in 1926 would settle the matter of native claims and requirements in respect of land for many years to come, and a certain exasperation will naturally be felt that substantial alterations have to be made so soon. But exhaustive inquiry has satisfied us that these modifications are necessary, and we consider that, when the evidence has been studied, the need for them should be generally realized.

1979. These recommendations may perhaps give rise to a natural apprehension among Europeans that the extent of the Highlands may be again diminished. One of the main objects of our Report has been to frame recommendations which would instil a feeling of security in the minds of the natives with regard to their lands. If, in doing so, we had only transferred the feeling of insecurity from the natives to the Europeans, we could not feel that we had succeeded in our task. We therefore recommend that the boundaries of the European Highlands should be safeguarded by Order in Council, so that the European community may have the same measure of security in regard to land as we have recommended for the natives.

2154. We consider that it would be invidious if the native reserves were to be protected in this manner and no similar security be given to the European Highlands. We recommend therefore that the external boundaries of the European Highlands be defined under the Order in Council, and be subject to analogous safeguards as to exclusions, additions and exchanges.

1494. If the land in respect of which the application is made is situated in the European Highlands, the same general conditions would apply, but it is clear that the European community would have to be consulted, and some practical means would have to be devised, whether through the District Councils or otherwise. In this case therefore, we recommend that agreement should be sought between the Government, as representing the Colony as a whole, and accredited representatives of the European community.

1495. If agreement cannot be reached, the question which presents itself is whether, if at all, the lease can be forced through in spite of the opposition of the European community.

1496. In another part of the Report we shall make a recommendation that the external boundaries of the area in which a European privilege obtains should be proclaimed under Order in Council. This would, in this respect, place it in a position in which it is comparable with a native reserve, and it may well be argued that the conditions under which natives should be able to obtain a lease of land in the European Highlands should correspond with the conditions under which Europeans are able to obtain a lease in native reserves. According to the recommendations which we are making to regulate leases in native reserves, it will be possible, if sufficient need arises, for leases to be granted to Europeans even if the natives concerned and the Local Native Council object, but it will not be possible if the Land Board objects. The analogy demands that, if the need were sufficiently urgent, a lease to natives of land in the White Highlands might be forced through against the wishes of the owner of the land (possibly by the application of the Land Acquisition Act), or against the wishes of the District Council, but not in face of any objection by accredited representatives of the whole of the European Highlands. We consider that this argument is fair to both parties, and recommend that the above procedure be adopted.

Loss of Land sustained by the European Highlands.

Recommendation for Safeguarding the European Highlands.

(iii) Lease to a Tribe of Land which is in the European Highlands.

Extrahs from Kenya Land Commission Report (Cmd. 4558)

60 46

H.H.

Discussion between the Secretary of State
and Sir Joseph Byrne on July 30th., 1935.

Highlands.

The Secretary of State explained what had passed at his discussion with Lord Zetland in the morning.

Sir Joseph Byrne said that an Order in Council defining the boundaries of the Highlands without any reference to ^{their} the preservation to Europeans would create a very great disturbance in the minds of Europeans - as great as that of 1922-23. The Europeans expected to get something more than boundaries, and he pointed to paragraph 292 of the Land Commission Report. This paragraph is in the summary of conclusions and it goes further than paragraph 1979 in the body of the Report in that it speaks of "analogous safeguards" instead of "a similar measure of security."

The unofficial members had ^{expressed} put in their views as to the detailed arrangements which would be necessary to give effect to these "analogous safeguards" and he put in papers showing what had passed locally.

The Secretary of State suggested that it might be possible to go further than he had at first contemplated by having an Order in Council defining the boundaries with either a mention of the reservation to Europeans in the preamble or a statement by the Secretary of State or the Governor to the effect that the Administrative practice would remain unchanged.

Sir Joseph Byrne repeated that this would create as much ill-feeling as in 1923, and ~~and~~ he recognised the difficulty of the position of the Government of India, ~~and~~ considered that it was a worse alternative to let down the Kenya settlers.

The Secretary of State said that he would like a solution on the lines just indicated, namely, that we should define the boundaries and re-affirm the administrative practice. This would give just as much security to the Europeans as full Order in Council, and it would have the advantage of satisfying Indian feeling.

[He directed me to inform Mr. Peel of the India Office that he hoped to write to Lord Zetland in the course of the day, but that as he might not be able to do so he hoped that Mr. Peel would tell Lord Zetland that his letter would be on the lines that he had explored with the Governor various "snags" which were in the way of taking action on the lines which he had foreshadowed provisionally at the morning meeting; that he was going to continue his discussion with Sir Joseph Byrne next week, but that it was impossible for him to give a definite answer now. In the circumstances, he suggested that Lord Zetland might tell the Viceroy that after a talk with Mr. MacDonald he can assure the Viceroy that Mr. MacDonald has every sympathy with the point of view put forward by the Viceroy, but that there are two other considerations which

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he has to keep in mind: (1) exactly what he is committed to under the pledge given last year in the White Paper, and (2) even if not committed up to the hilt, ^{he} is bound ^{to consider} what is to be the ^{on the European side} reaction of a decision to promulgate an Order in Council which does not in respect to the interpretation of the recommendations of the Kenya Land Commission hold all European unofficals in Kenya: that Mr. MacDonald still wishes to confer with Sir Joseph Byrne on both these points and therefore cannot give Lord Zetland his final conclusions this week.]

The Secretary of State gave directions for further exploration of the position, before he next sees Sir Joseph Byrne, as follows:-

- Handwritten: 7 Aug*
- (1) A complete list of the relevant recommendations of the Commission.
 - (2) The terms of the pledge given last year.
 - (3) Any Statement by Sir Philip Cunliffe-Lister or anyone else who would help to define the pledge.
 - (4) A skeleton Order in Council which would define the boundaries and in the preamble refer to ^{the} ~~any~~ administrative practice.

Lord Plymouth is to be informed when the date has been fixed for the Secretary of State's further talk with Sir Joseph Byrne.

This is confirmed by the S. 45's staff with Lord Zetland

I have explained to the S. 45's that this passage was out of date & did not connect it.

LSD

Note of a discussion between
Sops. for Cuba & Sops. for India H-2
30th July 1955.

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Dr. R. F. Paul &
Sir Cecil H. ...
were present.

Lord Zetland

then referred to the question of the Highlands of ⁶⁴
Kenya. The Viceroy had expressed himself
strongly adverse from the idea of substituting
a statutory-basis for the administrative basis

on✓

on which the special position of Europeans in the Highlands had been dealt with. The Viceroy foresaw very serious consequences in India, and supported Sir J. Bore in objecting to an Order in Council which would embody the restrictions in statutory form.

He referred to the Government of India Bill, under which discrimination against Europeans domiciled in India in respect of the acquisition of land or the carrying on of a profession, was definitely excluded. The Indians will say that if these provisions are insisted on by the Imperial Parliament in the case of India, there should be a corresponding absence of discrimination against Indians in a territory under the Imperial Government.

Lord Zetland

admitted that the present arrangements had lasted so long and matters had gone so far that it was impossible to ask that the arrangements for ~~the~~ reservation should be altered, but he stressed the serious political effect of an Order in Council giving statutory validity to the present administrative arrangements. The Viceroy had said that he would have great difficulty, even with Indians now well disposed to us and the new Constitution, ~~but~~ he is not able to say that the reservation will remain purely administrative without any statutory bar.

Mr. MacDonald

in reply, first referred to the allegations that the Kenya Land Commission had increased ~~in~~ the Highland ^{area} reserves. He said that there was ~~no~~ ^{serious} ~~real~~ discrepancy, the excess over the 1920 figures/



figures being amply covered by the area of Government Forest Reserves included in the definition of the Highlands, and by township areas, mission stations, etc. He fully sympathised with the views which Lord Zetland had expressed and felt that it would be very desirable if we could avoid an Order in Council which would make the discrimination statutory. The recommendations of the Kenya Land Commission had been accepted by H.M. Government in a White Paper and it was impossible to break the pledge which had then been given. He considered, however, that it would be in accordance with the pledge to have an Order in Council defining the boundary, without introducing into the Order any statutory confirmation of the Highlands reservation. This would secure that the administrative character of the arrangements would continue. He said, however, that he must consult the Governor, whom he would be seeing in the evening, as to the consequences of such an Order in Kenya itself.

Mr. Peel

in reply to Lord Zetland's inquiry, thought that such an Order in Council would meet the difficulty.

Mr. MacDonald

emphasised that it would be necessary for him to get the Government's concurrence for such an arrangement. There would undoubtedly be very serious protest in Kenya. The question of how far we were pledged under the White Paper is ~~undoubtedly~~ open to argument, and the European population of Kenya would certainly argue that we were committed to statutory reservation.

Lord Zetland

then/

then referred to the Muhoroni Farms.

Mr. MacDonald

explained the proposal in the Land Commission's report. The present Indian owners would be at liberty to dispose of their farms to Europeans or Indians. If to Indians, they, in their turn, would be free to ^{sell to anyone} ~~stay on~~ but if the farms came into the possession of European owners, then the Commission recommended that the land should be included in the European Highlands.

Lord Zetland

said that they Viceroy would very much prefer that these farms should remain on their present footing. He admitted that the matter was unimportant.

Mr. MacDonald

said that the difficulty was that this was the recommendation of the Commission, and that we do not want to vary their recommendations more than we can help. It was undesirable to ^{embitter} ~~embitter~~

^{our} the main trouble ~~being~~ the question of ~~the~~ statutory reservation ^{by} varying the Commission's recommendations on minor matters. In reply to Lord Zetland, he explained that, although there might not be any necessity for spontaneous public statements, questions would certainly be asked in the Kenya Legislative Council.

Sir C. Bottomley

in reply to a further question by Lord Zetland, said that he could not say at the moment, what had led the Land Commission to make this special proposal with regard to the Muhoroni Farms, but he supposed that they wished to provide for the eventual ^{boundary} ~~running~~ of what they considered to be the natural Highlands area. At the same time,

he/

he admitted that so far as any view could be formed here, the farms were not in what might be called typically European land, but on Mr. MacDonald pointing out that if they were unsuitable for Europeans they would not get into European hands, he said that it was possible that they might be the subject of ^{European} development on plantation ~~lands~~ *lines*.

In conclusion, Lord Zetland said that he would wait to hear the result of the discussion with the Governor before writing to the Viceroy. He recognised the position created by the issue of the White Paper on the Kenya Land Commission's report, and he finally referred again to the need for frank talks between the two Secretaries of State.

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KENYA ORDERS-IN-COUNCIL.

Sir Robert Hamilton is no doubt referring to the Orders-in-Council which it is proposed to make in connection with the Kenya Land Commission's Report (Cmd. 4556) - see his previous questions, flagged A, ~~in the margin of~~ (nos. 6, 7, 9 and 11 on 38005/35.)

Attached

2. The Land Commission recommended that the boundaries, status and method of control of native lands in Kenya should be defined and safeguarded by an Order-in-Council, so that no alteration could be effected by the local Legislature but only by a subsequent Order. They also recommended that the boundaries of the European Highlands should be safeguarded by Order-in-Council "so that the European community may have the same measure of security in regard to land as we have recommended for the natives".

Report, para.
1979.

3. Both these recommendations were accepted Cmd. 4580, paras. 9, 10, 20, etc. by H.M.G. in the White Paper of May 1934. The Native Lands Order-in-Council has been drafted in Kenya, and the draft is now under consideration in the Colonial Office. It, and the accompanying draft legislation, will call for very careful scrutiny, and possibly some amendment before final approval. It has not, of course, been published. Sir Robert Hamilton will possibly recur to the criticism in his question of February 27th (No. 7 on 38005), which was fully and fairly met in Sir Philip Cunliffe-Lister's replies.

Attached

4. The European Highlands Order-in-Council has not yet been drafted, pending a decision by the Secretary

of State whether it is

(a) merely to define the geographical boundaries of the Highlands,

or

(b) in addition to define the privileged position which Europeans are to enjoy within those boundaries.

(For a definition of the privileged position please see the reply to question No.1 on 38005).

Answer

5. The European settlers in Kenya are emphatically insistent that course (b) should be adopted, see their memorandum enclosed in No.29 on 38005/3, flagged B. They have gone further, and demand that the control of all land transactions in the Highlands be vested in a European Highlands Board with powers analogous with those of the Native Lands Trust Board which is provided for under the corresponding Native Lands Order-in-Council.

6. If course (a) be followed, it will undoubtedly lead to uproar on the part of the extreme representatives of settler opinion, with the usual charges of breach of faith, etc. On the other hand the adoption of course (b) would result in a similar outburst by the Indian community in the Colony.

The Government of India is strongly opposed to course (b) and the Secretary of State has undertaken to discuss the issue with the Marquis of Zetland on the morning of Friday the 26th July (the day after the debate) - see Nos.37,38 and 39 on 38005/3.

The Department has already advised, in connection with representations from the Society of Friends and other bodies in London, that course (a) be adopted, i.e. that the Highlands

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Highlands Order-in-Council should be limited to safeguarding the geographical boundaries of the Highlands and that the policy of limiting occupation and ownership to Europeans should continue to be a matter of administrative practice rather than be given the force of a legal enactment.

2/11/19

AIR MAIL

KENYA

No. 320

92nd Confidential
in No. 47.



GOVERNMENT HOUSE

NAIROBI

KENYA

RECEIVED

11 JUL 1935

O. O. REGD

4th JULY, 1935.

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No 29

Sir,

I have the honour to refer to my Confidential Despatch No. 64 of May 4th, with which I transmitted for your information a memorandum submitted to me by the European Elected Members of the Legislative Council.

2. In the sixth of their terms of reference the Kenya Land Commission were required "to define the area, generally known as the Highlands, within which persons of European descent are to have a privileged position in accordance with the White Paper of 1923". The definition given by them is illustrated on the Map in the Report facing page 492. This definition has been accepted by the Elected European Members with the exception that they consider that the Lorogi area, including the Marte portion up to the Coryndon line, should be brought within the Highlands.

You are aware that the Commission made no definite recommendation that the Lorogi area should be constituted as Native Lands or Native Reserves. They advised indeed that it should not be so declared, but should in fact be reserved for native use and occupation for such a time as may be necessary, leases to non-natives being in the meantime only issuable for purposes which would be of direct benefit to the natives though small residential plots of 50 acres or less might be granted to non-natives - c.f. section 884 (a) and (d). The arguments adduced by the European Elected Members and the advice ...

THE RIGHT HONOURABLE MR. MALCOLM MACDONALD, M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON, W.C.2

advice tendered by the majority of Executive Council which Sir Joseph Byrne accepted have already been communicated to you in Sir Joseph Byrne's Confidential Despatch No. 5 of the 3rd January last.

No 2

38005/55

It is not suggested that that advice should be reconsidered but, since the destination of this land is not finally settled by the Commission (it is to remain Crown Land) and since there is to be power to add from Crown Land areas of land for native occupation and use - see clause 54(6) of the Crown Lands Amendment Bill forwarded with my Confidential Despatch No. 72 of May 21st, there would seem to be nothing indefensible or illogical in bestowing in the Crown Lands Amendment Bill a similar power to add to the Highlands from Crown Lands. This suggestion was discussed with Sir Joseph Byrne before he went on leave and met with his approval, and is commended for your favourable consideration.

No 1

38005/4/55

5. The Commission recommended that all Forest Reserves which are bounded partly by European Highlands and partly by Native Reserves should be included in the Highlands and that "any question created by a change of user in respect of any part of the Forest contiguous or near to the Reserve should be a special case to be decided on its merits" - section 1977. I must confess to viewing this recommendation with some misgiving more particularly in respect of the Mt. Kenya Forest Reserve for which the Kikuyu profess some superstitious regard and in which they exercise traditional rights in regard to cutting firewood and building poles. I do not, however, desire to raise a definite objection and am satisfied with the machinery proposed in the third paragraph of Section 1 of the European Elected Members' memorandum, provided that the final ...

final arbitrament is placed with the Secretary of State.

4. In section 1957, the Commission dealt with the position regarding certain Indian-owned farms to the East of Muhoroni. There are, however, certain other Indian-owned farms near Nairobi and one farm near Kiu, which the Commission did not mention. The farms near Muhoroni comprise approximately 1000 acres, those near Nairobi 2857 acres and the Kiu farm is 195 acres in extent. There are also 2568 acres of land near Nairobi now held by Europeans in respect of which the right to transfer to Asians has in the past been sanctioned. I assume that the Commission's recommendation in section 1957 will apply to these other Indian-owned farms, and also that any permission to transfer to Asians accorded in the past, but not used, in respect of the above mentioned lands near Nairobi, will be abrogated by the Order in Council.

5. As regards demarcation of the boundaries, these march at a large number of points with Native Reserve boundaries which either have already been, or will shortly, be demarcated. The question of demarcating the remainder is one of expense which can be considered locally in due course.

6. The Commission adopted the expression 'accredited representatives' in various passages of their Report, but gave no indication as to whom they considered these persons to be. I see no reason why the proposal in the penultimate paragraph of the European Elected Members' Memorandum as to the constitution of the Highlands Board should not be accepted.

7. In the second section of the Memorandum the European Elected Members come to the crux of the position. You will observe that they claim that the Order in Council must provide for the grant to the Highlands Board of

"an absolute power of veto over all land transactions whatever within the boundaries of the European Highlands on similar lines to the powers proposed to be vested in the Native Lands Trust Board in reference to all land transactions in the Native Reserves": and that they state that this step would give the "same measure of security in regard to land as is to be enjoyed by the Natives on the recommendation of the Land Commission (see Sect.1979 of the Report)." They further propose on the first page of the Memorandum that the Highlands Board should have the power to veto the establishment of new township areas within the boundaries of the European Highlands.

8. It may, of course, be represented that, in fulfilling this part of their task, the Commission were concerned only with the future position of Natives vis-a-vis the Highlands: that they recognised that their recommendations in regard to the lands to be added to the present Native Reserves for Native use and occupation involved some sacrifices on the part of the European Community, and desired to safeguard the European position from any further encroachments on behalf of the Natives for the purpose of satisfying their economic needs: and that they made no recommendations concerning the administration of or inter-racial relationships between non-natives within the Highlands. Support is lent to this view by the phrasing of sections 1979, 2152 and 1494-1496 of the Report.

It is moreover arguable that the import of the words "the same measure of security in regard to land as we have recommended for the natives", which the Commission used in Section 1979, cannot have been fully appreciated by them for the reason that, whereas they recommended ...

recommended that Native Lands should cease to be Crown Lands and be vested in a Trust Board, the lands in the Highlands are either held under individual title (in freehold or under lease from the Crown) or are Crown Lands (available for future alienation or reserved as Forest Reserves, township or outspan reserves); and that there can be no question therefore of vesting the ownership of any of these lands in a Highlands Board.

There is, I consider, some force in this argument if it is to be accepted that the Commission did definitely recommend the renunciation of Crown ownership over the "Native Lands", and that this recommendation is to be acted upon. I dealt at some length with this point in paragraphs 8-9 of my Confidential Despatch No. 72 of May 21st: and it may be considered that an additional reason in favour of the view that the Native Lands Trust Board was meant to exercise only a protective trust over lands which, while dedicated to native use as Native Lands or Native Reserves remain in esse Crown Lands, is that the Commission must not be supposed to have failed to appreciate the significance of the words used by them in section 1979, and that in fact they visualized the Highlands Board as exercising a similar protective trust.

9. What are the safeguards as to exclusions, additions and exchanges provided in respect of Native Lands which are to apply analogously to the Highlands?

Exchanges are dealt with in Section 1474 of the Report and clauses 13 and 15 of the new Draft Native Lands Trust Bill.

Additions are provided for in clauses 14 and 15 of the Native Lands Trust Bill and in clauses 54 (6) and (7) and 55(8)(a)(b) and (c) of the Crown Lands Amendment Bill.

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In these clauses the position of land to be taken from the Highlands for purposes of an exchange is adequately safeguarded, and as I have observed above in paragraph 2, I see no objection to an analogous provision in regard to additions to the Highlands.

10. The most important safeguard from the European stand point is in regard to exclusions.

In the case of Native Lands, if land exceeding ten acres in extent is to be set apart or excluded (the setting-apart process must be regarded for the purpose of this analogy as exclusion) for purposes of social service, trade or industry, the Trust Board's consent must be obtained or, if it is refused, the sanction of the Secretary of State must be given - see clause 19(6) of the Native Lands Trust Bill. It is also provided in clause 30 of that Bill that, where land in the Native Lands is required for townships, trading centres, markets or Government institutions; the proposal must, if the land exceeds ten acres in extent, be submitted to the Trust Board and ultimately, if necessary, to the Secretary of State.

Now if this idea is applied to the Highlands it must mean that, if land is to be removed from the classification of land in respect of which Europeans have a privileged position, the approval of the Highlands Board must be obtained, or failing that the Secretary of State must approve. I agree, therefore, that the European Elected Members are justified in their claim that the establishment of new township areas in the Highlands, whether from Crown Lands or from alienated agricultural lands, is a matter which should require the approval of the Highlands Board, subject to the right of the Governor to refer any case in which the Board withholds approval to ...

to the Secretary of State for his final decision.

11. I regret, however, that I cannot agree that "the power to veto all transactions which may result in any portion of the Highlands being alienated to anyone other than a person of pure European descent" is a matter which arises out of the Commission's recommendations.

I presume that the analogy claimed is that the Native Lands Trust Board is to be required to approve the transfers of leases in "C" areas from natives to non-natives - see Section 1469 of the Report, Article 15(3)(e) of the draft Native Lands Trust Order in Council and Clauses 55(5) and (7) of the draft Crown Lands Amendment Bill. The purpose of this provision is clear but, in respect of the exercise by the Trust Board of its power of approval, no distinction is made between different classes or races of non-natives; and, once the transfer from a native is approved, the Board has no concern as to whether subsequent inter-racial transactions amongst non-native transferees occur or not.

I cannot agree therefore that this provision presents an analogy upon which to support a claim that the Highlands Board should be empowered to veto inter-racial transactions amongst non-natives in the Highlands. Indeed the European Elected Members' memorandum seems implicitly to recognise the weakness of the supposed analogy: for if the analogy did indeed exist, it would become incumbent on the Highlands Board to approve all transactions in land in the Highlands. The impracticability of such a position is, however, tacitly recognised and, in limiting the proposed power of veto to one class

of ...

of transaction only, viz. inter-racial transactions, the European Elected Members have in my opinion effectively weakened this point in their case.

The general power of veto must in my view remain with the Governor in Council as it does at present. I should, however, see no objection to the institution of an administrative practice of consulting the Highlands Board prior to submitting any such transaction to the Governor in Council.

12. As regards cases of change of user, the European Elected Members are on somewhat stronger ground. It will be seen that in section 1773 of their Report the Commission did recommend that, if a change of user in a lease is desired, the Trust Board should be consulted where the land in question exceeded ten acres in extent. The recommendation is not a strong one: no mention was made of what the procedure should be if such advice as they might give was disregarded but, in interpreting this section in clause 45(3)(b) of the Native Lands Trust Bill, provision has been made for eventual reference to the Secretary of State if necessary.

