

EAST AFR. PROT.

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Rec 29 JUL 05

No. 26812



(Subject.)

Legal status of slavery
in coast strip

365

1905

June

Previous Paper.

6/6

9/9/1

Submits memoranda on subject Deprecates abolition of slavery at present time but concurs with Mr. Bashi's remarks that in the event of our purchasing the Sultan's slave lands dominions it might be expedient to abolish (Slaves)

Mr. P. Ommeney

The diff. to me will be useful if the question is raised again desirable I think that we may

Put by ?

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Subsequent Paper.

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In Sfr. D. O. 1891
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Commissioner's Office,
Mombasa,

June 27th 1905.

AFRICA PROTECTORATE.
No. 565



Sir,

I have had the honour to receive your despatch No. 176 of April 18th calling for a report as to the possibility of abolishing the legal status of slavery in the coast strip, and, generally, as to the present position in regard to the institution of slavery in that district.

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2. As I was of opinion that it would be valuable to have the views of the officials who come most in touch with the slave population and the slave owners, I requested them to submit memoranda on the subject, copies of which I have the honour to forward herewith.

3. I entirely agree with the opinions expressed in these documents. We are bound by the assurance given by Lord Kimberley in 1893 to acknowledge the legal status of slavery,

and

Principal Secretary of State
for the Colonies,
Downing Street,
LONDON.

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and the abolition would necessitate the payment of compensation. Although slavery is dying out automatically, thanks to the decrees of Seyid Ali (1890) and Seyid Khalifa (1899), it is estimated that there are at the present time some ten or twelve thousand slaves in the Protectorate, and the amount of compensation that we should have to pay would be about forty thousand pounds. If any advantage were to be gained by liberating the slaves, I would advocate applying to H. M. Treasury for the necessary funds; but as the abolition would only be the obtaining of an object which is not particularly desired by the slaves themselves, and which in the course of a few years must be reached, I strongly deprecate any movement in the matter, especially as it would, as pointed out by Judge Hamilton, re-open sore feelings long since healed and dislocate the natural process of change.

4. With regard to the treatment of slaves, it appears that in most cases the yoke sits very lightly, and the slave is often happier than the freeman, as he is able to apply to his master when out of work or ill. Should he be badly treated, he can prosecute his master in the courts, and ill-treatment of a slave by his master may entail forfeiture of all his slaves.

A report by Mr. Monson (Africa No. 8, 1905) gives, I think, a fair and accurate statement ^{of the conditions} under which slaves live, and every year tends to make these conditions still easier. With the opening up of Tana and the lot of the slave there will in a short time be no worse than that of the slave in Seyidie, where it is little more than a name. That it is not very bad even in Tana land is apparent from Mr. MacDougall's report. It has recently come to this officer's notice that it was too much trouble for three or four groups of slaves, who, owing to the death of their masters without lawful heirs, acquired their freedom, to walk twenty miles to receive their freedom papers.

5. Whilst deprecating the abolition of slavery at the present time, I concur with Mr. Barth's concluding remarks and think that in the event of our purchasing the Sultan's Mainland dominions on the expiration of our lease of the coast strip, when the British flag would replace the Zanzibar flag, it might be expedient for sentimental

sentimental reasons to liberate all slaves then living and
compensate the owners.

I have the honor to be,

Sir,

Your most obedient,

humble servant,

J. Stewart

U. S. DEPARTMENT OF JUSTICE
NO. 405

Reference to O. Department No. 174
of April 18th.

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Memorandum on Slavery in the Coast Strip of the East Africa Protectorate.

Though the question of the abolition of the legal status of slavery depends mainly on the payment of compensation to the slave owners, the whole matter is so closely bound up with every condition of life and labour on the Coast that any attempt to alter the existing state of affairs should be made with the greatest caution.

The fact that a slave was held by his master in the same light as any other personal property that might be bought, sold, pledged, or exchanged has been recognized by the Government; and though the master's powers of dealing with this particular form of property have been restricted to the last degree, no attempt could be made to directly abolish slavery and deprive the master of his property without compensating him for his loss. Otherwise the action of the Government would not only be inequitable, but would appear doubly so in the eyes of the Arab masters to whom the holding of slaves is allowed by religious law and the custom of centuries which the British Government pledged itself to observe ten years ago and has in fact observed in this respect up to the present time.

It thus becomes more than ever apparent that compensation must form the basis of any negotiations that may be entered into with a view to abolition.

Before going more at length into the question of compensation, it would be as well to consider the actual system of slavery as it exists at the present day and to



as this it will be necessary to go back to the decree of Seyyid Ali of August 1890.

The main points of this decree are as follows:-

- (1) Slaves cannot be acquired by exchange, sale or purchase.
- (2) Ill treatment of a slave by his master may entail forfeiture of all his slaves.
- (3) Slaves can only be inherited by the lawful children of their master, and where the master dies leaving no lawful children, his slaves ipso facto become free.

As no fresh slaves could be acquired after 1st August 1890, and as of the slaves existing at that date the number has annually diminished owing to natural causes, while a considerable number have been freed by their masters and others have purchased their freedom by mutual agreement, and others became free through their masters dying without leaving children, it will be seen that the number of slaves has materially decreased in the last 15 years. The system is in fact automatically working towards its complete extinction.

This process of extinction is further hastened by the fact that many hundreds of persons who are nominally slaves are in practice to all intents and purposes free. I refer to the large class who have run away from their masters and either settled down or entered into service for hire in other parts of the Protectorate ^{and} elsewhere, without any intention themselves of returning and without any hope on the part of their masters of exerting any control again over them.

This state of affairs has to a large extent been

brought about by the attitude of the Courts. Seyyid Ali's decree provided that 'every slave should have the same rights as a free man to bring and prosecute complaints and claims in court', and this right was further emphasized in the East Africa Native Courts Regulations 1897 (Art. 86).

The procedure which has in consequence been adopted with regard to claims brought in the Courts by a master against their slaves, is to make them the subject of civil actions and not to make any order for the forcible return of a slave or to put into force against him other methods than those permitted by the ordinary civil law.

The actual kidnapping of slaves is a thing of the past, and my experience would lead me to believe that cases of ill-treatment of slaves are more rare in East Africa than are cases of ill-treatment of servants in England.

When Seyyid Ali's decree was proclaimed, and the Arabs realized that the system of slavery was defunct, much discontent and ill-feeling were shown, and when the British Government took over the Administration of the Mainland in 1895, the Courts were for the next few years constantly occupied with cases relating to the return of slaves to their masters. Since 1895, however, when the manner and procedure for dealing with such cases was settled, and the slave-owner realized that he could only get a civil judgment against his slave, they have gradually decreased