Now in the case of land in the Highlands, changes of user would only be made from an agricultural user to some commercial, residential or other non-agricultural user: and as such a change might be held to remove the land concerned from the classification of land in which Europeans have a privileged position, I agree that there is a case for granting to the Highlands Board the same power of veto as is to be given to the Native Lands Trust Board. Any provision to this effect in the Order in Council must however indicate precisely the limits within which this veto may be used, that is to say, is it to apply only to "agricultural lands" or to lands also

in ...

in respect of which a change of user has been granted?

The important matter in this connection from the European point of view is not so much control of the change of user itself but control of subsequent inter-racial transactions in the land in respect of which the change of user has been granted. I have already expressed my views that such subsequent control should be retained by the Governor in Council, and it therefore becomes of added importance that it should be perfectly clear when and in what circumstances this control is to be exercised.

This brings me to the consideration of the contents of the first fourteen paragraphs of the second section of European Elected Members' memorandum and of the difficulty to which I referred in paragraph 6 of my Confidential despatch No. 64 of May 4th.

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15. As intimated in the enclosure to your predecessor's despatch No. 152 of February 16th, the Chairman of the Commission was informed that the privileged position referred to in the sixth term of the Commission's terms of reference involved the rights of Europeans to acquire by grant or transfer agricultural land in an area to be defined and to occupy land therein: and that no person other than an European shall be entitled to acquire by grant or transfer agricultural land in such area or occupy land therein. Later in the enclosure your predecessor intimated that this was the same definition which has been accepted for 50 years in practice.

It is, however, a fact that there has never been a definition of what was meant by "agricultural" lands. The European Elected Members contend that, at least since 1925, the expression "agricultural lands" signifies all lands situated within the Highlands other than ...

than lands in townships and that, no matter the use to which such lands may be put, the privileged position of Europeans in respect of them is always to apply.

On the other hand, the view taken by successive legal advisers to this Government is that, once a change from agricultural to commercial or other non-agricultural user takes place, the land in question ipso facto ceases to be agricultural land, and therefore is free for transfer to and occupation by persons of other races.

14. This issue arose acutely some months ago and a memorandum on the subject was prepared by the Commissioner for Local Government, Lands and Settlement.

I enclose a copy of this memorandum from which will be seen that no certain line of interpretation has been adopted by the Governor in Council from time to time.

I also enclose a copy of an opinion given on this point by the present Attorney General.

In the passages quoted in the European Elected Members' memorandum from Lord Francis Scott's letter of April 24th, 1934, it is submitted that the interpretation intended by the expression "agricultural lands" was all lands outside townships. Neither I nor any of my advisers are in a position to know what was the intention of His Majesty's Government on this point since admittedly it did not actually arise for separate settlement at the time: but I venture to advance the following considerations.

On the Indian side there is, as might be expected, a strong reluctance to submit to being debarred from opportunities of commercial and industrial development because these happen to arise in areas not formally classified as townships or trading centres. There are a large number of shops run by Indians on European-owned farms ...

farms in the Highlands but the land-owner gives nothing more than a verbal permission to occupy and the Indian merchant has no security of tenure. It was necessary to control this practice and for this purpose the Shops in Rural Areas Ordinance was enacted in 1953. Occasions, however, will no doubt arise when, for the purpose of conferring security of tenure, sub-divisions will be made cutting off from the farm one or more small parcels of land for trading purposes.

Now as regards trade and industry carried on on such plots quite independently of farming, I share the views of the Attorney General that the use of a parcel of "agricultural" land for these purposes constitutes a change of user and that the land in question then, by ceasing to be agricultural land in the Highlands, is removed from the scope of Section 78 of the Crown Lands Ordinance (Cap.140). It is however the accepted policy of this Government that no change of user should be deemed to occur when a farmer erects on his farm a factory for the treatment of the agricultural products of his own farm. This point was dealt with by a Select Committee of Legislative Council in 1953 whose Report was adopted.

I enclose a copy of the Report and you will observe that a proviso was included regarding manufacturing processes and vide para. 6 c on page 3 of the Report.

15. Whilst it is true that the cases which have occurred recently and which aroused European opposition have been cases of small plots for trade I feel that that opposition was based on principle and that the real fear is that expressed on page 4 of the European Elected Members' Memorandum, that is the fear of gradual expansion and encroachment of the Indian population in the Highlands

unless ...

unless the most rigid adherence to a drastic policy of restriction is ruthlessly maintained. I cannot help feeling that this fear is not unfounded and I believe that it derives support from such expansion and encroachment in other parts of the World. One Indian store-keeper living and trading on half an acre of land does not seriously affect the situation. When however his children grow up and want establishments of their own, knowing no home other than the land on which they were born and on which they have lived all their lives, then they do become a distinct menace to the "white" integrity of the Highlands.

16. I am inclined to think that, whatever the legal position may be, there is something to be said for the European Elected Members contention that undue importance may have been attached to the word "agricultural" in this connection. If the intention of the Imperial Government has been to protect the White Highlands as a home for Europeans, then there seems a considerable danger of this intention not being realized unless non-Europeans are confined to townships and declared Centres of Trade while all other land, irrespective of the use to which it is put, (whether residential, arable, pasture, game preserve, racing stables, golf course or any other purpose which may appeal to its owner) is preserved entirely for European occupation.

17. Leasing of land in the Highlands for mining purposes presents, in theory at least, a difficulty. There is nothing to prevent a non-European, lawfully in possession of a prospecting right, from prospecting for minerals in Highlands. If he were to locate minerals in the Highlands outside a township or trading centre he could lawfully demand and could not be refused a mining lease. It will in my opinion be necessary to make it

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clear that the veto on inter-racial transfer - by whomever exercised and within whatever limits - cannot apply to mining leases. In practice the difficulty is not, probably, very real. In the first place it is not believed that minerals exist to any considerable extent in the Highlands and secondly mining is not an occupation in which Asians in Kenya readily engage.

18. These various matters require very careful consideration and I fully appreciate the difficulties which may be encountered particularly having regard to the attitude adopted in the Legislative Assembly of India. I have, therefore thought it advisable to acquaint you with my views without delay so that you may be in possession of them while His Excellency, Sir Joseph Byrne, is still in England rather than to wait until a draft Order in Council could be prepared here which would incorporate them.

If in the course of the discussions of this question it becomes apparent that His Majesty's Government is not prepared to accept in full the claims of the Elected European Members, I feel that I should emphasize the point that, if the privileged portion is to be restricted to "agricultural lands", then the term "agricultural lands" must be held to cover residential user. The making of homes by Europeans in the Highlands, whether these be farms or small residential holdings, is an aim which this Government has always encouraged, and the attractions of the Colony for residential settlement are being stressed at the present time in Government publications. I have no doubt in my own mind that, notwithstanding a technical change of user, the use of land in the Highlands for the purposes of residential settlement falls quite definitely within the intentions of the past. The danger of the transfer of such holdings to Asians exists although no

cases have as yet arisen and there is no doubt that it is gravely perturbing to general European opinion: and, unless it can be removed, will prove not only a deterrent to future settlement but also a source of serious political agitation and unrest amongst the present Colonists.

A solution on these lines would leave land used for purposes of trade or industry (whether inside or outside the boundaries of townships or trading centres) free from any inter-racial restrictions on transfer: and might to some extent lessen the bitter opposition which the preservation of the "White Highlands" by Order in Council will inevitably arouse. I must however, say that for the general reasons outlined in the previous paragraphs of this Despatch and for the following reasons I have grave doubts as to the ultimate success of any such compromise. In the first place it is not possible to distinguish in the case of an Indian trader between industrial user and residential user. His shop is his residence. It is not possible to allow him to acquire a plot for business purposes and then to forbid him to reside on it. Secondly the practical result will be, I think, that the Highlands Board will in no case consent to a change of user if the land concerned is to become exempt from veto on inter-racial transfer. The Governor in Council, therefore, if the Governor in Council is to retain control as recommended in paragraph 11 above, will be placed in the invidious position of having to choose between over-riding the Highlands Board or consenting to a permanent restriction of industrial development.

12. I would conclude this despatch by drawing your attention to the fact that during the past few weeks various Farmers Associations in the Colony have passed resolutions to the effect that

"That ...

MEMORANDUM.

Land in this Colony has been issued under the Crown Lands Regulations, 1897, the Crown Lands Ordinance, 1902 and the Crown Lands Ordinance, 1915: and Section 75 of the latter Ordinance applies to land issued under each of the three measures. For the present purpose the Crown Lands Regulations 1897 may be disregarded as practically no land now remains under them.

2. Leases under the Crown Lands Ordinance, 1902, provide that the land be used for agricultural or pastoral purposes but contain no special covenant against inter-racial transfer. They run for 99 years. Government has consistently held that use for residential, business or industrial purposes constitute a change of user which requires approval. When such approval has been given the method of giving effect to the transaction is by a Deed of Assignment in respect of the portion concerned; and, as a higher rental for this portion is charged by Government, the Crown is made a party to the Assignment for the purpose of receiving the rental covenant and authorising the change of user.

3. In similar circumstances where the land was issued under the Crown Lands Ordinance, 1915, between the date of that Ordinance and that of the Registration of Titles Ordinance, 1919, the procedure prescribed is the surrender of the head title and the issue of two fresh titles.

4. Since 1919 grants of land have been made under the Registration of Titles Ordinance, 1919, and in the same circumstances the original grant is not surrendered but a transfer in the form prescribed by the Registration of Titles Ordinance is executed and registered in respect of the portion; a record is endorsed on the Head title that such and such portion has been sub-divided off, and a Certificate

of title in respect of the portion is issued by the Registrar to the transferee. Both the transfer and the certificate contain any special conditions which may have been laid down by Government in respect of the sub-division.

5. Now it is not, I believe, open to question that, in the case of land leased between 1915 and 1919, there can be no carry over of the terms of the original lease to both of the new leases issued for the subdivided portion, and the remainder of the farm. In such cases a change of user is held to have occurred and the lease for the subdivided portion would not be issuable under Part IV of the Crown Lands Ordinance. As regards length of term in such lease, the present policy is to make the term 999 years in areas reasonably remote from any township where there would be no conflict with the policy applicable to township titles and where an industrial purpose closely connected with the agricultural pursuits of the area is contemplated; otherwise the term is for 99 years.

6. It appears, however, to be open to question, in regard to leases issued under the Crown Lands Ordinance, 1902, and grants made under the Registration of Titles Ordinance, 1919, whether, on the grant of an additional user, the Deed of Assignment in the one case or the transfer in the other represent a limitation of the original conditions or merely an additional permissive use.

7. The first case in point, which came up to Executive Council, viz., Farm 487/4/17 Elburgon, was in 1927. Here the original farm was held under the Crown Lands Ordinance, 1902, and a number of subdivisions had been made and used for commercial purposes. The change of user in the particular case was for a store and house. Executive Council approved the subdivision and advised that "no restrictive clause need be inserted in the lease on change

of user". The farm adjoined Elburgon township and, although at the time no question had actually arisen of including these portions in the township, it may have been in the air as the acquisition of a fairly considerable area of the farm for township purposes was mooted in 1928, and after fairly protracted negotiations the boundaries of Elburgon township were in fact extended in 1932 so as to include all the commercial development on this farm. Executive Council may, therefore, have been influenced by the vicinity of the plots to a township.

8. The same reasoning does not, however, cover the next cases which were considered in Executive Council on the same day, viz: (1) a subdivision of 10 acres for residential purposes; this was to be cut out of L.O. 469/3/1, a farm situated approximately 12 miles north of Nakuru on the Solai Road. (2) a subdivision of 3-5 acres from L.O. 838 Uasin Gishu for the purpose of a store at Hoey's Bridge and a transfer to the Kitale and Hoey's Bridge Stores Limited. (3) a subdivision of 3 acres from L.O. 796 Uasin Gishu (not far from Turbo Station) for the purpose of a store and hotel.

Each of these farms was held under Crown Lands Ordinance, 1902, and in each case on January, 19th, 1927, Executive Council approved the change of user and advised that no restrictive covenants regarding inter-racial transfer need be inserted.

9. The next case to go to Executive Council in this connection was the Rongai case. This case covers a period of several years. It comes in here chronologically, since on February 18th, 1927, a transfer to an Asiatic was vetoed and a sharp reversion of opinion from that recorded the previous month as shown

above/

above took place.

10. Following apparently on this decision, when the next case came up from the Commissioner of Lands (viz., a subdivision in respect of 2 plots, one of 5 acres for factory purposes in connexion with the adjoining farm, and one of 3 acres for residential purposes - L.O. 4895 Maccootha River, Kyambu - Crown Lands Ordinance, 1902, title) a Secretariat enquiry whether both or either lease would be covenanted against Asiatic ownership or residence ^{by} other than a servant was put to and answered in the affirmative by the Commissioner of Lands, and Executive Council, on May, 20th, 1927, advised approval of the subdivision on this understanding.

11. Then on the 26th. July, 1927 and 17th. August, 1927, there were submitted two cases of subdivision with change of user. The first was in respect of a 6-acre plot for residential purposes, L.O. 446 Nakuru (H.H. James): the second was for 2 acres for a store, L.O. 472/2 close to the junction of the Lower Molo Ravine and Nakuru Lower Molo roads. Both leases were under the Crown Lands Ordinance 1902, but in neither case was any mention of restrictive clauses made one way or the other either in Executive Council or in the correspondence on the files.

12. Finally we come to the Makuyu case where a 1-acre plot has been cut out of a freehold Estate and sold to a Company called Makuyu Stores, Limited. This Company is in Liquidation and the administrators have applied for permission to sell the plot to an Asiatic.

There are, in the close vicinity, 5 "shops on farms" but the development is by no means so full for commercial purposes as at Rongai. It is this case which is now up for consideration. No approval of a change of user is required as the land is freehold (though, actually, when in error the application was submitted for approval/

approval to a change of user approval was given by Executive Council on August 22nd. 1930.

13. The crux of the matter appears to be whether or not Government agrees to a change of user for commercial or industrial or for any purpose other than the agricultural purpose - save where the industrial purpose is intimately connected with the agricultural use, e.g. a coffee factory. If it does, then it appears to be questionable whether it can thereafter veto an inter-racial transfer on the ground that the grant is agricultural land in the highlands, as no Agricultural user is involved.

14. In regard to the Makuyu Stores, the use is de facto commercial and, if the farm had been held on a leasehold title, the change of user for commercial purposes would have been given. Control of inter-racial transfers of freehold land used for non-agricultural purposes can be quite effective because Government may veto any sale in respect of which it is not satisfied that, having regard to the size and situation of the plot and any other relevant factor, the freeholder has proved that his proposed user will not and cannot be agricultural.

15. It is, however, a fact, that every application we have had ^{up} to date concerns land held under the Crown Lands Ordinance, 1902, as to which, as is noted above, legal interpretation is open to doubt. Moreover the above record of cases shows that at different times Executive Council has taken different views as to the interpretation to be put upon the White Paper, 1923.

The matter is of such obvious importance that it is high time that a definite view should be taken and adhered to, and presumably when action is taken to

implement the

implement/

implement the Kenya Land Commission's recommendations regarding the Highlands, the point must be precisely dealt with.

(Sd) W.M. Logan.

COMMISSIONER FOR LOCAL GOVERNMENT,
LANDS AND SETTLEMENT,
NAIROBI.

4th, July, 1954.

13th. February, 1934,

The Honourable
The Colonial Secretary.

RE: SEGREGATION OF RACES
THE WHITE PAPER 1925 LAND IN THE HIGHLANDS.

In the White Paper of 1925 His Majesty's Government laid down the policy to be observed in regard to the reservation of land in the Highlands for Europeans only. The question that has now arisen is this: Did His Majesty's Government intend the restriction to apply to all land, other than land in townships, irrespective of the purpose for which the land was to be used, or did it intend the restriction to apply only to agricultural land? In my opinion the intention of His Majesty's Government, as stated in the White Paper is in effect, that the reservation for Europeans of land in the Highlands outside townships is to be confined to land for agricultural purposes.

2. A perusal of paragraph 8 of the White Paper shows that His Majesty's Government, in arriving at a decision, traced his history of land policy in the Colony and it is on the wording of the paragraph as a whole that I base my opinion.

3. In reciting Lord Elgin's policy, the words "suitable for European cultivation" and "agricultural land in the Highlands" are used. Further on we come to the word "particular farms". Again when referring to the reservation of the European area it is stated that "Lord Milner made it clear that the reservation of a certain area for Europeans implied that a similar

reservation....

reservation should be available for Indians who wished to take up agricultural land". And at the end of the paragraph in dealing with the reservation of land for Indians the words "what demand there is for agricultural land on the part of the Indians who will give suitable guarantee of their intention to develop the land themselves" appear. In other words, paragraph 8 would appear to refer only to agricultural land.

4. It seems to me, therefore, that, so far as land outside townships is concerned, the restriction to European ownership can only be maintained, in the absence of restrictive covenants, to land which is used or is intended to be used for agricultural purposes.

5. The following extracts from letter of my predecessors, which support my contention, are relevant -

(Mr. Lyall Grant's letter No.M.71/25 of the 12th. January, 1925, to the Honourable the Colonial Secretary)

"A careful perusal of that document however inclines one to think that its intention is that Indians may have any sort of holding in the Highlands except an agricultural holding, whether the holding be inside or outside a township. The only restraint on alienation to Indians is contained in the Crown Lands Ordinance, 1915."

(Mr. Huggard's letter No.M.127/27 of 17th. January, 1927 to the Honourable the Colonial Secretary.)

"6. As I understand the White Paper, coupled with the subsequent communications from the Secretary of State on the subject, the question as to whether Asiatics may hold land in any area depends in the first instance upon whether the area is, taking all circumstances into account, including the conditions of title under which it is held, essentially -

- (a) agricultural, or
- (b) residential or commercial,

in its character and user. If an area is agricultural then the policy laid down is that land in that area should be granted only to Europeans. If on the other hand an area is a residential or commercial area then prima facie the policy of segregation must be abandoned regardless of whether the area in question is declared to be a township under the Ordinance or not.

So/

So far as I am able to ascertain from the records of my Department Government has, since the issue of the White Paper, dealt with all cases which have arisen in accordance with the above broad principles."

(Mr. MacGregor's minute No. L. 140/84/3/17 of the 27th. September, 1952, to the Honourable the Commissioner for Local Government, Settlement and Mines regarding a transfer of a land at Rongai from a European to an Asiatic)

"I think the test to apply is whether the land is agricultural land or is ~~xxx~~ properly to be used for industrial purposes. From that point of view I find it difficult to distinguish between a township and a trading centre."

(Sd) W. HARRIGAN.

ATTORNEY GENERAL.



COLONY AND PROTECTORATE OF KENYA

REPORT OF SELECT COMMITTEE ON "CHANGE
OF USER" OF AGRICULTURAL LAND

Report of Select Committee on "Change of User" of Agricultural Land

YOUR EXCELLENCY,

On the 10th May last we were appointed as a Select Committee by the Legislative Council—

"To examine the position regarding residential, commercial and industrial development on land leased from the Crown for grazing and/or agricultural purposes, and the alleged 'change of user' incidental to such development, and to furnish a report."

The Committee was delayed in commencing its work on account of the illness of one of its members and pressure of other duties on other members.

The first meeting of the Committee was held on the 19th August. Seven meetings have been held and several memoranda, submitted in response to a public invitation, considered. The Committee has received oral evidence from Major E. S. Grogan, Mr. A. C. Tannahill, Mr. R. W. V. Bunbury, Mr. M. D. Puri (representing the Federation of Indian Chambers of Commerce and Industry), and Mr. Shams-ud-Deen.

2. The Committee first reviewed the terms on which leasehold agricultural land is held under the two Crown Lands Ordinances, dated 1902 and 1915 respectively, with a view to forming an opinion on the question whether, when such land is used for purposes other than agriculture, there is in fact a "change of user."

The position was found to be that, under the Crown Lands Ordinance, 1902, the following implied covenants by the lessee are applicable:—

"14. (e) To use and develop the natural resources of the land leased with all reasonable speed having regard to all the circumstances of the case."

"15. (a) To improve and develop the resources of the land in a prudent and businesslike manner, and to abstain from the undue destruction or exhaustion of any timber, trees or plants for the sale or cultivation of which the land is leased."

Farm leases under this Ordinance almost invariably contain a special reference to article 16 thereof, and a specific covenant by the lessee "to use the land for grazing and/or agricultural purposes only, and for no other purpose whatsoever."

3. The relevant sections of the Crown Lands Ordinance (Chapter 140 of the Revised Edition) are the heading to Part IV and sections 25, 42 and 44 (b). These respectively read as follows:—

PART IV.

Disposal of Agricultural Land.

(1) OFFERING OF LAND FOR AGRICULTURAL PURPOSES.

"25. The Commissioner of Lands may cause land available for leasing for agricultural purposes to be surveyed and divided into farms which shall, except with the consent of the Governor, exceed five thousand acres, or, except with the consent of the Secretary of State, exceed seven thousand five hundred acres."

"42. In every lease under this Part there shall, by virtue of this Ordinance, be implied a covenant by the lessee not to divide the land leased and assign any portion thereof, and not without the consent of the Governor in Council to divide the land leased and sub-let any portion thereof."

"44. (2) (b) The rent reserved in each lease shall be at the rate prescribed in section 36 of this Ordinance, provided that for no period of the lease shall the annual rent reserved in respect of any parcel be less than ten shillings."

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Report of Select Committee on "Change of User" of Agricultural Land

YOUR EXCELLENCY,

On the 10th May last we were appointed as a Select Committee by the Legislative Council—

"To examine the position regarding residential, commercial and industrial development on land leased from the Crown for grazing and/or agricultural purposes, and the alleged 'change of user' incidental to such development, and to furnish a report."

The Committee was delayed in commencing its work on account of the illness of one of its members and pressure of other duties on other members.

The first meeting of the Committee was held on the 19th August. Seven meetings have been held and several memoranda, submitted in response to a public invitation, considered. The Committee has received oral evidence from Major E. S. Grogan, Mr. A. C. Tannahill, Mr. R. W. V. Bunbury, Mr. M. D. Puri (representing the Federation of Indian Chambers of Commerce and Industry), and Mr. Shams-ud-Deen.

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"44. (2) (b) The rent reserved in each lease shall be at the rate prescribed in section 36 of this Ordinance, provided that for no period of the lease shall the annual rent reserved in respect of any parcel be less than ten shillings."

4. Major Grogan, in his evidence before the Committee, contended that, although both Ordinances were capable of strict interpretation to the disadvantage of the lessees, the Ordinances should be interpreted solely with the object of encouraging the utilization of the land to the best possible economic advantage of the lessees for the time being.

In this regard, the Attorney General advises that, while it is true that the general principle of the Common Law is that all grants by every common person are taken most strongly against himself and most favourably towards the grantee, a grant from the King is taken most strongly against the grantee and most favourably for the King; and further advises that as titles under both the Crown Lands Ordinances purport to be issued by the King their interpretation must be strictly in accordance with the principle enunciated.

5. The Committee is satisfied that when land is leased under the Crown Lands Ordinance, 1902, and the lease contains a specific provision for the use of the land for purposes of grazing and agriculture only, or under the Crown Lands Ordinance (Cap. 140), and the land is used for purposes other than agricultural or pastoral, a "change of user" does in fact technically take place. The Committee is divided as to the position of lessees under the Crown Lands Ordinance, 1902, in whose leases there is no specific covenant or no specific reference to section 16.

6. The Committee considered that where it could be shown that public advantage would be gained by the granting of a "change of user" and that the health and amenities of the surroundings would not be adversely affected thereby, consent should readily be accorded.

The various kinds of "change of user" were considered in detail by the Committee, and its recommendations in regard to each kind are set out below:—

A.—SHOPS ON FARMS.

In the view of the Committee, public interests would be prejudiced by a total prohibition of shops on farms, but control should be exercised. The number of shops should be controlled by the local authority; the buildings should conform to public health requirements; and power should be retained to close down any shop in which any malpractices occurred. Under existing enactments it appeared that there is no effective control of shops on freehold land. It seemed preferable therefore that this question of shops on farms should be dealt with by *ad hoc* legislation applicable to all shops wherever situated outside townships or trading centres. For this purpose, a Bill is appended hereto in the form adopted by the Committee. The Bill provides for the control of all shops on farms (both leasehold and freehold where no transfer of ownership of the land is concerned, and provides for the issue of annual licences by a licensing officer after consultation with the local district council or committee. As regards the fee to be charged in respect of such licences, the Committee recommends that the charge for a licence in respect of a shop should be Sh. 10 per annum if it is situate outside a radius of four miles from a trading centre or township, and Sh. 40 per annum if it is situate within that radius.

B.—RESIDENTIAL SUBDIVISIONS.

These are of two classes:—

- (i) Subdivisional schemes for residential estates on the borders of municipalities or townships.
- (ii) Small isolated plots excised from farms in out-districts.

The Committee considers that in principle as regards a "change of user" there is no difference between the two classes. It recommends that twenty acres should be regarded as the minimum area required for a bona fide agricultural holding unless acceptable reasons are advanced to the contrary in individual cases.

The Committee considers that the prevailing practice of charging a rental payable to the Crown of 3 per cent of the increase in value created by the permission to subdivide and change the user is fair and reasonable. A departure from present practice is, however, recommended in that the Committee considers that a sufficient minimum is Sh. 10 per unit instead of Sh. 72.

C.—FACTORY AND INDUSTRIAL PLOTS.

In the view of the Committee, no "change of user" should be deemed to occur when a farm holder erects on his farm a factory for the treatment of the agricultural products of his own farm. Where, however, the conversion of agricultural produce involves a manufacturing process in which the finished product contains a substantial amount of non-agricultural ingredients, and in which it undergoes marked change in appearance arising from the process of manufacture, then the activity should be regarded as constituting a "change of user" for which Government permission should be obtained and an annual payment be made (by way of increased rent) of Sh. 10. If a definite subdivision and change of ownership of the land to be used for factory or industrial purposes takes place, the Committee approves of the present practice of charging an annual rental of 1 per cent on the unimproved value of the land, subject to a minimum of Sh. 10 per annum.

7. Consideration was given by the Committee to the length of term to be granted when "change of user" is sanctioned. Agricultural leases are, (a) for 99 years under the Crown Lands Ordinance, 1902, and (b) for 999 years under the Crown Lands Ordinance (Cap. 140). Under the latter Ordinance, grants for township plots are for any term not exceeding 99 years. The Committee was informed that in dealing with applications for "change of user" the practice of Government has been to require the applicant to surrender his agricultural title and accept a new lease limited to 99 years in respect of the portion concerned. The Committee further understands that Government has recently had occasion to review this practice in so far as it relates to a "change of user" for an industrial purpose in respect of agricultural land held under the Crown Lands Ordinance (Cap. 140), and has decided "that, in cases of subdivision and 'change of user' of agricultural land in areas reasonably remote from any township where there would be no conflict with the policy applicable to township titles and where an industrial purpose closely connected with the agricultural pursuits of the area is contemplated, there is no objection to transfers being effected on existing titles without diminution of term."

The Committee expresses its agreement with this decision.

8. Although the questions referred to in this paragraph are not strictly within the terms of reference of the Committee, they are felt to be so closely associated with the various problems under consideration that the Committee desires to make recommendations thereon.

(1) SPORTS PLOTS.

The Committee has noted, and sees no reason to recommend any variation in, Government's present practice of granting title for small plots within townships at a rental of Sh. 72 per annum for five acres on 25-year leases, and of granting larger areas for golf courses, race-courses, polo grounds, etc., upon leases of similar term, but with rentals having some relation to the value of the land, subject to a minimum of Sh. 2 per acre per annum. When land required for sports purposes is excised from alienated land, and a "change of user" is granted, the Committee considers that a minimum rental of Sh. 10 payable to Government should be charged.

(2) CHURCH AND SCHOOL PLOTS.

The Committee recommends that no change be made in the present practice in respect of the granting of church and school plots in townships except that, where church and school user conditions are combined in one

4

title, the rental of Sh. 72 per annum only should be charged. As regards plots outside townships, where excised from private farms or granted on lease by Government, the Committee considers that the rental payable to Government should be Sh. 10 per annum.

(3) SUBDIVISION OF TOWNSHIP PLOTS WHERE NO "CHANGE OF USER"
IS REQUIRED.

The Committee was informed that the present practice, in respect of subdivisions of township plots where no "change of user" is granted, is to charge a minimum rental of Sh. 72 per annum in respect of each portion, irrespective of the size or value of each plot.

The Committee, considering that this practice tends to inflate the values of township plots and operate adversely against the poorer class of the community, recommends the adoption of the following formula: "That the annual rental on subdivisions of township plots where no 'change of user' is granted be either (a) proportionate to the rental reserved in the head-lease, or (b) at the rate of Sh. 72 per acre, provided that no such rental shall be less than Sh. 10 or more than Sh. 72 per plot, whichever of (a) or (b) is the greater."

TRANSFER OF COMMERCIAL, INDUSTRIAL AND RESIDENTIAL PLOTS OUTSIDE
TOWNSHIPS TO NON-EUROPEANS.

9. Representations were made to the Committee to the effect that unrestricted inter-racial transfer of such plots should be permitted, but the Committee makes no recommendation on this point, which it considers to be outside its terms of reference.

We have, the honour to be,

Your Excellency's most obedient servants,

W. M. LOGAN, *Chairman*.

A. D. A. MACGREGOR,

ALEX. HOLM,

G. O. GILBERT,

FRANCIS SCOTT,

H. E. SCHWARTZE,

CONWAY HARVEY.

Copy sent to
2/2/35 99
39

1. 2/2/35

3rd July, 1935.

Dear Secretary of State

Thank you for your letter of the 1st July. I quite agree that we should have a personal talk about the Zanzibar and Kenya questions. You will no doubt let me know when it would be convenient for you to arrange a meeting. In the meantime I can assure you that we shall take no action here which might prejudice the position.

Yours sincerely,

(Sgd.) MALCOLM MacDONALD

Direct 11 am
July 26 1935

~~100~~
29/7

100
100

Mr P. had told me
that you may assure Lord
Zetland that no British
interest is
interfered by us in either
of the matters referred to in
his letter in the
future; other countries
in the Island will not
interfere with the
one.

Edw. Hart

2/2/58

Put up a letter to Lord
Zetland for me to sign
M.M.

INDIA OFFICE,

38
E. 1/101

R

RECEIVED
1st July, 1935
C. O. RE...

My dear Secretary of State,

No 34

I have lately authorised the issue of an official letter to the Colonial Office dealing with the question of the Kenya Highlands. There is also the Zanzibar question, and on both these matters I have been strongly urged by the Viceroy to approach you personally and to discuss them with you. He says that they are very important from the point of view of Indian political opinion at the present time and I have no doubt that he is right. I think, therefore, you will agree that we should have a personal meeting.

Answer, 3-14-35 (37)

My time during the next two or three weeks will be very fully taken up with the India Bill in the House of Lords. What I should like, therefore, would be that we should meet as soon as it can be arranged during the latter part of July. I make this suggestion on the assumption that no action is required on your part on either question in the near future. If, however, it is otherwise, I shall do my best to arrange a meeting with you as soon as may be necessary.

Yours sincerely,

(Sgd.) Zetland.

The Rt. Hon. Malcolm MacDonald, M.P.

Copy sent to L. 28-1-35 47/1
102
38



India Office,
Whitehall.

1st July 1935.

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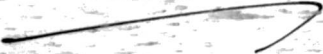
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The Right Hon. Malcolm MacDonald, M.P.

Answer 39

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Yours sincerely
Leland



Any further communication on this subject should be addressed to—

The Under Secretary of State for India,
Public and Department,
Judicial India Office,
London, S.W. 1.

and the following reference quoted:—
P. & J. 2327/35.

Telephone:—
Whitehall 8140. I.O. Ext. No. _____
Telegrams:—
Metaxandum, London.

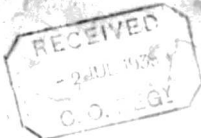


INDIA OFFICE,
WHITEHALL.

LONDON, S.W. 1.

1st July, 1935.

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Sir,

I am directed by the Secretary of State for India to refer to correspondence ending with your letter of the 8th March, 1935, No. 38005/35, regarding the recommendation contained in the Report of the Kenya Land Commission that the boundaries of the European Highlands should be safeguarded by an Order in Council, and to transmit for the consideration of the Secretary of State for the Colonies, copy of a memorandum embodying the views of the Government of India on this question. Mr. Secretary Macdonald will observe that for the reasons stated in the memorandum the Government of India urge very strongly:—

No 1H

(i) that there should be no change in the "privileged position" of persons of European descent in the Kenya Highlands, either in regard to the definition of the term "privileged position" in the proposed Order in Council, or as regards the area in which the existing privilege is enjoyed; and

(ii) that the small plot of farms immediately to the east of Muhoroni, which was alienated to Indians in 1906, should not be subjected to racial distinction of any character.

2. The Marquess of Zetland strongly supports the representations made by the Government of India. Apart from the arguments used in the memorandum, he desires to invite particular attention to the political considerations involved in this case, which, he understands, were emphasised by Sir J. Bhore in his recent informal conversations with Sir P. Cunliffe-Lister and which are strongly endorsed by the Government of India. He would point out that the effect of

see (32)

the proposed Order-in-Council will be to make a statutory discrimination against Indian subjects of His Majesty, simply because they are Indians, in a part of His Majesty's Dominions which is under the direct control of His Majesty's Government. The embodiment of a racial discrimination of this nature in statutory form would, in Lord Zetland's view, have a most unfortunate effect on all sections of Indian opinion, and would be readily exploited by those who profess distrust of the intentions of His Majesty's Government with regard to the new Indian Constitution.

3. Lord Zetland earnestly hopes that Mr. Macdonald will be able to meet to the full the requests made by the Government of India. He trusts that it will be found possible even now to leave undisturbed the existing position under which the reservation of the Highlands for European occupation rests on administrative practice, and that the proposal to give statutory recognition to this discrimination against the Indian community by Order in Council will not be proceeded with.

I am, Sir,

Your obedient Servant,

R. Steel

NOTE ON KENYA HIGHLANDS.

In their Report, which was presented to Parliament on 6th October 1931, the Joint Select Committee appointed to consider the Reports on Closer Union in East Africa together with the statement of the conclusions of His Majesty's Government recommended that "in view of the nervousness among the native population as regards the land question, a full and authoritative enquiry should be undertaken immediately into the needs of the native population, present and prospective, with respect to land within or without the reserve held either on tribal or on individual tenure". In April 1932, the Secretary of State for the Colonies accordingly appointed the Kenya Land Commission under the chairmanship of Sir William Morris Carter. The terms of reference of the Commission, included the following -

To define the area generally known as the Highlands within which persons of European descent are to have a privileged position in accordance with the White Paper of 1923.

The Commission's Report was presented to Parliament in May 1934. The Commission recommended that the boundaries of the European Highlands should be safeguarded by Order in Council, so that the European community may have the same measure of security in regard to land as the Commission had recommended for the natives.

2. In paragraph 1938 of the Report, the Commission observed that "the whole boundary (of the Highlands) is undetermined and the material does not exist from which the issue could be settled by a finding on facts". In their opinion "neither Lord Elgin's declaration of 1906 nor the White Paper of 1923, which are the basic guarantees of the European privilege in the Highlands afford any direct help in fixing the position of the boundary, except at two points on the Railway". Lord Elgin as Secretary of State for the Colonies had expressed his

approval in July 1906 of the practice then in force of limiting land-holding by Indians (outside Townships) to the areas east of Kiu and west of Fort Fernan. The Commission argue that it is not permissible to infer that the limits set by Lord Elgin could never be extended or contracted. A large number of farms had already been alienated outside this area under the Soldiers Settlement Scheme restricted to Europeans. In 1913 two farms in the Kaimosi area had been sold at a restricted auction to Europeans. The alienations under the Land Settlement Scheme (presumably the same as the Soldiers Settlement Scheme) represented an extension and were made with the consent of the Colonial Office. The White Paper of 1923 did not specifically exclude these alienations from the European Highlands. The Commission therefore have come to the conclusion that the area of the European Highlands should be extended so as to include further areas which might be considered suitable for European settlers. While not upholding the contention of some of their witnesses that any land which is suitable for European settlement should be treated as European Highlands, the Commission have proceeded on the principle that land where climatic conditions are cooler and more bracing should be included in the Highlands. They have therefore made the Report of the 1928 Sub-Committee of the Kenya Executive Council the basis of their proposed territorial definition of the boundaries of the Kenya Highlands. The area to be comprised within these boundaries is 16,700 square miles, of which 3,950 square miles is Forest Reserve.

3. In paragraph 1957 of the Report, the Commission have also recommended that a comparatively small block of farms immediately to the east of Muhoroni, which was alienated to Indians in 1906, should be deemed for the present to

be excluded from the European Highlands, that, if any plot comes into the market, it should be permissible for either a European or an Asiatic to buy it, and that, when any such plot has been bought by a European, it should thereafter be included in the European Highlands.

4. The Commission did not attempt any definition in their Report of the "privileged position" which persons of European descent are to have within the territorial limits to be included in the Highlands. In reply to a question asked by Major Milner in the House of Commons on the 14th February 1935, however, the Secretary of State for the Colonies stated that the Chairman of the Kenya Land Commission had been informed that the "privileged position" in question involved (i) "the right of Europeans to acquire by grant or transfer agricultural land in an area now to be defined or to occupy land therein", and (ii) that "no person other than a European shall be entitled to acquire by grant or transfer agricultural land in such area or to occupy land therein". Presumably this definition of the term "privileged position" is to be incorporated in the Order in Council defining the territorial limits of the Highlands.

5. Two conclusions emerge from the recommendations of the Commission:-

(1) The area to which Lord Elgin's original decision to limit alienations of land to persons of European descent applied, is to be considerably extended. In 1920, the total area alienated to Europeans or available for alienation is given as 11,859 square miles. The Commission's recommendation that 16,700 square miles should be so reserved therefore marks an increase of 4,841 square miles.

(2) If the definition of "privileged position" given by the Secretary of State for the Colonies is incorporated

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in an Order in Council, it is arguable that it would no longer be possible for the Executive Government to grant land in the Highlands to any Asiatic or to approve of the transfer of land from a European to an Asiatic which is permissible under the existing law.

6. The Government of India's attitude towards the reservation of Highlands for Europeans was set out in the following terms in the Memorandum presented to the Secretary of State for the Colonies by the Colonies Committee in 1924:-

"The contention of the Government of India is that Lord Elgin's decision related only to initial grants of land in the Highlands and that the terms of that decision were misinterpreted when they were stretched to cover a veto on transfers. Moreover, the inclusion of a definite provision in the Ordinance of 1915 making transactions in lands subject to an official veto on racial grounds, which had not appeared in the previous Ordinance of 1902, is incompatible with the terms of the decision".

This statement was made after the announcement of His Majesty's Government in the Command Paper of July 1923 that the existing practice must be maintained as regards both initial grants and transfers. The Colonies Committee were instructed by the Government of India to state this view in pursuance of the liberty, which the latter had reserved to themselves, when the White Paper was published "of making such representations as may be necessary whenever in future a legitimate opportunity should present itself either as a result of experience gained or by change of events or otherwise".

7. The decision of His Majesty's Government on the representations of the Colonies Committee was that the pledges, expressed or implied, which had been given in the past, must be continued and that no hope could be held out of the policy in regard to agricultural land in the Highlands being reconsidered. But the Government of India

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have not abandoned the position which they took up in 1924 or in the negotiations that led up to the White Paper of July 1923. They cannot therefore but object most strongly to the extension of the area in which both initial grants and transfers of land are to be restricted to Europeans or to the conversion of what is now an administrative into what would be tantamount to legal discrimination against Indians. Public opinion in India is extremely sensitive in regard to racial discrimination. India expects and has always demanded that, in countries under the administration of the Colonial Office, Indians should be on a footing of complete equality with other classes of His Majesty's subjects. This is in conformity with the principle pressed upon the Colonial Office by the Secretary of State for India in 1914 that there is no justification in a Crown Colony or Protectorate for assigning to British Indians any position inferior to that of any other class of His Majesty's subjects. Speaking in the House of Lords on the 14th July 1920 a former Secretary of State for the Colonies, Lord Milner, said - "In East Africa, as in other countries under the administration of the Colonial Office, it has been the avowed principle and it is the definite intention of the British authorities to mete out even-handed justice between the different races inhabiting these territories". Even the restrictions now in force on the ownership or occupation of land by Indians in the Highlands are racial and offend against this principle. The proposals of the Carter Commission will constitute a further inroad upon the principle and will occasion special resentment among all sections of Indian opinion at a time when His Majesty's Government are seeking to provide in the Government of India Act that a British subject domiciled in the United Kingdom shall suffer no liability, restriction or condition in regard to the holding of property in India, so long as

similar restrictions are not imposed in the United Kingdom on Indian subjects of His Majesty. India has always desired similar reciprocity between herself and the Colonies. If that cannot be secured, she can legitimately expect that His Majesty's Government will not permit, in the territories subject to their control, any extension of disabilities from which Indians now suffer. Unless this modest claim is admitted, Indians will feel that they are condemned to a status of humiliating inferiority in the Empire, and Indian faith in and devotion to the British Commonwealth of Nations will be profoundly shaken.

8. The Government of India would therefore urge very strongly; (a) That there should be no change in the 'privileged position' of persons of European descent in the Kenya Highlands, (i) either in the sense indicated in paragraph 5(2) of this Memorandum, or (ii) as regards the area in which the existing privilege is enjoyed; with regard to (i) it is pertinent to point out that, as stated in paragraph 8 of Part II of the White Paper of 1923, the restrictions in the Crown Lands Ordinance of 1915 do not "amount to legal restrictions against Indians, for it would be possible for the Executive Government to grant land in the Highlands to an Asiatic, or to approve of the transfer of land from a European to an Asiatic"; (b) that the small plot of farms immediately to the east of Muheroni, which was alienated to Indians in 1906, should not be subjected to racial distinction of any character. In their view the authoritative declaration made on the subject by His Majesty's Government in White Paper of 1923, should give to Europeans all sense of security that they can reasonably expect, and no Order in Council is necessary.

The Society of Friends now take up the same point about the proposed Order in Council which, as I may point out at the very beginning, is not yet in existence. The question at issue is whether the Order in Council, in addition to defining the area of the European Highlands, shall lay down that within that area Europeans have any special privileges in regard to the holding of land.

The position, as the thing stands at present, is that there is no legal sanction to any such rule, but it has been brought about by administrative practice and that has held the field for the last twenty-seven years.

The European Elected Members are anxious that the position shall be legalized, as will be seen from their memorandum enclosed in No. 29, but there is in reality no necessity to do so since, if an Order in Council is enacted defining the area to be regarded as the Highlands, the administrative practice can continue.

In the discussion with Sir Joseph Blore, he said that what would make the Indians uneasy would be if discrimination in favour of Europeans was given statutory force. The suggestion was put out that, if the Order in Council was drafted so as merely to define the Highlands without defining the privileges reserved to Europeans, the Indian objection would be met, and Sir Joseph Blore was inclined to agree that it would be met in part. The ^{Act} Secretary of State promised to do everything to meet Sir Joseph Blore's point.

The statement made in our letter to the Society of Friends and to the Aborigines' Protection Society

Society was that the proposed Order in Council to define the European Highlands would merely afford formal sanction to an administrative practice which has been consistently followed in Kenya since 1908 at any rate. If no enactment were made the administrative practice would remain unchanged and there would be no practical difference in the situation.

This is, of course, perfectly true, and the practical position will remain exactly the same whether the Order in Council confines itself to defining the boundaries or goes further, but it seems probable that we shall have to content ourselves with confining the Order to the boundaries of the Highlands. In that case, it would be left to administrative action to maintain the existing position just as it stands.

We shall obviously have to play for time with these interested bodies, the effect of whose well-meant interference will only be to start up trouble and probably defeat their own objects, but the situation is complicated by the fact that the Government of India has now ^{accepted in} ~~written~~ with a similar proposal, and the Secretary of State for India is going to talk to our Secretary of State some time towards the end of the month.

I think we can reply as per draft herewith. This will necessarily involve reconsideration of the letter to the Anti-Slavery and Aborigines Protection Society (No. 28), but I think the draft can stand.

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CENTRAL OFFICES of the SOCIETY of FRIENDS
FRIENDS HOUSE, EUSTON ROAD, LONDON, N.W.1.

Assistant:
TANLEY J. FORWARD

Secretary: **W. F. NICHOLSON**

*Librarian
and Secretary of
Literary Committee*
JOHN L. NICKALLS

Telephone:
MUSEUM 3600
Telegrams:
OVERSIGHT, HURBOAD, LONDON

14th June 1935.

The Under-Secretary of State
for the Colonies,
The Colonial Office,
London, S.W.1.

RECEIVED
18 JUN 1935
C. O. REGY

pl
ACKD. BY P.C.

Ref: No. 36005/3/35 of May 18th 1935.

Sir,

No 27
No 25

I am obliged for Mr. Flood's letter and for the copy of a letter of April 23rd, 1935, addressed to the Secretary of the Anti-Slavery and Aborigines' Protection Society.

Both these letters have been before my Committee and I am asked to make the following observation upon the statements made in the enclosure.

In its second paragraph appear the words: "The effect of the proposed Order-in-Council to define the European Highlands will merely be to afford formal sanction to an administrative practice which has been consistently followed in Kenya since 1908 at any rate".

May we urge that this assertion may be further examined. We believe that there is documentary

evidence in a directly opposite sense. We presume that we are correct in supposing that the terms of an Order-in-Council will have the force of law in Kenya Colony. This being the case Lord Elgin's ruling of the year 1908 will be set aside, for he pointed out that it was "not consonant with the views of His Majesty's Government to impose any legal restriction upon any section of the community" as regards grants of land in the Highlands. The Duke of Devonshire in 1923 pointed out the difference between a legal prohibition and an administrative restriction.

My Committee will be glad to be informed whether it is wrong in supposing that the making of an Order-in-Council on the lines proposed by the late Colonial Secretary, Sir Philip Cunliffe-Lister, would not have the precise effect of converting what has been an administrative restriction into a legal exclusive privilege for persons of European descent in the Highlands of Kenya. We are legally advised that this would be so, and we should greatly deplore such an act of State, based solely upon considerations of race, and thus making an important departure from present Imperial policy in colonial rule.

I am, Sir,
Your obedient servant,

Alexander C. Wilson
Chairman of Society of Friends Committee
on Slavery & Protection of Native Races

Communications on this subject should be addressed to—

THE UNDER SECRETARY OF STATE,
Public and DEPT.,
Judicial INDIA OFFICE,
LONDON, S.W. 1,

the following number quoted:—

P & J. 2070/35.

Reference to previous correspondence :

Letter to the India Office of the 8th March 1935,
from— No. 38005/35.

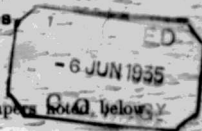
INDIA OFFICE,

5 June 1935.

The Under Secretary of State for India presents his compliments to the Under Secretary of State for the Colonies.

and begs to transmit to him copy of the papers noted below.

The Under Secretary of State,
Colonial Office, S.W.1.



Origin

Date

Subject

From Government of
India with
enclosures.

16th
May
1935.

Kenya Land Commission Report.
Debate on adjournment motion in
Indian Legislative Assembly to
discuss question of reservation
of the Highlands of Kenya for
Europeans.

3621 5000 335

Copy also sent to—

No. F. 214-2/35-1 & C.
Government of India.

P & J
270
1935

Department of Education, Health and Lands.
Sindia, the 16th May, 1935.

From

M. S. A. Hydari, Esquire, C. I. E., I. C. S.,
Deputy Secretary to the Government of India,

To

His Majesty's Under Secretary of State for India,
Public and Judicial Department, India Office,
London.

Kenya Land Commission Report. Debate in the
Legislative Assembly on the motion for
adjournment moved by Mr. S. Satyamurti.

Sir,

With reference to the correspondence ending with
the letter from the India Office, No. P & J. 796/35,
dated the 18th March, 1935, I am directed to forward,
for the information of His Majesty's Secretary of State
for India, a copy (with two spare copies) of the debate
on the motion for adjournment moved by Mr. S. Satyamurti
in the Legislative Assembly on the 27th March, 1935, to
discuss the question of the reservation of the Highlands
of Kenya for Europeans.

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

M. S. A. Hydari,
Deputy Secretary.

The Assembly met in the Assembly Chamber of the Council House at New Delhi, on Wednesday, the 27th March, 1935.

MOTION FOR ADJOURNMENT.

RESERVATION OF THE HIGHLANDS OF KENYA FOR EUROPEANS.

Mr. S. Satyamurti: Sir, it is a far cry from Pusa to Kenya, but, whether we are at Pusa or in Kenya, we meet Mr. Bajpai.
e.s.m. (Laughter.) Sir, I beg to move that the House do now adjourn.

Mr. M. S. Ansy (Berar Representative): What for?

Mr. S. Satyamurti: The matter which I seek to bring to the notice of this House is the critical position of Indian settlers in Kenya in respect of the proposed reservation of the highlands for the Europeans. This is not a Party issue, Mr. President. There are two issues in the public life of this country, namely, the Indianisation of the army, and the position of Indians overseas, in which all parties, including the Liberals, the Muslim League and others, have always taken a practically unanimous view, and I hope, Sir, today we shall have the support of the non-official European Group in this House, because this is a matter which concerns the honour and the self-respect of India as a whole. The position of the Congress, Sir, is that so far as Indians overseas are concerned, they cannot come by their own, until India is mistress of her own destinies. Meantime, we shall do our best, with the co-operation of other Parties, to see to it that their rights are vindicated. The history of this question is given more or less accurately in a memorandum published by Parliament in which it is stated:

"The history of the position of Indians in Kenya up to the end of the late war may be summarized briefly. There have been Indian merchants established along the East African Coast for a long time and with the opening up of Uganda and Kenya, and particularly with the development of British administration in those countries during the last 25 years, Indian traders have penetrated into the interior. Many Indian artisans and laborers employed on the construction of the Uganda Railway remained to engage in commerce, and, at the beginning of the present century, the number of Indians in Kenya was greatly increased by the arrival of artisans, clerks and small traders."

My position is that, in the making of Modern Kenya, Indians have played a large and distinguished part, and, therefore, deserve to be treated as honoured citizens of that country. Moreover, this question of the reservation of highlands is a very important one, because therabouts will be the centre of Government of the future East Africa, and it is not right that Indians should be excluded from that area. This trouble began in 1908 when Lord Elgin, as Secretary of State for the Colonies, decided to reserve, for the purposes of administrative convenience, lands in the highlands to Europeans; but then the Indian community was assured that there would be no legislation passed against them in the matter of land tenure. Indians accepted that on the understanding that this order referred only to the first transfer of Crown lands, and that second transfers and sales would be open to Indians. In 1915, an Act was passed by which the Governor-General was given the right of veto in all sales or transfers of land in the highlands, and, I must say, that at that time the Government of India protested and protested very strongly, but as usual, that protest was of no avail.

Now, Sir, the position today is that, as far as original transfers of Crown lands are concerned in the highlands, all the entire land belongs to the Europeans; but what the Europeans wanted was that they should prevent all further purchases by or transfers to Indians. The second fact is that the Indians are not likely to take up much of agricultural land in the highland portion, but the Indians cannot get land even for any other purposes there. In 1920, the Government of India addressed a "long despatch" to the British Government in which they say and say very strongly:

"We would urge you that this reservation was the lowest Lord Elgin's intention and is inconsistent with his own declaration that it is not consistent with the views of His Majesty's Government to impose no legal restrictions or any purchase upon the community in regard to the acquisition of land."

Then, Sir, they add:

"We submit that it is not easy to reconcile the land policy of the East African Government with Lord Milner's assurance that it has been the avowed principle, and it is the definite intention of the British authorities to mete out even-handed justice between the different races inhabiting these territories."

Then, Sir, we come to the last paragraph in which they say:

"The Government of India cannot and will not disclaim responsibility for the welfare of the Indians who are settled in East Africa."

I bring that to the notice of the House this afternoon. Then, we have the Parliamentary Paper, to which I have referred, in which Parliament, for the first time, laid down this. Tracing the history of this question, they say:

"His Majesty's Government have decided that the existing practice must be maintained as regards both initial grants and transfers."

That was specifically stated, and they added:

"It has not been possible to meet the wishes of the Government of India whose views have received the fullest consideration from His Majesty's Government at the instance of the Secretary of State for India."

That was the position, and after the publication of the White Paper, there was a debate in the Council of State, in which Sir B. N. Sarma, then Member in charge of this portfolio, stated certain facts. He said that some of the best lands is included in this 11,859 square miles and he added that this decision was only a temporary decision and the Government of India hoped that it would not become a permanent decision, and he said that he would take steps to see that it did not become a permanent decision. After that, a Commission called the Carter Commission was appointed with a specific term of reference in these words. I am referring to the sixth term of reference. They were asked to define the area generally known as the highlands, within which persons of European descent ought to have a privileged position, in accordance with the White Paper of 1923, but they went beyond this term of reference. Attempts have been made in the House of Commons to elicit how they were authorised to go beyond the terms of reference and the Secretary of State admitted that he stated in answer to a question from the Chairman that, the phrase 'privileged position' means securing the rights of Europeans in regard to the two points, on which I seek the support of this House today,—first the extent of this area which has been considerably added to from the 11,000 odd square miles, which the Honourable Sir B. N. Sarma mentioned in his speech, to 16,000 odd square miles, and, secondly, and more important than this, that His Majesty's Government should, and they have practically made up their minds to, issue in the form of an Order in Council, almost more immutable than a parliamentary statute, this reservation of the highlands for Europeans. The gravamen of the charge against the British Government is that they have agreed to reserve this land by statute and they have also agreed to extend the area of the land. The position, as I see it, Mr. President, is this that what has been more or less an administrative arrangement, which, although it has gone on in spite of the Government of India, may yet be capable of adjustment when India becomes stronger and more and more powerful in international councils, is now sought to be made into an Order in Council, which really precludes all possibility of future adjustment on terms of mutual advantage.

Secondly, we believe that this idea of reserving a very large area of a very desirable part of a colony, to the making of which Indian labourers and Indian merchants contributed a lot, is unjust to the Indians. Sir, I am not bringing forward this motion directly as a censure on the Government, for the simple reason, that, as far as I have read the papers, the Government of India have consistently supported the claims of Indian settlers in Kenya (Hear, hear), but because time and again they have been overruled—overruled in practically all matters concerning Indians in South Africa, Indians in East Africa and elsewhere, and I believe, Sir, that I am right in asking the Government sincerely and honestly to vote with me on this motion. (Laughter.) That is the only way in which the Government of India can show to the world how strong, how earnest, how sincere is the feeling of all India in this matter. Sir, let us recall how well Mr. Jinnah put it in that picturesque language of his when he said: "we cannot get hold of the Secretary of State: you are the only gentlemen whom we can get hold of; we shall really talk to the Secretary of State through you"; and we want the Government of India to communicate to His

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Majesty's Government that this perpetual attempt on the part of the European settlers in Kenya and their friends in London to reduce Indians in all self-governing colonies and also in Crown colonies to the position of helots is one which we Indians cannot approve of.

Sir, I want to address just one more argument and conclude. In the case of the self-governing Dominions like South Africa, Canada and Australia, the argument has been advanced by the British Government: "What can we do? After all, they are self-governing Dominions. They have a right to control their own emigration and immigration. They can make their own laws. By all means, make your own laws". Those were the conclusions arrived at at the Imperial Conference. Very well. I shall have no quarrel with them. We shall deal with them as equals now or hereafter. But, so far as the Crown colonies are concerned, like Kenya, for the Government of which His Majesty's Government is, in the ultimate resort, fully responsible, I think no other argument is available to His Majesty's Government excepting the argument that, because India is weak, we will not fight India's cause, and will always allow the Colonial Office to have its own way. It seems to me, Mr. President, that the justice of the case is obvious. No man can accept the position that a particular land of about sixteen thousand square miles of very desirable residential qualifications should be reserved for one community alone for all time, and that Indians should not have any part or lot in that territory, and we, therefore, want that the sense of this House and of this country as represented in this House should be communicated to His Majesty's Government, that we do not want this reservation to be made by an Order in Council, that we do not like the extension of the area, and that we want freedom to negotiate and assert the equal and just rights of Indians in Kenya. With these words, Sir, I move that the House do now adjourn. (Applause.)

Mr. President (The Honourable Sir Abdur Rahim): Motion moved:

"That the Assembly do now adjourn."

Mr. G. S. Bajpai (Secretary, Department of Education, Health and Lands): Mr. President, I venture to intervene early in the debate, because I feel that, in view of the long history, and the complicated history of this subject, Honourable Members may like to be put in possession, in the brief time available to me, of the background. Sir, my Honourable friend, Mr. Satyamurti, ended upon a note which I am sure has the sympathy and the response of every assent of this House (Hear, hear), namely, that, in those territories for the administration of which His Majesty's Government themselves are responsible, there shall be no discrimination against Indians but there shall be absolute equality. If I may remind the House, Sir, this was the language which the Government of India used in the Despatch which they addressed to the Secretary of State on the very Kenya question in 1920. They said: "We are unable to agree that the Indian claim to acquire agricultural land anywhere in the colony is neither just nor reasonable. We do not consider that this proposal—the proposal was the reservation by way of compensation of land in low-lying areas of Kenya—is compensation for the exclusion of Indians from the uplands. We hold most strongly that there is no justification for the extension of Lord Elgin's decision so as to prohibit the transfer of land to Indians, which, in our view, is incompatible with his own pronouncement"—the pronouncement of Lord Milner that, in territories administered by His Majesty's Government, it shall be the policy of His Majesty's Government to wield even-handed justice. That was the language which he used. I would like further to remind the House that when the White Paper of 1923 was published and His Majesty's Government announced their decision that both in regard to fresh alienations and to transfers of land, the existing practice would be retained, the Government of India made it abundantly clear that they reserved to themselves the right to re-open this question whenever opportunity offered itself. When the Hilton-Young Commission was out and sat in East Africa in 1927, these considerations were repeated. It will therefore be clear to the House that, in so far as the position of the Government of India is concerned, throughout these years of controversy it has in no way altered. It remains what it was in 1920, namely, that there shall be no racial discrimination against Indians in East Africa; and, to the extent that His Majesty's Government had decided in 1923 to overrule that contention of theirs, the decision was accepted only under protest. Now, Sir, I would like to come to the charge—and I think this is really what the House will be most interested in—in the position that would arise if the recommendations of the Carter Commission were actually incorporated in an Order in Council by His Majesty's Government. My Honourable friend, Mr. Satyamurti, referred to one point, namely, the extension of the area where

this restrictive policy prevails at the present moment. Undoubtedly, that is objectionable, but there are two further points which I think ought to be clearly explained to the House. The other day, Sir, answering a short notice question in the House, I read out the reply of the Secretary of State for the Colonies to a question asked in the House of Commons on the 14th February. The question was as to what exactly were the implications of the words "privileged position" as regards these highlands. The reply of the Secretary of State for the Colonies was that the words "privileged position" implied, *inter alia*, that none but a European shall acquire or occupy land in the highlands. Now, Sir, our view is that that definition, if it be incorporated in the terms of an Order in Council, will go beyond the existing position. In other words, not only would it prejudice the position that we have all along taken, namely, that at a suitable opportunity we would like the existing position to be relaxed, but it would make the existing position even worse. And I would like, Sir, in support of this, to quote the interpretation which His Majesty's Government themselves gave in the White Paper of 1923. They said:

"We claim that the existing restrictions meant no legal discrimination against Indians if it would be possible for the Executive Government to grant land in the Highlands to an Asiatic or to approve of the transfer of land from a European to an Asiatic without any alteration in the existing law."

The position, if the restrictions which the Secretary of State for the Colonies outlined the other day were incorporated in an Order in Council, would be that what is now a restriction imposed by administrative practice would become a statutory restriction. That, Sir, in our opinion, is much the most vital objection or point of objection that we have got to take with His Majesty's Government. There is a third point which perhaps by reason, as I said, of the complexity of the question and the voluminous nature of this document escaped the piercing eye of my Honourable friend, Mr. Satyamurti. That point is that in a certain area in the Highlands, where these restrictions prevail, prior to 1906 land was alienated to Indians without any restrictive condition or covenants. The recommendation which the Carter Commission make is that if hereafter this land be transferred by an Indian to a European, then the restrictive covenant will apply and the European will not be at liberty to alienate it to an Indian. There you have the three objections which we have to the implications of what the report says and what the Secretary of State for the Colonies says. First, the extension of the area, second, the conversion of what is an administrative restriction into a statutory restriction and, third, the removal of an existing privilege and the substitution for it of a racial discrimination. Those are the three points which are under our attention. We had examined the report, and because we felt that these difficulties had to be faced, we asked His Majesty's Government not to make an Order in Council until this question had been fully represented by us. As I announced to Honourable Members the other day, His Majesty's Government have agreed that such representations be made and that no Order in Council shall be issued until those representations have been made. I have within the time at my disposal sought to indicate the points upon which representations will be made. I have also informed the House that the Secretary of State for the Colonies and His Majesty's Government have given us a pledge that they will make no change in the existing position until those representations have been made. Now, Sir, I do not really know that in this particular matter there is any difference between the Honourable Members opposite and ourselves. If I may say so, I had a slight grievance against my Honourable friend's otherwise admirable statement of the position. He prefaced his remarks by saying that on this matter all Parties—the Liberals, the Nationalists and the rest—are agreed. I wish he had also added that not only all Parties, but the Government of India are also agreed. (Hear, hear.) Because, if there are any matters on which there has been complete unanimity, this is one of those matters.

An Honourable Member: What about fiscal autonomy?

Mr. G. S. Bajpai: I am not talking about fiscal autonomy at the present moment. It has its own place important though it may be. The position, then, is that there is identity of outlook; there is unanimity of objective and there is determination on all sides that we should forward and put this case before His Majesty's Government. My Honourable friends may ask: What will be the result? None can predict the result. But, Sir, this House considers the work of its own executive, the attitude of its own executive and the line that that executive takes in response to public opinion. I submit that by the account that I have given of what we have done and what we propose to do, I have established to the satisfaction of every fair-minded man that in this matter the executive, that is to say, the Government of India, deserve not the censure of the House, but their whole-hearted support and approval. (Applause.)

Mr. M. A. Jinnah (Bombay City; Muhammadan Urban): Sir, I had very little dream when I was speaking here yesterday on a similar motion that my words will have that magic effect upon the Government of India. Sir, I congratulate the Honourable Member who spoke on behalf of the Government of India. The question is not whether the Government of India can successfully fight our battle. It is also not the question whether we can successfully fight our battle. The constitutional position in this House is this that when we want to raise a question of definite, specific character and of great public importance, it is initiated definitely not in the inimical sense towards the Government but for the purpose of finding out the real position and the real situation and the attitude of the Government or the holders of the Government. If the House is satisfied that our Government has done what is right or that they have done their level best, surely it will be positively unreasonable that the House should proceed further and pass the vote of censure on the Government. Now, Sir, on this question—and it is, of course, a very rare question and I do not want the Government to run away from this fact—we are able to speak, as we did, whole-heartedly and not censure the Government. Therefore, speaking for myself, in view of what the Government have done and in view of the position which they have taken up from the very start and stoutly maintained that position. Although the Honourable Member speaking on behalf of the Government did not say so, I will even give the credit to the Government of India that they have held the hand of the Secretary of State for the Colonies in not passing the Order in Council till their representation reaches him which would have, of course, by now become a statute and law of Kenya. Therefore, speaking for myself, as I said yesterday, I am always loath to unnecessarily pass votes of censure on the Government and on this occasion certainly I shall not be justified. But before I sit down, may I point out to the Government that when the reply was given—perhaps the Honourable Member is already aware of it, but I would like his attention to be drawn to it—the Secretary of State for the Colonies was heckled by the Members in Parliament on this very question. I have got a report from a newspaper which is called the *Weekly Edition*, and its correspondent sends this report which is dated London, the 15th February. Major Milner asked the Secretary of State for the Colonies:

"Has the Colonial Secretary asked or does he intend to ask for the consent of the Government of India on the text of the proposed Order in Council defining native reserves in European Highlands in Kenya?"

Sir Philip Cunliffe-Lister replied:

"I shall of course be prepared to consider any representations which may be received from the Government of India, but if your Government of India were to say, 'No, Sir,' I think it will be to point out that the effect of the proposed Order in Council as administrative practice for the next quarter of a century. This practice was formerly re-confirmed by His Majesty's Government in the White Paper in 1923 and has not been challenged by any successive Government."

Of course, there he was referring to the British Government not our Government. I want the Honourable Member therefore to bear in mind that it is not only for the successive Governments of Great Britain only to challenge but I think ours is a greater right to challenge and we have challenged it from the very inception. The result of this law—if the Order in Council is passed—would be this:

First, what was originally suggested, or rather maintained was on the ground of administrative convenience, from that we have now come to the stage when not only an area which was kept on the plea of administrative convenience, that area is enlarged to a very great extent and now it is not on the ground of administrative convenience but on the ground that it is going to be the white island, that is a special reserve for white people. That is one. If that law is passed then it follows that the restriction which did not find a place in the way of any Indian acquiring before this law comes into operation, that is to say any Indian could have acquired any property in that highland, but the moment this law comes into operation no Indian could acquire any land within that area—that is a restriction which does not exist at the present moment. Not only that, but those Indians who happen to possess lands within this enlarged area, if those lands are sold once to a European, then that European cannot alienate or transfer those lands to an Indian any more. So far really it seems that the words of that great man, Mr. Bouter Law, are thrown to the winds, namely, even handed justice. Sir, it is far from being even handed justice, it is downright injustice (Hear, hear), and I am glad that on this occasion at any rate the Government of India have risen to the occasion and I wish them God-speed in their fight, and I hope they will win. (Applause.)

Mr. F. E. James (Madras; European): Sir, it is indeed a happy circumstance that finds all sections of the House of one mind on this subject. (Hear, hear.) I should like to make it perfectly clear from the outset that we, in this small and somewhat insignificant Group in this part of the House, join whole-heartedly in the remarks made by my Honourable friend, Mr. Satyamurti, and also in congratulating the Honourable Mr. Bajpai on his exposition of the actual steps taken by the Government of India. We have on previous occasions—I claim from the days when my Honourable friend, Sir Darcy Lindsay, was the Leader of this Group—identified ourselves whole-heartedly with those in this country who have been working for the establishment of justice for the Indian communities overseas. Whether men and women of our own race are concerned or not, we shall continue, in so far as it lies in our power, to join our Indian brethren (Hear, hear) in this campaign for the establishment of justice. Having said that, I would like to say straightaway that I trust that this motion will not be pressed to a division. I understand the desire of my Honourable friends is to have some vote which will place on record their position. But I would ask them, whether, in fact, the establishment of any vote in this House on this issue is going to alter the circumstances at all. The person we are really anxious to get at is the Secretary of State for the Colonies and through him the British Government. We cannot, in fairness censure the Government of India. Those of us who are on the Standing Committee on Emigration, at our last meeting, had the pleasure of placing on record our warm appreciation of the magnificent fight which the Honourable Member in charge of that Department, Sir Fazi-i-Husain, has put up (Applause), during the time of his office, for the cause of Indians overseas, and it would be a most unhappy thing if on this, his first appearance in the House during this Session, this House were to record a vote which would ordinarily be recognised as a censure vote upon the Government of India. Therefore, I trust that my Honourable friend, the Mover of this motion, will not persist in that policy. Sir, we feel in regard to this matter that the proposal to turn, what is somewhat euphoniously called "an action of administrative convenience" into a discrimination embodied in statute is not only detrimental to the interests of India, but it is injurious to Indian inhabitants overseas not only in Kenya but elsewhere. If my voice could go from here in any way with any power or any authority or any persuasion to those in authority in the United Kingdom, I would ask them to pause before they do anything which will establish a position by Order in Council, that is to say, by a prerogative of His Majesty the King in this his Jubilee year, a position which will undoubtedly be resented, not only by Indians in Kenya but by Indians throughout the length and breadth of this land. (Hear, hear.) I trust, Sir, that the Government of India, in the great effort which they are making, will be supported by every section of this House and every community in this country and that they will be successful in achieving what we all desire and, in preventing, what I believe will be not only an act of injustice but an act of great "un-statesmanship" on the part of His Majesty's Government. (Hear, hear.) (Applause.)

Mr. B. Das (Orissa Division; Non-Muhammadian): Sir, this is one of those rare occasions when we find,—if I am correct, this is the fourth occasion—when we find that the Government of India and the Opposition are agreed on the subject matter that is under discussion and it is rather surprising that on all these four occasions, it happens to be a subject that is handled by the Department of Education, Health and Lands and that Department finds itself in complete agreement with the people of India in their unanimous demand over the overseas question. Sir, I am glad that my Honourable friend, Mr. James, gave us his partial support, though not his full support. I do not feel he gave his whole-hearted support, but he gave his partial support.

An Honourable Member: No, he gave his full support.

Mr. B. Das: No, in my interpretation it is not full support.

[At this stage, Mr. President (The Honourable Sir Abdur Rahim) vacated the Chair which was then occupied by Mr. Deputy President (Mr. Akhil Chandra Dutta).]

I am glad that I have at least got the sympathy of my Honourable friend, Mr. James. We had it on another occasion when we discussed on the floor of the House the evidence of the Secretary of State for India given before the Joint Parliamentary Committee where the people of the Colonies and the Dominions were given further amount of status in India over which we condemned the attitude of the Secretary of State and my Honourable friend, Sir Fazi-i-Husain, joined his

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full strength with us to condemn that attitude of mind of the British Government. But, Sir, what is the genesis of this question? What I find in this matter is that however united we may stand on the floor of this House the Government of India are impotent, as Sir Cowasji Jehangir put it yesterday. The Government of India, however, united they may be in their protest with the Indian people, cannot impress the Secretary of State and the Secretary of State who happens to represent the Indian interests in the British Cabinet in no way carries weight with the Colonial Secretary. So the colonising policy of the British people goes on merrily and the Indians who go to the colonies, whether it is South Africa or East Africa or Kenya or Tanganyika, and contribute to its economic development are slowly pushed out.

My Honourable friend, Mr. Bajpai, grew eloquent over this question: I admire his eloquence and also his sincerity, but I think his voice did not contain the note of sadness which I expected there, because he must be burning with the sense of injured feeling over the kick that the Government of India received over the Zanzibar question. If the Colonial Secretary can kick the Government of India in curtailing the rights of Indians in Zanzibar, how can we expect, by expressing pious hopes on the floor of this House, that the united voice of the Government of India and the people of India will carry any weight with the Colonial Secretary over this Kenya Highland question? Sir, the whole trouble I locate in another direction. In this new Constitution that is contained in the White Paper and the Joint Parliamentary Committee Report, Indians are not given freedom over their overseas problems or over their foreign policy. The Secretary of State still remains the master and he is to negotiate on behalf of the Government of India and on behalf of even so able an advocate as my Honourable friend, Sir Fazl-i-Hussain, with the Colonial Secretary. And however much my Honourable friend, Sir Fazl-i-Hussain, may agree with us he cannot make the Secretary of State move in the matter. The Secretary of State in this matter tacitly agrees to what the Colonial Secretary says. Sir, my Honourable friend, Mr. James, wished that in the King's Silver Jubilee year Indians all over the Empire would be happy or some such thing he said. Sir, I do not expect any such thing. In India we are not happy. Indians in South Africa are not happy; Indians in Zanzibar are today condemned to live from hand to mouth and their trade is destroyed by those Ordinances that were recently passed and over which the protests of the Government of India have gone fruitless. So I think, in a month or two, the Secretary for the Colonies will further tighten the control over the rights of Indians in Kenya and Tanganyika and their freedom will be further restricted. So what I urge on the Government of India is to test how long Indians will be pariahs in these colonies of the Empire. Sir, people talk of our rights and status; people talk of India's position in the League of Nations. What is the use of our claiming a position in the League of Nations when, throughout the Dominions and Colonies, we are treated as pariahs? The Government of India may be sympathetic, but they are as helpless as we are in this matter to advance the status and the rights of Indians in these Colonies. So when my Honourable friend, Sir Fazl-i-Hussain rises to speak, I do hope he will tell us what he himself feels in the matter, whether he sees any light ahead or whether the Indians in Kenya and Tanganyika will have the same fate as the Zanzibar Indians. With these few remarks, I support the motion.

Sir Lancelot Graham: Sir, the question may now be put.

Mr. Muhammad Asfar Ali (Lucknow and Fyzabad Divisions; Muhammadan Rural): Sir, it is really a matter of very great satisfaction to all Members of this House that at least once, though it may not be in the beginning of the Session, the Government of India have seen their way to compromise and go hand in hand with the Indian public. It is not only a matter of felicitation to us, but it augurs well, not for the Government of India alone, but also for the country. Sir, we have known it always that united we stand and divided we fall; and today the Government of India can very well see that whenever they are prepared to extend their hand of unity to the Opposition, the Opposition will not fail to extend its own hand. Our object in moving this motion today, as Mr. Satyamurti pointed out, is not to censure the Government of India, but to strengthen their hands in putting our case before the Government at home, although it is already a very strong case. In every paper like the White Paper and the Joint Parliamentary Committee Report, we find that there is always mentioned the question of partnership with Indians. Every Englishman save and all the papers in England also say that they want partnership with India. But there can be no partnership with India unless and until the

rights of Indians overseas, the rights of Indians in this country, the rights of Indians everywhere in the world, are recognised by the British Government and the Government at Home, and they also take care that our rights are protected everywhere wherever we are in the world.

Sir, yesterday, my Honourable friend, Mr. Jinnah, said that we find that this Government is not our Government. I am glad to see that today we find this Government to be our Government. Some friends say that it may be that tomorrow the Government of India will change. Sir, if the Government of India will change, we also will change, and if one Party can break the peace of this House the other Party will also be prepared to do it. The rights of Indians in Kenya have been the subject of discussion for a long time not only in this House but outside it. I remember reading in the papers once that about three lakhs of pounds were invested by these Indians in the hospitals of Kenya but still Indian ladies are not admitted into those hospitals. Whereas every kind of arrangement is made for European women in those hospitals, it is not so for Indian ladies. It is things like this that Indians resent, that protection and assistance is given to Europeans only whereas the money is invested by Indians as well. I do not think it is necessary for me to say more, but again to thank the Government at least or extending the hand of friendship even for once to this side. I support the motion.

Seth Govind Das (Central Provinces Hindi Divisions: Non-Muhammadan): Sir, I rise to support the motion moved by my Honourable friend, Mr. Satyamurti. There is no doubt in the fact that racial discrimination is being made in this respect. There are both highlands and lowlands in Kenya and Indians are being kept away from the highlands. In the beginning it was an administrative question, but now in spite of our prolonged wish, in spite of our unanimous opinion in this country, including that of the Government, an Order in Council is being proclaimed, by which Indians would be kept away from the highlands permanently, and they will not be allowed to buy those lands from others as second-hand or even third-hand property. Now, I shall read in this connection what an eminent English paper has said, I mean the *Manchester Guardian*. In its issue of the 11th February, 1935, it said:

"When the long and comprehensive report of the Morris Carter Commission on Land in Kenya was published last May it was rightly praised for its objectivity and for the care with which the claims of the various tribes had been considered. But one feature of the report caused dismay to many acquainted with Kenya's problems. The Commissioners were requested in their published terms of reference to 'define the areas generally known as the Highlands within which persons of European descent are to have a privileged position.' They did so. Their report contains a map of the recommended area which includes an addition of 5,200 square miles to the 10,345 already in the possession of Europeans. Moreover, paragraph 1979 of their report recommends that 'the boundaries of the European Highlands should be safeguarded by Order in Council so that the European community may have the same measure of security in regard to land as we have recommended for the natives'."

[At this stage, Mr. President (The Honourable Sir Abdur Rahim) resumed the Chair.]

"It seems superficially a harmless proposal. In fact, it is a highly serious departure. At present land in the Highlands can be transferred to others than Europeans, though only with the consent of the Governor. In future, if the Order in Council is passed, the greatly extended Highland area will be a close European preserve. The Commission would seem here to have exceeded its terms of reference. It was asked to define the Highlands, not to hand them over to Europeans for all time. Such, as is pointed out by a correspondent whose letter we print today, it proceeded upon the advice, unknown to Parliament at the time, of the Colonial Secretary. Sir Philip Currie-Lister has admitted that, in reply to an inquiry from Sir Morris Carter for a definition of the 'privileged position' of Europeans in the Highlands stated in the Commission's terms of reference, he declared that:

"No person other than a European shall be entitled to acquire by grant or transfer agricultural land in such areas or to occupy land therein."

Kenya contains a non-white population of some 20,000 Indians, 14,000 Europeans, and 1,000 Arab and Sikh. The proposed new Parliamentary Commission permanently to exclude the Indian population from acquiring land in the Highlands is not likely to pass unnoted in Delhi."

Sir, this is what the *Manchester Guardian* has said. We are not censuring Government by moving this adjournment motion, but, in fact, we want to strengthen their hands, to advocate our cause to the Secretary of State. The Government of India always act as subordinates to the Secretary of State. They never even press our views before him, but this is one point in which they have been pressing and advocating our views. By passing this adjournment motion, we shall be strengthening their hands, and in that way we are not, in fact, censuring the Government of India. We, in this country, are not independent—we are considered as slaves in this country of ours, and we occupy the same

position overseas, and no respect is being given to an Indian outside the country also. Under these circumstances, I hope that the House will carry this adjournment motion. In fact, Government Members also ought to vote for this motion, because we are making it clear that we are not censuring them and that we are only trying to strengthen their hands. With these very few remarks, I support the adjournment motion moved by my Honourable friend, Mr. Satyamurti.

Mr. Sami Venkatesham Chetty (Madras: Indian Commerce): Sir, while I do not wish to underestimate the value of co-operation and support which the Government on such rare occasions is affording to the point of view that is well canvassed by Indian public opinion, I am afraid I cannot resist the feeling that after all these are all merely empty words and they do not bring in any desirable result. The struggle of the Indians overseas is a long one and has been as protracted as the struggle for Swaraj by the Indians in their own country. I was not surprised at the support of my Honourable friend, Mr. James, not only on his own behalf but also on behalf of the Europeans sitting with him, because I say that they saw that the Government was of that view. But the whole question is, are we to end these representations by merely verbal protests or have we got any power either to persuade the Secretary of State for India or the Secretary for the Colonies to enable the Indians overseas to enjoy equal privileges and opportunities with the other nationals of that country? As regards that, I am afraid there has been no answer in the very able and sympathetic exposition of the case of the Government in this matter. Unless one feels certain that we can, notwithstanding the verbal protest, by other means, by means of retaliation or by means of anything else, afford the same kind of treatment to their people in our country, unless we are able to persuade the Colonial Government like that, there does not seem to be any hope of getting most of the great grievances and disabilities, which the Indians suffer, redressed. I would rather like the Government to tell us whether we have the power or not. We shall be prepared to go to any length with the Government of India in the matter of persuading the Secretary of State to take a very strong attitude in this matter and see whether the Secretary of State for the Colonies can ask the Colonial Government to agree to the legitimate, reasonable and just demand of Indians overseas. In this attempt I should expect the European Members to give us their whole-hearted and unstinted support. Much lies in the attitude they adopt, not only in this Chamber, but also either in private correspondence or in representations to the authorities at home. The value of the words of the Europeans here will certainly have far greater effect than even the Government of India in this matter. Because they must be generous enough to feel that though they are in such a small minority here, yet they are able to enjoy such privileges and such responsibilities in this country that they should be grieved that their brethren in other parts of the Empire should deny the privileges which they themselves enjoy at the hands of the people of this country. Well, Sir, if when a change of Constitution takes place, the rights and privileges of Europeans and other Englishmen could be safeguarded in this country by means of conventions, by statutory rules and other things, would it be unreasonable for us to expect that the same kind of thing should be done by Englishmen in the Colonies so far as our people in the Colonies are concerned? Therefore, unless the Government of India give us an assurance that they will do all in their power, not only by means of strongly worded protests but also by every means which they have in their power, we can get no satisfaction in this matter; nor do we think that the Colonials will be so unreasonable as to turn down our representations. I join in the statement made by several Members of this House that this adjournment motion does not mean a censure on the Government, but it is intended to strengthen the hands of the Government, and I hope that Government will take this in the same spirit in which it is offered, and will do all that lies in their power to support the claims of Indians in Kenya.

Mr. D. K. Lahiri Chaudhuri (Bengal: Landholders): Sir, I consider it a great privilege to get this opportunity to express my views on this important question. I am glad that my friend, Mr. Satyamurti, tabled this adjournment motion, because it is really a matter which is of the vital importance affecting the self-respect of our countrymen abroad. Sir, I belong to a party which is supposed to be the Independent Party, and my view should be really independent in this matter, and, as my Leader rightly expressed, this is the only question on which there has been complete unanimity of opinion in this House. I also congratulate my friend, the Mover, on the able and eloquent

manner in which he put forward his arguments which has excited him to secure the support of every side of this House. I am also glad that the Government has given an undertaking to the effect that they will do all that lies in their power. As the Government has given an undertaking to do all that lies in their power, at the same time, I must also express satisfaction at the speech by my friend, Mr. Jagan, who speaks not only for himself, but for his Party also, and that shows that they wholeheartedly support our case. I, therefore, suggest, Sir, that the unanimous decision of this House should be forwarded to the Secretary of State for the Colonies requesting him to consider this matter very seriously. Sir, there is a certain section in this House which believes that all recommendations we make here are merely of an advisory character and are not binding, but this recommendation should be regarded with the greatest seriousness it deserves, because, unless and until Indian interests overseas are sufficiently safeguarded, we in this country can never remain satisfied. Sir, this is a solemn occasion, because all our friends outside the House will be watching with keen interest the result of our debate, and it will give universal satisfaction if it is known outside that there is complete unanimity on this important question affecting the interests of our countrymen abroad. Sir, in my career in the Legislature this is the first occasion on which I find complete agreement between the Government and Honourable Members of this House belonging to all sections. I heartily congratulate the Honourable Sir Fazl-i-Husain on the bold stand he has taken in this matter. Sir, I wholeheartedly support this motion.

Muzam Shahab Ali (Officer of the United Provinces: Mahmoodnagar Urban): Sir, this Session is now about to close in a few days, and I was feeling dependent that the peace maker was making nothing but holes from this side and that side. (Laughter.) Today, when an hour ago, speaker after speaker was speaking about Funs, I was wondering whether we were going to have another new quarrel. Hindu-Muslim quarrels were there, there were provincial jealousies present and in this was added another quarrel between wheat and rice. So I was getting very dependent, but when this adjournment motion came, I heard the speeches with very great pleasure. My friend, Mr. Bhatnagar, spoke with great restraint. There was not very strong language anywhere in his speech. I also heard my friend, Mr. Bajpai, coming like a loving dove representing all the sweet advances made by Mr. Bhatnagar. Sir, there is an old saying in Persian:

"Kake-chen Paar shodh gake bad delak."

"When the bad woman becomes old, she accepts the profession of penance."

That is why I am a peace maker. This is the spirit in which I like that all our affairs should be settled in India. There is no lack of talent, there is no lack of public speaking, there is no lack of people with temper,—there are many people in this House who like me and the Finance Member, have short temper (Laughter), and if we all speak with a glass of cold water in front of us, the atmosphere will be much nicer.

An Honourable Member: Not with a glass of water, but with a glass of Sherbet.

Muzam Shahab Ali: I have no objection to Sherbet. I rather like it. I have travelled a good deal in Kenya and Tanganyika and throughout East Africa, and I did over a couple of thousand miles by motor. I saw thousands and thousands of miles of beautiful country, but in the Highlands and in the Lowlands lying below and leading to the sea, energy, human intelligence and human enterprise were wanting. In all that tract in that beautiful land, I also saw that the population was very scarce, and, as the people were primitive and backward, all the people, whether in Europe or Asia or elsewhere, white, brown, blue or of any other complexion combined together and made a serious study to develop the land and kept it as a trust for the people ever there, there ought to be no dearth of land for at least a hundred years or so. But if human selfishness goes to such an extent that we should worry every bit of land to ourselves, then you eat and my food, you can eat all your neighbour's lunch and dinner, but there is bound to be some day when you will have to throw out all including your own reserve food stuffs. Though we may go on grabbing other people's land, the time will come one day when we may be obliged to give all back. I had been a rebel, and the Hindustan Times always says that, whenever Mahatma Gandhi is set up, he always brings in the fact that he has been asked not to take up an outlaw. I want to remind the Hindustan Times and everybody in this

House that no long as there is life, and peace efforts give no respite, there is a likelihood of my being a rebel and an outlaw against the Government. Today I am flatterer everybody for peace and I am going on headed lines for peace, but, some day, there is a chance of my being an outlaw again. When an outlaw makes up his mind to fight, then everybody likes to go and make friends with him. I do believe, the time has come when we ought to make friends with each other, and I am glad that the House has made a beginning today and I hope that it will continue it for another week or ten days and that this good spirit will last. If so, it will make me very very happy. I will go back to my constituency and the country and tell them that though I did not succeed in the beginning, but later all realized that peace was better than war and there was a friendly atmosphere. There is no part of the world which I have seen which is better populated and better cultivated than Zanzibar. In Zanzibar, you will not find an inch of land which is uncultivated, but for Kenya and Tanganyika, thousands and thousands of miles are lying fallow. One night, when I was going in my motor car from Tabaru to Wawanza it got stuck up in mud owing to rain and I had to wait the whole night and half a day, that is about 26 hours, before I could get the help of anybody or get an axe to cut down a tree to get some wood. Humanity should not be selfish, we should meet as brothers and divide the good things of life among all of us, and then our lives would be better, our families would be happier, and deaths from heart failures and other diseases would be few and far between. The House has made a good beginning in the matter of peace, and I hope that it will last. There is an Urdu couplet in which the lover says:

"Gale lipay kein woh bill hi dar ast
Shukh pah phate do din to karay."

"My sweetheart has embraced me through fear of lightning and thunder.
May love and cloud-burst may last two days."

I hope this peace will last for at least two days. I pray that peace may come into India and make our lives happier, that we may become stronger again and enjoy life better, and let us not go into divisions, but let us congratulate ourselves on the beginning we have made, and let us go back and have a happy time.

The Honourable Khan Bahadur Khan Sir Fazl-i-Husain (Member for Mahmoodnagar, United Provinces): Sir, I am most grateful to Mr. Bhatnagar for his adjournment motion. It has afforded me an opportunity to come to this House in the first place, to congratulate the new House, and in the second place, to make a few observations on the floor of this House before I leave my present appointment in the Government of India. So, my present speech is one of welcome to the new Members of the House.

Mr. H. B. Agney: And a farewell.

The Honourable Khan Bahadur Khan Sir Fazl-i-Husain: And a farewell speech to her as I am myself constrained.

Five years ago, when I took up this appointment, I had set an ideal to myself. I said to myself that the question of Indians overseas is an extremely difficult one to handle, but at the same time, a most interesting one, and I said to myself, my business is not in a manner which would be in accord with the British Cabinet, and at all events, Indian opinion is concerned in the Central Legislature. I knew that there was possibly some difficulty, as there were sections when the view that was taken by a Government Member was misunderstood by public leaders, and there were times when the views taken by public leaders were not fully appreciated by the Member in charge. I made it my business to see that I was in contact with all the Indian leaders who took keen interest in the matter of Indians overseas. I was, I am in a position to say, most fortunate in that respect, as I had the privilege of being instructed as well as supported by the Leader of the Congress who is probably the best informed Indian on all questions concerning Indians in South Africa. I had his guidance as well as his support in the matter of the Indian delegation which I had the privilege of taking to South Africa in 1921. As ex-President of the Congress, I had the privilege of having as one of the members of the delegation. I had also the privilege of having direct touch with experts in the matter of Indians overseas like the Right Honourable Sir James Bampfylde. I had the privilege of being in direct touch with the great Indian Chamber of Commerce in Bombay which has done a great deal of good work in this matter. I was equally fortunate with the Indian press. The Indian nationalist press has invariably taken a strong line in this connection and given us their full support. Payment among these papers is the

whose well-informed opinions and very well-considered *Hinds* from Malabar; leaders on many questions have been of great help to us. I was in the fortunate position of feeling that what I was doing, had the Indian support behind it, and further that I was not in any way departing from the Indian view on the various subjects that came up from time to time for decision and with which I had to deal. Thus, I was able in a few cases to achieve very minor successes. These successes really are very minor and divisible into insignificance when one thinks of the numerous failures that one has come against. There is nothing to be proud of in the line of achievement. The utmost one could say is that I have not lost very much ground. It would be wrong on my part to say that during my term as my great advance has been made, because none has been made. It would be equally wrong if I were to say that I had any difficulty in doing my best with the British Government in the matter of my colleagues or the Viceroy. They have invariably supported every effort made to improve the conditions of Indians overseas. We have acted like one team and the Viceroy has been the strongest of us in these matters. (Applause.) I have, Sir, to pay my tribute of gratitude to all the Indian leaders, including the leaders of the Congress for the support they have given. But for their support, I do not think I would have had much heart even to put up such a hopeless struggle. We must remember that the struggle is more or less a hopeless one. We must not run away with the idea that we are united and there is no difficulty in the way of our achieving our desire. Nothing of the kind. There is a conflict of interest. We must not forget that India is a part of Asia. We must not forget that Asia is not Europe. Again we must not forget that even Asiatics, who are not in our position do not have a look in, in places which are worth going to. So Indians must remember their two-fold disability, firstly they are Asiatics. Secondly, they are situated as they are. Remembering these two disabilities, there is nothing that an Indian Member of Government or for the matter of that an European Member of Government would not be prepared to do, that any one of you would like to do. Therefore, Sir, it is a matter of gratification to me to see, on the eve of my retirement, that on this point, not only there is a tacit understanding that the policy of the Government of India is the Indian policy, but there has been, through the good offices of Mr. Satyamurti, an opportunity for a public declaration, on the floor of this House, to that effect. I trust that this significant fact will have some value. It may add a little more strength to the representation which will issue from the Government of India. Let us hope it will, but if it does not by any chance, the struggle cannot be given up. It has to be fought. It has to be continued. (Applause.) It will never do to lose heart. Nobody, who believes in the future, can afford to lose heart. We believe that there is a future. If we begin to believe that there is no future, there would be no fun in my standing here or your sitting there. I trust that in a matter which is so dear to our hearts we should realise that unless we are in course of time able to create a certain amount of sympathy in the minds of Britishers in Britain and possibly a few in the Dominions and in the Colonies, the difficult task of persuading people in authority to take even a fairly just view of Indian claims is very remote indeed. When I mention the matter of the support that the Viceroy gives to our representation, I ought also to have mentioned that much as we may disagree with the Secretary of State in many matters, in matters relating to Indians overseas, he has invariably assured us that he has done his very best with his colleague, the Colonial Secretary, in rendering our representations on him. However, we must be just to others, if we want others to be just to us. The Secretary of State for the Colonies is not so much responsible to us as he is to his own constituents, the British Parliament. If there were responsible government here, the Member of the Government sitting here would think more of you sitting there than of people elsewhere.

Mr. M. A. Jinnah: That is what we want.

The Honourable Khan Bahadur Mirza Sir Fazl-i-Husain: Even when you get it, the question of Indians overseas is not settled.

Mr. S. Satyamurti: We must go to war on that.

The Honourable Khan Bahadur Mirza Sir Fazl-i-Husain: You will require many Hitlers and many Mussolinis before you could even talk of war like that. So, that is rather remote, I am afraid.

An Honourable Member: We have not got one yet.

The Honourable Khan Bahadur Mirza Sir Fazl-i-Husain: You had better try to develop some by and by. That seems to be your only chance. To come back to my point, I was saying what is really wanted is a certain amount of honourable propaganda eliciting the sympathies of people in Britain and elsewhere to take up the Indian case for a sympathetic hearing. Mr. Satyamurti shakes his head.

Mr. S. Satyamurti: Nothing doing.

The Honourable Khan Bahadur Mirza Sir Fazl-i-Husain: I am prepared to join issue with him. Britain is a very funny place.

An Honourable Member: Very.

The Honourable Khan Bahadur Mirza Sir Fazl-i-Husain: There may be people who are dead against you, but you will always find some people who are with you.

Mr. S. Satyamurti: Thanks.

The Honourable Khan Bahadur Mirza Sir Fazl-i-Husain: I assure you that a man is not a man to be despised. Many great things can be achieved through cranks. I have never despised cranks, and I have always solicited the co-operation even of cranks. From small beginnings, you can achieve a successful organisation but that has got to be done. Anyhow that is my humble view and I would be the last person to profess to dictate the soundness of that view to people who have much more experience, sitting opposite than myself. However, that is a view which I have always entertained and I have thought it a great misfortune that one little Congress organisation, that existed in London for certain reasons, had to be closed down. It may be found necessary to revive it. Those who are in authority will decide that point. In conclusion, I wish to thank every part of the House for the appreciation they have expressed of the Government policy, and inasmuch as my name has been associated with it, I very sincerely tender my gratitude to everybody. (Applause.)

Mr. S. Satyamurti: Mr. President, the presence of the Honourable Member for Education, Health and Lands in this House, for the first time after we entered it, has been significant, not only because of the physical addition to the Treasury Bench, but also because of a new atmosphere which he seems to have brought with him. We have been sitting here for the last nine weeks, and during the whole of that time, we have had nothing but lies, masses, and any amount of contempt thrown on our devoted heads, for all our labours on behalf of our countrymen. In instances, some spoken to our decorated souls that there is at least one Member of the Treasury Bench who can appreciate our point of view and, whether he agrees with us or not, recognises that we are patriotic and are anxious to serve our country according to our humble ability, and it is a matter for regret to me that the first speech of his should also be the last speech in this House, but I hope, Sir, his example will not be lost on his colleagues and they will profit by a lesson which he has taught us that a man will turneth away wrath.

Coming to the subject, I agree with the Honourable Member in his diagnosis of the situation. It was somewhat cynical but profoundly true. We had not you any new ground, but he claims that he has not lost any, and he believes that, simply because we are united, we are not going to give our opinions immediately. So far, he and I are at one, but he added a statement that, by eliciting the sympathy of Britishers, shall I say Britishers and others, we will get this matter settled right. Sir, we have to catch Britishers. We believe that the right of Indians in Kenya, in South Africa, and in other countries will be settled satisfactorily, only when we get the aid of other European nations. We know that if they treat our fellow countrymen unjustly, we will go to war with them. (Hear, hear.) Sir, that is the way in which other nations have won their freedom and status. (Hear, hear.)

I want to know, if only half a dozen Britishers had been ill-treated, as so many of our own countrymen are today ill-treated, whether this very country—Great Britain—would not have gone to war, and India would not have been compelled to take part in that war also? Therefore, that is the position in which other nations place themselves when their own nations are ill-treated. Sir, as my Honourable friend, the Member for the Punjab, has said, probably all the British have been used our case. (Hear, hear.) We have to go to the general day in order to get other European nations to help us; and, if India were free, as I believe

today in India would be able to tell these Colonies that they saw not
treat our Indian fellow-countrymen as they are treating them now. My
Honourable friend paid a tribute to his willingness, to the Viceroy and to
the Secretary of State. I am not in the confidence of the Government of
India, and I have no desire to question the truth of his statement; but
it seems to me somewhat peculiar that, with this combination of His
Majesty's Secretary of State for India, His Excellency the Viceroy and the
Government of India, nothing has been achieved. (Hear, hear.) Sir,
what is this co-operation worth? Are we children? Are we to be told
that, "we are all united; the result is nothing; therefore, please be
satisfied"? It seems to me, Sir, that if this Government means business,
if the Secretary of State means business, they ought to have been able to
achieve some result.

Then the Honourable Member went on and told us the position of the
Secretary of State for Colonies, who is responsible to the British Parliament.
Well, that is exactly why we want this country to be free and self-gov-
erning! That is why we do not want the Constitution which is now
embodied in the Government of India Bill. (Hear, hear.) Coming, Sir,
to my Honourable friend, Mr. Dajpai, between whom and myself
Honourable friend, the Maulana, saw signs of love-making, I merely want
to thank him for the addition he made to the points I made, namely, that
with regard to a small portion of this territory, lands are in the possession
of Indians today, but, when they pass to Europeans, they can never pass
back to Indians. I thank him for it. The position is really very bad.

Now, Sir, so far as this House is concerned, it is a curious position. If
today we shall get rid of the idea in our minds that this adjournment
is a censure on the Government of India, I expect every Honourable
Member, including the Honourable Member in charge of the portfolio, to
vote for this motion, but, by some reasoning, it is understood to be a vote
of censure. I said, in my very first speech, that I do not intend this to
be a vote of censure, but somehow there is a tradition that, if this motion
is carried, it will amount to a vote of censure. Therefore, I am in this
position that, while everybody wants to vote for this motion, everybody
supports this motion with his arguments, and everybody, except the Party
to which I have the honour to belong, does not want the motion to be
passed to a division lest he be compelled to vote against his own judg-
ment.

Mr. M. A. Jinnah: May I point out, Sir, that we are not supporting
the motion, but we are supporting the subject-matter of the motion.

Mr. S. Satyamurti: I know, but there is no other way of bringing up
the subject-matter.

Mr. M. A. Jinnah: We have got it. We have brought it up. It has
been discussed.

Mr. S. Satyamurti: The subject-matter is one which commands every-
body's support, but because of a formal defect, unfortunately in this being
a motion for adjournment, some Honourable Members feel, they cannot
vote for it. Personally, being a fighter, I should like to vote for this
motion. It seems to me a good enough way to "impress" the Secretary
of State and the British Government with the strength of feeling in this
country and in this House, but I hope, Sir, and I beg of my Honourable
friends, the Honourable Member in charge and the Secretary of the Depart-
ment concerned, to convey to the Secretary of State not "impressions", but
mere "conclusions", not mere soft phrases, but that the subject-matter of
this motion commands the unanimous approval of the House. (Loud and
Prolonged Cheers.) From there not being a vote recorded, it must not
be misunderstood as if there is any lack of strong feeling in this matter on
the part of a single individual in this House. (Hear, hear.)

One last word, Sir, and I have done. I am also grateful to the other
Parties in this House who have expressed their profound agreement with
the desire of Indians to assert the rights of their fellow-countrymen in
Kenya; and, Sir, in order to make sure that this motion is not allowed to
be voted on, thereby creating a difficult or delicate situation for our friends
in this House and elsewhere, I would beg leave of you and of this Honour-
able House to withdraw this motion for the present. Let me, however,
tell the Government that we, on this side of the House and in fact on
every side of the House, feel very strongly. I wish god-speed to the
Government in this matter. I have, of course, no hope of success any
more than has my Honourable friend, Sir Paul-Husain. But, if just a
ray of light penetrates the dark chambers of Downing Street, and they do

the right thing, we shall be grateful; but, if not, let me assure the Govern-
ment here and in England, that we shall later on, take every opportunity
of bringing up the subject again and again, and make it an issue in the
forefront of our political life, until we see that our fellow-Indians' rights
are safeguarded, and respected and protected in all the Colonies and
Dominions. Our Indian fellow-countrymen abroad may rest assured of
our deep sympathy and concern in this matter, and I hope the Government
will represent our views correctly and sincerely. I would now ask your
leave, Sir, to withdraw this motion. (Loud and Prolonged Applause.)

Mr. President (The Honourable Sir Abdur Rahim): Has the Honour-
able Member the leave of the House to withdraw his motion?

(Voices: "Yes, yes.")

The motion was, by leave of the Assembly, withdrawn.

MEMORANDUM.

Sir Joseph Bhoré called on the Secretary of State at the House of Commons on the 21st May to discuss the question of clove marketing in Zanzibar and the question of the definition of the White Highlands in Kenya. Sir Cecil Bottomley and I were both present.

Sir Joseph dealt first of all with Zanzibar. He explained that he was representing primarily the Government of India, but he would also like to represent the standpoint of what he might describe as Indian moderate and loyal opinion. In these capacities he sympathised entirely with the object of the clove marketing scheme. The Government of India were no less convinced than the Secretary of State of the necessity for improving the position of the primary producer, but he did wish to ask whether the Secretary of State was satisfied that the means adopted to deal with it were the best, and in these circumstances he would urge that a public enquiry should be held to ascertain whether the methods adopted were the best and whether something which would be less obnoxious to Indian public opinion could be devised. The Secretary of State said that he saw considerable objections to any form of public enquiry. The Government could not devolve its responsibilities. It must formulate its own policy and, in fact, it had done so. He would be most unwilling to pull up a new policy by the roots just when it was getting established to see whether the roots were the right shape. Moreover, there were practical difficulties. It is exceedingly difficult to get a good man to conduct a local enquiry of this kind. The whole thing

*Copy sent on
15033 1/155 E.M.
as regards Z bar
clove marketing*

thing had been greatly misrepresented and he was very much afraid that anyone who proceeded to Zanzibar without the local knowledge of the local authorities would find it exceedingly difficult to get at the facts, but he did not wish to take up an absolutely uncompromising attitude. If he could have any specific complaints, he would be very glad to examine them. - The scheme had already been modified in certain respects. Certain proposals had been put before him which would have the effect of eliminating the ordinary exporter. - Those proposals had been rejected but he could not have unco-ordinated export without a proper control over the grading and the price for each grade. The licensing system to which Sir Joseph Bhore referred was necessary to ensure that, but any reputable person could get a licence. There was no question of discrimination on any ground except that an applicant had a criminal record or had previously held a licence and been deprived of it for contravening its terms. - The subject was discussed at considerable length without any substantially different points emerging. Finally, the Secretary of State agreed that if the Government of India could produce individual complaints regarding the scheme, he would instruct the Resident to give them the fullest consideration. Sir Joseph Bhore suggested that if these individual complaints indicated that there were certain general defects in the working of the scheme, there would be ground for a public enquiry of the kind for which the Government of India had asked. The Secretary of State refused to commit himself in this matter, but said that he would not absolutely exclude the possibility of holding such

Close
the scheme
the white highlands

such an enquiry after the scheme had been running for a reasonable period if there did appear to be genuine reasons for supposing that its working was defective and that the trade could be carried on better on ^{the} lines, ^{consistently with} ~~more~~ ^{the interests of the producer.} approaching those which prevailed before the scheme was introduced.

Sir Joseph Bhore then turned to the question of Kenya. He did not wish to raise the general question of principle relating to the "White Highlands". Every Indian, irrespective of class or creed, objected to that policy and felt very strongly about it, but he appreciated that the present was not the time to raise it. If he might say so without offence, he regarded the matter as one in which India might in course of time educate public opinion to see the wrongness of racial discrimination in any part of the Empire. But the question which he wished to put now was whether it was necessary and advisable or wise that these discriminations should be extended at the present time and given validity by law. The Secretary of State said that all that was intended was to define the area of the White Highlands. Sir Joseph Bhore suggested that the proposal was also to extend them, but after some discussion it was agreed that since the area of the White Highlands had, in fact, never been defined, it was difficult to see how it could be ^{said to be} extended and that, in fact there was no question of including within the area as defined any part which had hitherto not been regarded as belonging to it and ^{in fact} that ~~in fact~~ one area which some people regarded as belonging to the White Highlands was being excluded from it. Sir Joseph Bhore said that while

the definition of the area was objectionable to Indian public opinion, what was much more objectionable was the formulation of a statutory definition of European privileges in that area. Those privileges had never been defined by statute and Indians regarded it as a definite worsening of their position if they were defined. If he might put the thing in a nutshell, speaking for himself he would say that reasonable Indians did not mind what the Government of Kenya did in practice, but that every Indian would be uneasy if discrimination in favour of the European was given statutory force in Kenya. Sir Cecil Bottomley suggested that what it came to was that if the Order-in-Council was drafted in such a way as merely to define the Highlands for executive purposes without defining the privileges reserved to the Europeans within them, the Indian objection would be met. Sir Joseph Bhore said that it would be met in part, but not altogether and asked whether it was absolutely essential to define even the area. The Secretary of State said that His Majesty's Government had come to the conclusion that it was. This was a decision not of himself, but of the whole Cabinet, and the reason was not that the settlers were afraid of Indian intrusion into the area, but that they were afraid that the native reserves might be enlarged in such a way as to encroach on those Highlands. So long as the Highlands were undefined this was always theoretically possible, but as soon as they had been defined it was no longer possible. Sir Joseph Bhore said that he quite appreciated that point, but that the passing of an Order-in-Council at the present stage might so prejudice the position of moderate Indians, who were quite prepared to acquiesce

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acquiesce in a fait accompli but would be quite unable to speak in defence of a statutory definition of that fait accompli, that the Congress Party might obtain a majority not only in the new Central Legislature, but also in the Provincial Legislatures in the first elections held under the new constitution of India. Such a result would be a disaster of the greatest magnitude and he begged the Secretary of State to do all that he could to prevent the Indian moderates from having their hands tied behind their backs by the presentation of an argument to the Congress Party that the British Government were still firmly resolved to perpetuate and re-inforce a policy of racial discrimination in an area under their direct administration. The Secretary of State said that the Government had given the most solemn expression of their intentions in a White Paper and he did not see how they could go back on that decision, but he fully appreciated Sir Joseph Bhore's point and would do everything that he could to meet it.

G. L. P. Rawson
24/5/35

Mr. Freeman 12 24/5/35
Mr. Freeston 20p.

38005/35.

31 130

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

AIR MAIL

24/5/35

DRAFT.

KENYA.

NO. 377

O.A.O.

DOWNING STREET,

25 May, 1935.

Sir,

I have the honour to acknowledge the receipt of your despatch No. 206 of the 27th of April, in which you reported that completion of the removal of the Laikipia Dorebo and the Uasin Gishu ^{is complete} Masai to the Northern Frontier ~~Reserve~~ and the Masai Reserve respectively, in accordance with the recommendations of the Kenya Land Commission.

30

*Official Legat
P.O. 1/A
No 2 on
P.O. file.*

FURTHER ACTION.

*R299
M/3
on No 13
PR file*

arrangements made for
2. I agree that the smoothness with which
the movement of the Uasin Gishu Masai was effected
reflects great credit on the officers who
organised the removal, and I note the arrangements which
were made for those natives who established ~~the a~~
~~claim to lands in the~~
Nandi, Elgeyo and Kamasia Reserves.

3. I take this opportunity to transmit to
you an extract from the Official Report containing
a question addressed to me in the House of Commons
and my reply thereto, and shall be obliged if you
will inform me whether the removal of any
native occupiers of land in the European Highlands,
other than the Laikipia Borobo, has been effected
or is in early contemplation.

I have etc.

(Sgd.) P. CUNLIFFE-LISTER.

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KENYA
No. 206.



GOVERNMENT HOUSE,
NAIROBI,
KENYA.

RECEIVED
21 MAY 1935
G. O. REGY

27/4 APRIL, 1935.

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Sir,

No 3
No 1

forward (31)

With reference to your telegrams No. 47 of February, 22nd and No. 53 of February 25th on the subject of the removal of natives from lands in the European Highlands, I have the honour to report that the removal of the Laikipia Dorobo and the Uasin Gishu Masai has now been completed.

2. The Kenya Land Commission recommended in paragraph 811 of this Report that the few scattered Dorobo in the Laikipia District should be moved into the Northern Frontier Province where suitable accommodation should be found for them. Steps have been taken to inoculate the cattle owned by these people who had for some years been living temporarily on unalienated Crown Lands or as resident labourers on farms in Laikipia District. Their removal to the Samburu country in the Northern Frontier Province has now been completed. The number of stock moved was slightly over 8,000 head and the people numbered 336 souls.

3. In paragraph 923 of the Report the Commission recommended the removal of the Uasin Gishu Masai to the Masai Reserve. The position of this section is dealt with in paras. 915-923 of the Report. It will be recalled that, when the removal of this section was undertaken some years ago, a considerable number of the natives were found to have closer affinities with the Nandi and Elgeyo tribes than with the Masai; and this has again proved to be the case/

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.

case amongst those who were at that time left in this area of the Ravine District.

4. The removal of those who elected to go to the Masai Reserve, viz. 560 men, women and children with 5,122 head of cattle and 1,200 goats, was carried out successfully during the first and second weeks of last month. District Officer Mr. J.H.Lewis was in charge of the move under the superintendence of the Provincial Commissioner, Rift Valley Province, and in acknowledging the arrival of the Uasin Gishu Masai the Officer-in-Charge Masai District stated:-

"I should like to say a word for the manner in which the safari was handed over. The party arrived in good spirits and only three very old women, who had come by car, appeared fatigued to the point of exhaustion. Special care was taken of them at Amala Bridge and after a day's rest they were able to proceed by lorry to Kilgoris".

You will, I feel sure, agree with me that this satisfactory state of affairs reflects considerable credit on the officers who organized the removal.

Arrangements have also been made for the supply of food to the Uasin Gishu Masai until they settle down in their new abode.

5. Those natives who established a claim to reside in the Nandi, Elgeyo and Kamasia Reserves have been moved there in the following numbers:-

To Nandi 89 men, women and children and 404 head of cattle.

To Elgeyo-Marakwet 77 men, women and children and 272 head of cattle.

To Kamasia 142 men, women and children and 705 head of cattle, including sheep and goats.

6. The Provincial Commissioner has been informed that on the completion of the move the area vacated may be made available forthwith for the Kamasia as recommended in paragraph 967 of the Commission's Report subject to the following conditions:-

(a) Residence in the area to be allowed only under a permit issued by the District Commissioner.

(b)....

- (b) That the District Commissioner have authority, subject to the sanction of the Provincial Commissioner, to prohibit entirely all goats and sheep in the area.
- (c) The District Commissioner have authority, with the sanction of the Provincial Commissioner, to close the area temporarily to all or any stock.

These conditions will be embodied in due course in Rules issuable under the new Native Lands Trust Ordinance.

I have the honour to be,

Sir,

Your most obedient,
humble servant,

A. Delgado

ACTING GOVERNOR.

AIR MAIL

KENYA
No. 64.



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GOVERNMENT HOUSE
NAIROBI
KENYA

RECEIVED

13 MAY 1955

O. O. RES

CONFIDENTIAL.

14th MAY, 1955.

Sir,

No15
I have the honour to refer to your Air Mail Despatch No. 190 of the 12th March, with which were transmitted for my consideration copies of papers on the subject of the effect of the proposed Order in Council regarding the European Highlands upon the position of Indians in Kenya. I have also received your Despatch No. 152 of 16th February, in which my attention was drawn to the fact that your agreement with the suggestion of Mr. Paling that the Order in Council will definitely exclude Indians from having any rights in the Highlands referred only to the restriction against Indians in respect of their ownership and occupation of agricultural land in the Highlands.

No4
In letter No. P&J.477/55 of the 20th February, from the Indian Office, Whitehall, addressed to the Under Secretary of State, it has been asked that the Government of India may be afforded an opportunity of expressing their views on the proposed Order in Council before it is promulgated: and it would appear from Telegram 877 from the Government of India, Department of Education, Health and Lands to the Secretary of State for India, that representations are being prepared "if not as regards the principle of reservation, at least in respect of the methods now proposed". In this connection you may be aware that it has been stated in the Kenya Daily Mail in their issues

of ...

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.

Final to
No4

of April 5th and 15th that the British Government has agreed to defer action pending the receipt of the representations of the Government of India.

5. The importance which is attached by the European Community to the Commission's recommendations regarding the Highlands was made very evident in the speeches of European Elected Members during the Debate on the Report last October: and you will have observed from the copies of the Legislative Council proceedings sent with Kenya Confidential Despatch No. 5 of January 3rd. that they indicated in their speeches readiness to accept the whole of the Commission's findings (with the exception of Lorogi) in consideration of the security which the proposed Order in Council would confer upon the European Community in respect of the Highlands. References to this point are made on pages 529, 554-556, 548, 577, 606, 611, 614, 684, 704 of the proof of the debate.

No 2

38005/35

in case of
debate below.

I note that the Government of India would appear to be contemplating representations principally regarding the methods proposed by the Commission: and I should say at once that any suggestion that His Majesty's Government were prepared to consider representations in respect of the principle of the reservation of the Highlands would evoke accusations from the European Community here of breach of faith and I fear that the 1925 controversy would be revived with greatly increased bitterness.

4. So far as the "methods proposed" are concerned it is probable that the representations of the Government of India will be received before the drafting of the Order in Council is completed and can be considered without undue delay. But, if as appears probable, those representations are directed against the issue of an

No 26
23.05/54

Order in Council at all, the European Community here will in my opinion stand on the Cabinet decision as recorded in paragraphs 9 and 10 of C.M.D. No.4580 and will strongly resist any proposal that their position should not be consolidated by means of an Order in Council on which they set great store. The opposition to the issue of an Order in Council voiced in the Debate by one of the Indian Members (c.f. page 560) was based on the ground of the finality of such an Order - which of course is the reason for the European insistence on this particular recommendation in the Report.

5.] Before the Legislative Council Debate was held a request was formally addressed to the European Elected Members for any comments they had to make on the actual areas which the Commission defined as the Highlands: and they were also asked for their views as to who should be the accredited representatives, how they should be chosen and as to what provisions the Order in Council should make regarding their status functions and powers in order to carry out the Commission's recommendations. An uncompleted draft memorandum was received from their Secretary in January which was considered by Sir Joseph Byrne shortly before he sailed: and on the 12th April I received a deputation from the European Elected Members to discuss the position generally. I assured them that this Government was anxious to make similar progress in the matter of the Commission's recommendations regarding the Highlands as in regard to the other recommendations in the Report: and invited them to acquaint me as soon as possible as to the points which they wished me to bring to your notice.

6.] A real difficulty has become evident in recent months as to the interpretation of the White Paper of 1925 - in cases where sub-divisions of farms are made for industrial, residential etc.

Collymore

No 1

residential or commercial purposes. Some doubt exists as to whether such sub-divided lands can be regarded as agricultural lands. I propose to address you separately in this matter but I mention it here because of your Despatch No. 152 of the 16th February, in order to record the view of the European Elected Members that the reservation applies to all land outside existing Townships, and to all sub-divisions of farms until such sub-divisions are declared to be Trade Centres or Townships.

7. I have now received from the European Elected Members a Memorandum signed on their behalf by Lord Francis Scott and Major F. Cavendish-Bentinck. I enclose one copy forthwith for your information and will transmit my remarks on it as soon as possible.

I have the honour to be,

Sir,

Your most obedient, humble servant,

A. W. Lodge

ACTING GOVERNOR.

Almost a year has now elapsed since the publication of the Report of the Kenya Land Commission, and ample time has been afforded for full consideration of its recommendations. Certain of such recommendations can only be implemented gradually as circumstances and the evolution of events may permit, but one of the main provisions of the Report, and the one to which the European community of the Colony attach the greatest importance, should, it is submitted, be given effect to without further delay. We refer to the recommendations of the Commission contained in paragraph 1441, 1449, 1469 and 1979 of the Report, which are summarised in Clause 10 of the White Paper of 1934 (Com. 4580) as "that the boundaries of the Reserves and of the Class C Lands (native leasehold areas) and of the Highlands should be declared by Order in Council".

His Majesty's Government having, in the White Paper above quoted, approved of this recommendation, are presumably awaiting representations from the Government of Kenya as to the method to be adopted for giving effect to it, and this Memorandum is submitted in order that the Government of Kenya and through them His Majesty's Government, made be made fully aware of the views of the European community not only upon the subject of the boundaries of the Highland areas, but also as to the measures which must be taken to preserve the complete and absolute integrity of those areas and to secure for all time that "privileged position" which persons of European descent enjoy therein by virtue of the provisions of the Command White Paper of 1923.

We believe that the above objects can only be achieved either by the issue of an Order in Council which shall -

1. Define and demarcate the boundaries of the European Highlands.
2. Vest in an European Lands Trust Board, to be established on the lines proposed later in this Memorandum, the power to veto
 - a. All transactions which may result in any portion of the Highlands being alienated to anyone other than a person of pure European descent.
 - b. The establishment of new township areas within the boundaries of the European Highlands.

Or alternatively by the issue of an Order in Council in respect of 1 and 2 b. above ~~with~~ with Legislation forbidding and declaring "null and void" any alienation or transfer of land within the demarcated boundaries either "inter vivos" or by succession to persons other than of pure European descent.

1. The Boundaries of the European Highlands.

We assume that, in addition to a map on a fairly large scale, showing the boundaries with different coloured verges, there will be a geographical definition in words,

both of which will be prepared in Kenya; we ask that we may be allowed to inspect both the map and the verbal definition before it leaves Kenya; we also make the suggestion that the verbal definition be interspersed at fairly frequent intervals by numbers in brackets, such numbers being shown on the map for easy reference; as a purely imaginary example :-

"(1) from the point of commencement being the SE beacon of farm 1260, thence westerly along the southern boundary of the Farm 1260 to the south-east beacon of Farm 1261, thence westerly along the southern boundary of Farm 1261 to (2) the centre of the Kiara River etc."

We consider that so soon as the boundaries are defined by Order in Council immediate steps should be taken to demarcate by cairns (or other suitable beaconing), plus really efficient lock-spits, those boundaries which are not topographically defined by rivers roads or railways etc.

With regard to forest reserves boundaries referred to in paragraph 1977 of the Commissions Report, we hold very strongly that where a Forest Reserve is bounded on one side by European Highlands and on the other by Native Reserve, the whole of such Forest Reserve should be included within the boundary of the European Highlands for purposes of defining the boundary of the Highlands but we agree with the Commissioners that, in the unlikely event of any such Forest Reserve ceasing to be used as such and becoming available for alienation, the question as to whether such available land should be retained in the European Highlands or added to Native Reserve must be referred firstly to a Joint Special Committee composed of Representatives from both the Native Lands Trust Board and The European Lands Trust Board and if they cannot agree that the matter be referred to a single Arbitrator perhaps a Judge of the Supreme Court.

We consider that wherever the boundary between the Native Reserve and European Highlands is also the Boundary of a Forest Reserve that Boundary as shown on the Map shall carry a special marking with a reference to the foregoing special conditions attaching to the Forest Reserve adjoining it.

(2). Boundaries.

We are prepared to make the sacrifices, recognised as such and recommended by the Commission and accept the Boundaries of the European Highlands as recommended by the Commission with one exception, namely the Leroghi Area, ~~including the Mutha portion.~~ We attach great importance to the retention of this particular area within the Boundaries of the European Highlands and we urge that a grave and unforgettable injustice will be done to the European community if the Commission's recommendations are not amended so as to include the Leroghi ~~and Mutha Areas~~ ~~within the European Highlands.~~ ~~MASTER~~

With this exception we agree to the Boundaries as shown by the Commission, but we would prefer to leave our final and signed approval until we have had the opportunity of inspecting the map and the verbal definitions, which we assume will be prepared in Kenya for submission to His Majesty's Government.

2.

In order to instill a sense of absolute and permanent security in the minds of the European community, in other words, to give them that same "measure of security in regard to land" as is to be enjoyed by the Natives on the recommendation of the Land Commission (see Sec. 1979 of the Report), not only must the Boundaries of the Highlands be safe-guarded by an Order in Council, but the position can only in our opinion be rendered secure beyond question if the Order in Council provides for a grant to a Statutory Body comprising the representatives of the whole of the European Highlands (as recommended by the Commission in Sec. 1496 of their Report) of an absolute power of veto over all land transactions whatever within the Boundaries of the European Highlands on similar lines to the powers proposed to be vested in the Native Lands Trust Board in reference to all land transactions in the Native Reserves.

It was made abundantly clear by Major Cavendish Bentinck, speaking in Legislative Council in October last on behalf of all Elected Members of Council, that nothing but a guarantee of permanent security on the above lines can be accepted by the Europeans of the Colony, amongst whom considerable apprehension still exists that attempts may in the future be made to undermine or tamper with the privileged position of Europeans in the Highlands, and that Elected Members were not prepared without such guarantee to agree to the recommendations of the Carter Commission made in the natives interest. We would reiterate that statement of the position - that it is a "sine qua non" of the acceptance of the Report of the European community that they be given adequate safe-guard on this head - and further would express our belief that no issue in the Colony is so capable of arousing public feeling as that of the security of the White Highlands. It roused the country to a remarkable degree in the years following the war, and it is capable of doing so once again.

Apprehension is undoubtedly felt today at attempts which are being made to introduce a new issue into the White Highlands controversy by a strained interpretation of the phrasing of the White Paper of 1923. When the White Paper was issued it was believed to have settled finally a question which had been the subject of bitter controversy for some years and to secure (so far as it could be secured by administrative practice) the principle of veto of all transactions between persons of different races relating to land within the Highlands area, exclusive only of land within townships. Some years after the issue of the White Paper, however, the doctrine was enunciated that the Veto could only be called into operation in the case of a transfer of agricultural land and that where a change of "user" was proposed or had been effected, no Veto could be exercised. This doctrine has the support of the present Attorney General and of certain of his predecessors, but from it we must strongly dissent. It is, we submit, based upon a narrow and academic interpretation of certain terms used in the White Paper and ignores the circumstances surrounding the controversy preceding its issue and the avowed purpose of the Paper of setting at rest certain matters in dispute.

Perhaps we cannot present our arguments in a better form than was done by Lord Francis Scott in a letter written to The Hon. The Colonial Secretary on the 24th April 1934.

"There can be no doubt in the mind of anyone conversant with the history of the case that the dispute between the two communities in relation to land was as to whether the White Highlands as a whole (other than land in townships, which was of necessity excluded) were to be kept inviolate for White Settlement. It can be accepted that the particular issue arising in the Makuyu case was not raised specifically during the years of controversy because both the European and Indian Communities were at one, in treating the question as relating to land outside townships generally, without regard to its proposed user.

It will be appreciated that if the test to be applied is the ultimate use to which land is to be put rather than its original use, the whole object of the Veto will be lost and little by little, encroachment will creep in in every highland area in the Colony, with the resulting breakdown of the integrity of the highlands for European Settlement. In fact if a change of user from agricultural purposes to purposes other than agricultural is to mean that the Veto of the Governor in Council is not to be exercised in respect of such land, it is clearly demonstrable how easy it would be completely to negate the Imperial Government's decision on this Cardinal issue.

When the case was argued with the Colonial Office and His Majesty's Government by the Members of the delegation which proceeded to England in 1923, the European case was based largely on the risk of gradual encroachment were the Veto to be removed. In the Memo: submitted to the Colonial Office of this deputation the following passage occurs

'To permit free transfers between the races would inevitably result in the gradual encroachment on the Highlands area by Asiatics, and would certainly nullify the attempt to preserve these areas for European occupation by restricting original grants to Europeans. This would not be because Europeans as a whole would sell to Indians, but because here and there one might find an individual who might do so and by a process of "dummying" through the medium of Europeans not settled in Kenya, it might be possible to transfer considerable areas to Indians. Once they are established in certain areas, neighbouring Europeans would wish to leave and themselves be forced in their turn, to transfer to Indians, and so, gradually, large districts might become exclusively settled by Asiatics.'

Mr. Churchill, speaking at the East African Dinner in January 1921 when he was Secretary of State for the Colonies said :

'We consider we are pledged by undertakings given in the past to reserve the Highlands of Kenya exclusively for European Settlers and we do not intend to depart from that pledge.'

The Wood-Winterton agreement which contained proposals for settlement of the various issues between

Europeans and Indians contained, in relation to the Highland areas, the following passage :

'Having regard to past policy and commitments the Colonial Office cannot contemplate any change in the existing law and practice.'

Turning to a consideration of the terms of the White Paper itself, I submit that the expression "agricultural land" to which the Attorney General attaches importance in support of his argument is used by way of contra-distinction to land in the Highlands situated within a declared township which has as above mentioned, always been admittedly open to occupation and ownership by members of the different races. The only question arising with reference to such township areas was whether race segregation was or was not to be imposed within their boundaries.

The offer of land to Indians in the Lowland areas for agricultural purposes was made to meet their complaint that by being deprived of land in the Highlands they were in effect being shut out from all agricultural enterprise in the Colony and to give an earnest of the Colonial Office's oft-repeated assurance that there was no unfair discrimination against Indians in their exclusion from the Highlands.

The penultimate paragraph of Clause B of the Command Paper appears to set the matter beyond all doubt. This paragraph is in fact the operative part of the Clause, the passage containing the finding of His Majesty's Government on this issue, whereas the previous passages, some of which are quoted by the Attorney General in support of his opinion, are in the nature of mere recitals of the successive stages of the matter in dispute. The paragraph in question reads as follows :-

'After reviewing the history of this question and taking into consideration the facts that during the last fifteen years European British Subjects have been encouraged to develop the Highlands and that during that period settlers have taken up land in the Highlands on this understanding, His Majesty's Government have decided that the existing practice must be maintained as regards both initial grants and transfers.'

The decision of His Majesty's Government was therefore for the maintenance of the "existing practice" and a search of the records from 1906, when the Elgin Policy was first introduced, until 1923 the date of the White Paper, will, I believe, show that in no case concerning land in the Highlands (and outside the limits of a township) was sanction given for a transfer to an Indian.

We have had the opportunity of consulting certain Members of the European delegation who attended the Conference with the Colonial and India Offices in 1923, and we have their assurance that this particular issue was not raised,

was never (they believe) present in the minds of either party, and would have been most strenuously opposed by them if it had been advanced by the Indian representatives. The sole reason which prompted Lord Delamere and his colleagues to accept as a whole the terms of the White Paper, with several of whose provisions they were in disagreement, was that they considered that the two main principles for which they had been contending - the system of election of Indians to the Legislative Council and the reservation of the White Highlands exclusively for Europeans - had been definitely secured to them.

There remains to make proposals for the formation and composition of the European Lands Trust Board.

We contend that the "accredited representatives" of the European Community are the Members elected by that Community to represent them on Legislative Council, and therefore that the majority of any Board or Trust constituted must be chosen from the European Elected Members on Legislative Council.

We believe that this contention is unanswerable and admits of no argument to the contrary and we therefore consider that the composition of the Board should be as follows :-

- Chairman - The Hon. W.M. Logan, O.B.E.,
Commissioner for Local Government, Lands and Settlement.
- and three European Elected Members, who should be nominated by the whole body of European Elected Members.

We have purposely not included in this Memorandum any reference to matters not immediately essential to the principle of the confirmation of the privilege of Europeans in the Highlands - however important such matters may be in effecting the recommendations of the Commission - as any such reference might tend to cloud the immediate issue and to give scope for objections or discussions actually irrelevant to the essential principle. We thus felt that it would be useless for us at this stage to drag within the scope of this Memorandum matters ultimately important but irrelevant immediately to it. If the Order in Council confirms the policy of giving Europeans a privilege in the Highlands analogous to that of the natives in their Reserves then the main issue will be finally and satisfactorily settled as a first step, and details of procedure can be dealt with in due course.

Ld. Francis Scott,
Ld. H. Laverdick-Berwick.

28
144

The Anti-Slavery and Aborigines Protection Society

(in which are incorporated the British and Foreign Anti-Slavery Society and the Aborigines Protection Society)

Joint Presidents :

The Rt. Hon. THE EARL OF LYTTON, K.G., G.C.S.I., G.C.I.E. The Rt. Hon. LORD MASTON, K.C.S.I. The Rt. Hon. LORD NOEL-BURTON

Chairman : CHARLES H. ROBERTS, Esq.

Vice-Chairman : CHARLES ROBERT BURTON, Esq.
TRAVERS BURTON, Esq.

Secretary : SIR JOHN HANNAH.

Assistant Secretary : MISS E. K. BATTY.

Joint Hon. Treasurers :

ALFRED BROOKS, Esq., J.P.
H. J. TAPSCOTT, Esq.

DENISON HOUSE,

296 VAUXHALL BRIDGE ROAD,

LONDON, S.W.1.

(CLOSE TO VICTORIA STATION.)

RECEIVED

[13 MAY 1935

C. O. REGY

10th May, 1935.

To :-

The Rt. Hon. Sir Philip Cunliffe-Lister,
G.B.E., M.C., M.P.,
Colonial Office,
Downing Street,
S.W.1.

ACKD. BY P.C.

Sir,

No 25
No 24

My Committee has carefully considered the reply of the Secretary of State to their letter dated April 5th, upon the question of the Kenya highlands. I am asked to express their appreciation of this reply.

As the position with regard to the Kenya highlands appears to be one of exceptional gravity, and one which strikes at one of the main objects for which our Society exists, our Committee would greatly appreciate being informed whether in any of the following major respects they are under any misapprehension.

We understand that it is now proposed to follow up the Morris Carter Commission by the issue of an Order in Council, under which the area of the highlands will be largely increased. That by such legislative action on the part of the Home Government, it will henceforth be made illegal for any coloured British subject - colour being the sole test - to own by future legal title any land in that area. It will, as we understand it, be permissible to grant legal title of ownership to German, French, or

Scandinavian subjects - but not to British Africans who are natives of the territory.

The historic background, as we understand it, is shortly stated as follows -

The question of land in the highlands of Kenya first arose when grants were made to the Europeans who were invited there; following upon this, British Indians wished also to come in. The matter was then referred to Lord Elgin, who took the view that it was impossible to discriminate legally against British subjects. Lord Elgin agreed to the making of an administrative order for purposes of convenience, and the Governor was free to grant titles only to Europeans, and any transfer had to be subject to the Governor's approval. That, as we understand it, has been the practice hitherto.

It is proposed now by Order in Council to discriminate in a colony against Indians (British subjects) and natives (British subjects) solely on the grounds of colour or race. This is, we believe, a thing which has never hitherto been done by the Home Government. It is, moreover, in flagrant violation of a principle which for a century has been asserted and maintained by the Government of India.

Our society exists primarily to maintain what has been so well set forth by Queen Victoria, in words drafted, we believe, by your predecessor, Lord Derby:-

"There shall not be in the eye of the law any distinction or disqualification whatever founded upon mere distinction of colour, origin, language, or creed, but the protection of the law in letter and in substance shall be extended impartially to all alike."

146

It is because we fear that this great principle
is now threatened with violation, that we beg leave to
ask whether we may receive an assurance that no such
measure is contemplated.

I have the honour to be, sir,

Your humble and obedient servant,

John Harris

Secretary.

26
147

CENTRAL OFFICES of the SOCIETY of FRIENDS
FRIENDS HOUSE, EUSTON ROAD, LONDON, N.W.1.

Secretary: W. F. NICHOLSON

9 May 1935.

Secretary:
STANLEY J. FORWARD

Telephone:
MUSEUM 3600

Librarian:
JOHN L. NICKALLS

Telegram:
OVERSIGHT, EUSTON ROAD, LONDON

COMMITTEE ON SLAVERY AND PROTECTION OF NATIVE RACES.

To the Rt. Hon. Sir P. Cunliffe-Lister, M.P.
The Colonial Office,
Whitehall S.W.1.

R

RECEIVED
10 MAY 1935
C.O. REG.

Sir,

The attention of this Committee has been drawn to the statements made in Parliament that an Order in Council is being prepared to give effect to a recommendation of the Morris Carter Land Commission in Kenya whereby Kenya Africans will be debarred permanently from residing on, or possessing land anywhere within an area of 16,700 square miles (over 10 million acres) except as regards temporary occupation for African wage earners in the employ of Europeans.

It appears to us that, in the eyes of Africans, this vast area will, quite reasonably, cease to be regarded as a part of Africa, which must be disastrous.

We are informed that in this same district some thousands of Africans had their homes and farm lands within recent years, until evicted to make way for European settlers.

We hope that ^{that} the Order in Council will not be proceeded with.

We further wish to associate ourselves with the protest made in Parliament by Sir Robert Hamilton on March 1st, 1935 to your proposal that the cost of the Morris Carter Commission, amounting to £7,000, should be met from funds due to untraced dependants of African troops and carriers who fell in the war 1914 - 1918.

We consider that the cost should be met from Kenya Government funds.

Yours faithfully

Alexander C. Wilson
(Chairman)

148
25

C. O.

Mr. Flood. / 6

Mr.

Mr.

Mr. Parkinson.

Sir G. Tomlinson.

X Sir C. Bottomley.

Sir J. Shuckburgh.

Perml. U.S. of S.

Parly. U.S. of S.

Secretary of State.

C. D.
R 18 APR
D 22

Downing Street,

23 April, 1935.

Sir,

I am etc. to acknowledge the receipt of your letter of the 5th of April putting forward certain criticisms on matters arising from the Report of the Kenya Land Commission.

In the first place I am to remind you that in defining, at the request of the Commission, what was to be meant by the privileged position of Europeans in the Kenya Highlands the Secretary of State was merely enunciating the existing situation as it is and as it has been for ^{many} the past thirty years. The effect of the proposed Order-in-Council to define the European Highlands will merely be to afford formal sanction to an administrative

DRAFT.

THE SECRETARY,

ANTI-SLAVERY AND ABORIGINES PROTECTION SOCIETY.

18/4 FS

699 a letter - Slavery 27

FURTHER ACTION.

practice

C. O.

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

DRAFT.

FURTHER ACTION.

Commission among the objects to which the grant of £50,000 voted by Parliament is to be devoted. Your Committee appears to be under some misapprehension as regards this grant and I am to invite attention to paragraph 2044 of the Morris Carter Commission's Report in which they specifically recommended that the Imperial Govt. should include the cost of the Commission among the objects for which funds might be supplied by Parliament. In consideration of this recommendation and of the disputed liability on account of unclaimed balances due to natives from the War, H.M.G. has provided ^{an ex gratia} payment of £50,000 and it is quite obvious that the cost of the Commission may ^{properly} be charged to this ^{against} ~~sum~~ ^{payment} ~~indeed, it~~ would be difficult to argue that the ~~cost of the Commission was not closely~~ linked

practice which has been consistently followed in Kenya since 1908 at any rate. If no enactment were made the administrative practice would remain unchanged and there would be no practical difference in the situation.

As regards the position of those Africans who at present hold certain land rights in the highlands the Secretary of State has no intention of departing from the recommendation of Sir Morris Carter and his colleagues as summarised in Pt. III Chapter 7, of their Report. The Committee of the Anti-Slavery and Aborigines Protection Society will no doubt remember that the Commission envisaged the possibility that portions of the highlands might be leased by natives and in paragraphs 1494-96 of the Report they outline the means whereby such leases might be arranged.

In the concluding paragraphs of our letter attention is called to the inclusion of the cost of the Morris Carter Commission

linked up with active African welfare.

I am, etc.

Signed) J. E. W. FLOOD

The Anti-Slavery and Aborigines Protection Society

(in which are incorporated the British and Foreign Anti-Slavery Society and the Aborigines Protection Society)

Joint Presidents:

THE RT. HON. THE EARL OF LYTTON, K.G., G.C.S.I., G.C.I.E. THE RT. HON. LORD MASTON, K.C.S.I. THE RT. HON. LORD NOEL-BUXTON

Chairman: CHARLES DE ROBERTS, Esq.

Vice-Chairmen: CHARLES MOORE BUXTON, Esq.
TRAVERS BUXTON, Esq.

Secretary: SIR JOHN HARRIS.
Assistant Secretary: MISS E. K. BATTY.

Joint Hon. Treasurers:
ALFRED BROOKS, Esq., J.P.
H. J. TAPSCOTT, Esq.

*Ack. -
Official Answer*

RECEIVED
11 APR 1935
C. O. I.

DENISON HOUSE,
25, VANDERHALL BRIDGE ROAD,
LONDON, S.W.1.
(CLOSE TO VICTORIA STATION.)

To:-

The Rt. Hon. Sir Philip Cunliffe-Lister,
G.B.E., M.C., M.P.,
Colonial Office,
Downing Street, S.W.1.

5th April, 1935.

ACKD. BY P.C.

Sir,

Our Committee has noted with concern the questions and answers in Parliament upon the interpretation of the phrase "privileged position in the Highlands of Kenya Colony".

These questions and answers, coupled with references to the relative documents, notably White Paper Cmd. 1922/1923 - White Paper Cmd. 3573/1930, and the Minutes of the Morris Carter Commission, convince our Committee that native rights, both actual and potential, in the Highlands are to suffer still further restriction. In the opinion of the Committee, disabilities imposed upon racial grounds are a violation of the main principles of British Colonial practice, and are without justification either in ethics or economics, more particularly in the case of the Kenya Highlands, where the interests of the natives of the soil are sacrificed for those of the immigrant and dominant races. Our Committee, whilst protesting against the policy of racial disability, hopes and believes that in due time the impolicy and injustice of such procedure will be recognized, and the loyal native subjects of the Crown given equal rights with the whole of His Majesty's subjects.

In the meantime, the Committee desires to appeal

*Not
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Chair
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naistic*

● to you with regard to two particular features affecting the land in the Highlands, and also upon the allotment of the £50,000 as recommended by the Morris Carter Commission.

First with regard to the land. We understand that the position is to be regulated by the issue of an Order in Council, and beg leave, therefore, to appeal to you to give sympathetic consideration to the following two suggestions:-

(1) We believe that at the moment there are a small number of African families at present enjoying rights in the Highlands. Our suggestion is that the Ordinance should safeguard the occupation of this small body of natives and give them a legal security in these rights.

(2) From information we receive from Kenya Colony, it would seem that there are frequently farms and lands in the Highlands advertised for sale, either directly or by means of auctions, for which there is no European purchaser. Our Committee trusts that it may be possible to incorporate in the Order in Council a provision that where such lands are for disposal, offers of purchase from individual or native Africans should be entertained equally with those of other British and foreign immigrant races.

The second matter concerns the grant of £50,000.

In the first place, our Committee desires to express its appreciation of the successful efforts made by the Colonial Office to secure this grant. It is with regard to the allotment of the grant that they wish to make an appeal. As our Committee understands it, this £50,000 represents unclaimed balances of pay due to native carriers or their relatives who died or disappeared whilst employed in the Great War. According to the Morris Carter Commission, 39,000 of these are still untraced, many of whom doubtless died in the War.

The Merris Carter Commission recommended that, in view of the impossibility of tracing the relatives of these people, the £50,000 which was owing by the Imperial Exchequer to the carriers or their relatives should be devoted to the cost of carrying out certain recommendations of the Commission directly affecting Native welfare. From the debate on the 1st March last, it would appear that it is now proposed to use £7,000 towards the cost of the Commission generally.

NOT
36005/11/15

Our Committee begs to draw the attention of the Secretary of State to the fact that, so far as can be traced, no suggestion for such application of funds appears in the report of the Merris Carter Commission. Our Committee cannot believe that it is just to alienate any part of this £50,000 for any purpose other than native African welfare, and they trust that the Secretary of State may, upon consideration, refuse sanction for the allocation of any part of the total towards the general cost of the Commission, which they suggest is a legitimate charge upon administrative funds.

I have the honour to be, Sir,

Your humble and obedient Servant,

John Harris
Secretary.

REUTERS

NEWS

EA
153
23

TELEPHONE
CENTRAL 15060

9, CARMELITE STREET,
THAMES EMBANKMENT
LONDON, E.C.4

5 47 PM

DELIVERY SIX

WHITE RESERVATIONS IN KENYA.
INDIANS AND THE HIGHLANDS.
SUPPORT FROM GOVERNMENT OF INDIA.

RECEIVED
30 MAR 1935
C. O. REGY

NEW DELHI, WEDNESDAY.

THE POSITION OF INDIAN SETTLERS IN KENYA AND THE PROPOSED EXTENSION OF THE RESERVATIONS IN THE HIGHLANDS FOR EUROPEAN SETTLERS WAS DEBATED IN THE LEGISLATIVE ASSEMBLY TODAY

THE QUESTION WAS RAISED ON A MOTION FOR THE ADJOURNMENT OF THE HOUSE BY MR. SATYAMURTI, CONGRESS.

HIS MAJESTY'S GOVERNMENT, HE SAID, SEEMED TO HAVE PRACTICALLY MADE UP THEIR MINDS TO INSTITUTE AN ORDER-IN-COUNCIL AND EXTEND THE AREA OF RESTRICTION AGAINST THE INDIANS FROM 11,000 SQUARE MILES TO 15,000.

THAT AREA OF RESERVATION, MR. SATYAMURTI POINTED OUT, OWED MUCH TO INDIAN LABOUR AND TO INDIAN MERCHANTS.

MR. BAIPAI, SECRETARY FOR EMIGRATION, SAID THERE WAS IDENTITY OF OUTLOOK AND UNANIMITY OF OBJECTIVE AND DETERMINATION TO PRESENT THE CASE OF INDIANS TO THE COLONIAL SECRETARY.

F.B.

SEE SHEET...(2)...

V SHEET...(2)... NEW DELHI - - WHITE RESERVATIONS IN KENYA - -

- - JUSTICE FOR INDIANS OVERSEAS. - -

THE PROPOSED ORDER-IN-COUNCIL, SAID MR. BAJPAI, MADE THE EXISTING POSITION WORSE BY CREATING A STATUTORY RACIAL RESTRICTION WHICH HITHERTO HAD ONLY EXISTED AS A MATTER OF ADMINISTRATIVE CONVENIENCE.

FURTHER, IF AN INDIAN SOLD LAND TO A EUROPEAN THE LATTER WOULD NOT BE ALLOWED TO ALIENATE THAT LAND TO AN INDIAN.

ALL PARTIES WERE UNANIMOUSLY DEMANDING JUSTICE FOR INDIANS OVERSEAS.

HE HOPED THAT IN THE YEAR OF THE KING'S JUBILEE NOTHING WOULD BE DONE WHICH WOULD BE RESENTED BY KENYA AND INDIA.

MR. JEMMAN, INDEPENDENT MOSLEM LEADER, DESCRIBED THE PROPOSED ORDER-IN-COUNCIL AS A DOWNRIGHT INJUSTICE AND HE WISHED "GODSEKED" TO THE EFFORTS OF THE GOVERNMENT OF INDIA.

SIR FAZLI HUSAIN, EMIGRATION MEMBER, WHO IS RETIRING AT THE END OF THIS MONTH, RECALLED THAT THROUGHOUT HIS TIME HE HAD BEEN HELPED IN MATTERS CONCERNING INDIANS OVERSEAS, BY THE LEADERS OF INDIAN OPINION INCLUDING MR. GANDHI.

DESPITE ALL THIS SUPPORT HE HAD ACHIEVED ONLY MINOR SUCCESSES AND REGISTERED NUMEROUS FAILURES.

HE HAD BEEN SUPPORTED BY HIS COLLEAGUES, BY THE VICEROY AND ALSO BY THE SECRETARY OF STATE FOR INDIA BUT THE TASK REMAINED HOPELESS OWING TO CONFLICTING INTERESTS.

INDIA WAS PART OF ASIA AND NOT OF EUROPE. THE DISCRIMINATION PROPOSED WAS AGAINST ALL ASIATICS BUT THE STRUGGLE MUST BE FOUGHT TO A FINISH (APPLAUSE).

SHEET... (3)... NEW DELHI - - WHITE RESERVATIONS IN KENYA - -

SIR FAZLI THOUGHT INDIA SHOULD CREATE SYMPATHY IN THE MINDS OF BRITONS AND OF BRITAIN BY MEANS OF HONOURABLE PROPAGANDA.

MR. SATYAMURTI WITHDREW HIS MOTION PROFOUNDLY THANKING THE GOVERNMENT FOR ITS SYMPATHETIC ATTITUDE.

HE URGED THE GOVERNMENT OF INDIA TO CONVEY TO THE BRITISH GOVERNMENT THE UNANIMITY OF OPINION OF THE HOUSE AND THE COUNTRY.

IF THAT OPINION WENT UNHEEDED CONGRESS MIGHT BRING THE ISSUE TO THE FOREFRONT OF ITS POLITICAL PROGRAMME.

R E U T E R.

RTBX/CJM/FS. MARCH 27/35.

Chairman of Executive Committee:
H. H. THE AGA KHAN.

Deputy Chairman:
SIR M. M. SHOWNAGGREE,
K.C.I.E.

Hon. Secretary and Treasurer:
Hy. S. L. POLAK.

Indians Overseas Association

Telegrams: Kaloph, Estrand, London.

Cables: Kaloph, London.

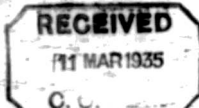
Bentley's Code.

Telephone: General 2022
Holsborn 5300.

42, 47 & 48, Danes Inn House,

265, Strand, London, W.C.2.

8th March, 1935.



Sir John Maffey,
Permanent Under Secretary,
Colonial Office,
Whitehall, S.W.1.

Dear Sir John Maffey,

No 13 I am very much obliged to you for your letter of the 7th instant with enclosures. I had in fact already seen the letter, but I am glad to have additional copies. I am glad to be informed that the matter is now the subject of an official representation from the Government of India and is under consideration between the Colonial and India Offices.

1000/55
19. I see, however, from Sir Philip Cunliffe-Lister's reply to Major Milner on the 14th ultimo that he continues to draw no distinction between a privileged position by administrative action and an extensive right. This, as I need hardly remind you, is of the very essence of the matter.

Thanking you for your courtesy,

Yours sincerely,

C.O.

38005/35

57
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Mr. Huxton 6/3

Mr. Flood 6-3

Mr. Parkinson.

Sir G. Tomlinson.

✓ Sir C. Bottomley. 7.3

Sir J. Shuckburgh

✓ Permt. U.S. of S. 7/3 FS

Party. U.S. of S.

Secretary of State.

Kemp.

FS

8 MAR 1935

Sir

DRAFT.

The U.S. of S.
I.O.

I am in touch with the

re: of yr. letter of the
20th of February (P. & J. 477/35)

(4)

regarding the effect of the
proposed Order-in-Council
upon the position of Indians
in Kenya, and to request
that the attention of Secy.

From P. & J. 22 Feb.
(112)
To P. & J. 2 Mar
(Comp. 44-1)
(112)

Sir Samuel Hoare may be
invited to the reply given
in the House of Commons on
Feb. 14th to Sir John Lubbock (10061)
and on Feb. 27th to Sir Robert
Hamilton (10017). A copy
of a despatch transmitting the

2 dfts.

FURTHER ACTION.

Copy to & this to (with out)
H. Kemp LF conv. 10

Copy to Kemp (112)

2 n.p.g. file

6 n.p.g. file

From question and answer to the
Governor of Kenya was forwarded
to you under cover of the letter
from this Office of the 19th of Feb. (2 lines)

2. I am to report that any
representations which the Govt of India
may wish to put forward may
be communicated at an early
date. As regards the Mahoran
farm, dealt with in para. 1957(2)
of the Kenya Land Commission's Report,
Sir Philip Coulters has not
yet been given to the Commission's
recommendation by the Govt of Kenya,
but the Governor, to whom a copy
of this correspondence is being sent,
is being asked to report on the
present position by air mail.

3. A copy is enclosed for Sir Samuel
Horne's info. of semi-official corresp
which has recently passed with Mr. H.S.L. Polak,
of the Indian Overseas Association

C.O.
Mr. Frater 6/3
Mr. Flood 6.
Mr. Parkinson.
Mr. G. Tomlinson.
39005/35
Kenya.

Sir C. Bottomley, 7.3.35
Sir J. Shuckburgh
Permt. U.S. of S. 7/3 FS for Sir J. Raftery
Parly. U.S. of S.
Secretary of State.

7th March 1935

DRAFT.

Hj S.L. Polak Esq.

Dear Mr. Polak

Thank you for

(2) your letter of Feb. 22nd
about the position of Indians
in Kenya. I feel sure
that you will not expect
me to discuss these ~~large~~
difficult matters with you

in informal correspondence,
more particularly as they have
already found the subject
of official representations from
the Govt of India, and
are now under consideration

P.O. No 2 an
- 12 file (containing
supplementary)

2/1/35

FURTHER ACTION.

Copy 12 (without serial) to
I.O. in comp. diff.
Copy also required
for sub. end. to
L¹ to Kenya.

copy to I.O. (14)
... (13)

between members and the Public
Office.

You have, no doubt,
noticed the replies given by
Sir Philip Cunliffe-Lister
to two recent questions in
Parliament on the subject; I
enclose the list, taken from
the Official Report.

(Signed) J. L. MAFFEY.

12
157

Indians Overseas Association

Telegrams: Kaloph, Estrand, London."
Cables: Kaloph, London.
Bentley's Code.
Telephone: ~~Central 2222~~
HOLDEN 5222.

(Car. Pse.)

42, 47 & 48, Danes Inn House,
265, Strand, London, W.C.2.

22nd February, 1935.

Sir John Haffey,
Permanent Under Secretary,
Colonial Office,
Whitehall, S.W.1.

Repts?

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~~26~~

PERSONAL

Dear Sir John,

I very much appreciate the renewal on Wednesday, after so long a time, of the contact that I was privileged to have with you in India.

I am sending you herewith a copy of Mr. Andrews's book. I had a letter from him on his way to Achimota this morning. He is, I gather, writing a book on Indo-British relations, and is trying to do so from what will be for him a detached point of view. He should be back here on the 31st March and is leaving for India on the 12th April. I hope, however, that he may be able to find time to see you before he goes, as he may be able to give you a viewpoint on inter-racial relations with regard to Africa that will be of value in view of his long and various experience of work in many parts of that Continent.

If I may revert to the Kenya question, I would point out that the Indian viewpoint is based upon the position set out in

Annex 13

Copy to I.O. (14) - Kampala

occupation of agricultural land in the Highlands. The Governor is given powers of veto of transactions as between persons of different races, and it seems clear from an ordinary reading of the provisions of the Ordinance that the exercise of the veto is not contemplated as a usual or customary thing. Its actual exercise has been strongly resented by the Indian settlers as well as by the Government and people of India, but, as the Secretary of State for the Colonies has rightly said, the Europeans have been established as regards agricultural land in the Highlands in a privileged position by administrative action. But a privileged position cannot by any stretch of imagination be regarded as one of exclusive right, and it is clear from the language of the Ordinance that no exclusive right of ownership or occupation was ever granted to the Europeans, nor in law can administrative action nullify the legal effect of a Statute.

In the circumstances, India is now being faced with the intention on the part of the Secretary of State to issue an Order in Council that will have the effect of revoking the present legal right of Indians in certain circumstances to acquire rights over agricultural land in the Highlands, thereby, legally converting what is a privileged position for the Europeans into an exclusive right, *subjecting them to a position of legal inferiority*. I am confident from my knowledge of Indian sentiment that, whilst it may temporarily reconcile itself to a certain state of affairs brought about by administrative action, in which, however, it has never acquiesced, it would regard the issue of an Order in Council with the consequences above mentioned, as being in complete

conflict with the declarations contained in the 1923 Kenya White Paper and the Report and the proceedings of the Joint Select Committee. Anything calculated to add to the existing tension in race relations in India is to be deeply deplored, and you, who are in a position from your Indian experience to verify the intensity of Indian feeling on this question, in which Indian national sentiment and prestige are most deeply involved, will, I am sure, have no difficulty in helping the Secretary of State to realise the immense injury to Imperial relations that I foresee if the present proposal is proceeded with.

I am of course not dealing here at all with the question of native rights, which is another problem altogether, upon which I have my own views, but which I prefer to leave to the experts on that question. My remarks here are confined to the Indian aspect only.

I trust you will forgive the length of this letter, intended to place on record the substance of what I was able imperfectly and somewhat hurriedly to bring to your notice on Wednesday.

With kind regards,

Yours sincerely,



RECEIVED
26 FEB 1935
C. O. REGY

8 161
REGISTRATION

Telegram from the Governor of Kenya to the Secretary of State for the Colonies

Dated 26th February 1935. Received at 11.2 am. 26th Feb. 1935

URGENT

466
465
No 37. Your telegram No 53 and your telegram unnumbered of the 25th February Section of Land Commission Report should read 811 not 84. Regret error in transmission. No compulsion was necessary. These DOROBO while preferring to remain where they were had for years been told that they were only being allowed to squat on farms on unalienated crown lands in this district on sufferance. There was no opposition to the move.

C.O.

- Mr. *Franklin* 2/7
- Mr. *Hard* 25. *closed*
- Mr. *Parkinson*
- Sir G. *Tomlinson*
- Sir C. *Bottomley*
- Sir J. *Shuckburgh*
- Permt. U.S. of S.
- Party. U.S. of S.
- Secretary of State.

Annexed by No 8
38000/3
Kenya

Codes & Sent
7.0 pm
25.2.35
Q

Q.D.
1 26/35

DRAFT. Tel. (contin)

Gov. Nairobi

Immediate
 No. 53 your let. 25. Please
 telegraph whether computation
 necessary to effect moves
 referred to, and if so
 what legal basis can be
 adduced.

SECRET

FURTHER ACTION.

The report to be sent to the main committee
should be made (a) to the 7th Division
of the ~~Board~~ (Board) of the

4

Any further communication on this subject should be addressed to—
The Under Secretary of State for India,
Public and Judicial Department,
India Office, London, S.W. 1,
and the following reference quoted—
P. & J. 477/35.



INDIA OFFICE,
WHITEHALL,
LONDON, S.W. 1.

Telephone:—
Whitehall 3140. L.O. Ext. No. _____
Telegrams:—
Rozsamund, London.

RECEIVED
21 FEB 1935
C.O. REGY

20th February, 1935.

3

Leave
Sign

Sir,

No 36
17312/31

With reference to correspondence ending with your letter of the 12th April, 1932, No. 17312/31, I am directed by the Secretary of State for India to transmit, for the information of the Secretary of State for the Colonies, copy of a telegram received from the Government of India regarding the Report of the Kenya Land Commission and the

Dated 18th February 1935. Summary of Conclusions of His Majesty's Government

thereon published in May 1934 (Cmd. 4580). As regards the reservation on the question of the Highlands area in Kenya made by the Government of India at the time of the issue of the White Paper of July 1923 which is alluded to in paragraph 2 of the telegram, I am to refer to paragraphs 3 and 4 of the Resolution of the Government of India, No. 730, Overseas, dated 18th August 1923, copy of which was forwarded with the letter from this Department of the 14th September, 1928, I. & O. 3175/23.

Copy to Kenya (15)
5634/13

2. Sir Samuel Heape supports the request now made by the Government of India and he trusts that, in the circumstances, Sir F. Cunliffe-Lister will be willing to afford the Government of India an opportunity of expressing their views on the matters mentioned in their telegram before the promulgation of the proposed Order in Council. It will be noted that the Government of India presume that no action has yet been taken in regard to recommendation (b) in paragraph 1957 of the Commission's Report.

I am, Sir,

Your obedient servant,

R. Peel

RECEIVED
COPY FOR REGISTRATION
E. 25 FEB 1935
C. O. REGY

5
163

Telegram from the Governor of Kenya to the Secretary of State for the Colonies.

Dated 23rd February, 1935. Received 3-5 pm 23rd February.

No. 35.

No 3

Your telegram No. 47 Dorobo referred to in Land-Commission Report Section 84 have been moved. These natives grow no crops and no cash compensation was required or paid but stocks were inoculated free. Uasin Gishu Masai about to be moved reference Section 923. No crops are grown and no cash compensation is proposed but expenses of removal and assistance to them for few months will be defrayed out of the parliamentary grant. Stock has been inoculated free.

811

4
14/2

Any further communication on this subject should be addressed to—
The Under Secretary of State for India,
Public and Judicial Department,
India Office, London, S.W. 1.
and the following reference quoted—
P. & J. 477/35.



INDIA OFFICE,
WHITEHALL,
LONDON, S.W. 1.

20th February, 1935.

RECEIVED
21 FEB 1935
C.O. REGY

30

Telephone:—
Whitehall 5140 L.O. Est. No. _____
Telegrams:—
Ratanindram, London.

Leave Secy.

Sir,

No 36.
17/32/31

With reference to correspondence ending with your letter of the 12th April, 1932, No. 17312/31, I am directed by the Secretary of State for India to transmit, for the information of the Secretary of State for the Colonies, copy of a telegram received from the Government of India regarding the Report of the Kenya Land Commission and the

Dated 18th February 1935. Summary of Conclusions of His Majesty's Government

thereon published in May 1934 (Cmd. 4580). As regards the reservation on the question of the Highlands area in Kenya made by the Government of India at the time of the issue of the White Paper of July 1923 which is alluded to in paragraph 2 of the telegram, I am to refer to paragraphs 3 and 5 of the Resolution of the Government of India, No. 750, Overseas, dated 18th August 1923, copy of which was forwarded with the letter from this Department of the 14th September, 1923, I. & O. 3178/23.

Copy to Kenya (15)
45634/13

B. Sir Samuel Beare supports the request now made by the Government of India and he trusts that, in the circumstances, Sir P. Cunliffe-Lister will be willing to afford the Government of India an opportunity of expressing their views on the matters mentioned in their telegram before the promulgation of the proposed Order in Council. It will be noted that the Government of India presume that no action has yet been taken in regard to recommendation (b) in paragraph 1957 of the Commission's Report.

I am, Sir,

Your obedient servant,

R. Peel

DECODE OF TELEGRAM.(COPIES
CIRCULATED)From Government of India, Department of
Education, Health and Lands, to
Secretary of State for India.

Dated New Delhi, 12th February, 1935.

Received 12th February, 1935, 4-45 p.m.

IMPORTANT.

E.214/B/33 L. and O. Your letter of June 7th, E. and O. 3510/34. Kenya Land Commission Report. We have recently received copy of resolution of East Africa National Congress protesting against the following.

(1) Recommendation in Section 1979 that boundary in European highlands should be safeguarded by an Order in Council.

(2) Recommendation in Section 1957 (b) regarding comparatively small block of farms immediately to the east of Muhoroni which was alienated to Indians in 1906.

2. According to paragraph 10 of Command Paper No. 4580 of May, 1934, His Majesty's Government have approved, inter alia, of recommendation in Section 1979. This declaration was made without giving us opportunity of making representations regarding effect of proposed Order in Council on Indian opinion. We are advised that provision of such Order in Council will possess full legislative force and will, with substantial accuracy, be describable as statutory. As you are aware, we have reserved to ourselves liberty of making such representations on the subject of reservation of highlands as may be necessary whenever in the future legitimate opportunity presents itself, either as a

result of experience gained or by change of events or otherwise. We think proposed change in authority for reservation justifies our making representations, if not as regards principle of reservation, at least in respect of methods now proposed. We shall therefore be grateful if you will persuade Colonial Office to defer promulgation of Order in Council until we have been given opportunity of expressing our views on the subject.

3. Presumably no order has been passed in regard to Section 1957 (b). We shall be obliged if no orders in the matter are passed until representations, which we propose submitting shortly, have been considered.

C.A.

3 167

Mr. *Dutton* 2/21
 Mr. *Hand* 22 *atms*
 Mr. *Parsons*
 Sir G. *Toulson*
 Sir C. *Battamley*
 Sir J. *Shuckburgh*
 Persnl. U.S. of S.
 Parly. U.S. of S.
 Secretary of State.

Answered by Nos

Q.D.
 22 FEB
 22

Letter sent
 1.0. pm
 22/2/55
 W.B.

no. 47

DRAFT. Tel

Gov. Nandi

16

Question being asked in Parliament
 27 Feb. by *Mr. [unclear]* whether any
 of the native occupiers of land
 in the European highlands
 of Kenya have been removed
 or displaced since the receipt
 of the Morris Carter Report
 and if so how many
 have received cash compensation
 and to what approximate
 average amount and. I
 propose to reply ^{to first part} in the
 negative. Can you confirm.

FURTHER ACTION.

SECRET

the content that in his accepting
his forecast of the effect of
the Order in Council upon Indians,
I had in mind only the restriction
of their ownership, occupation of
agricultural land, with which
~~provision~~
I was specifically dealing
as is clear from the answers.

(Sd/-) P. CUNLIFFE-LISTER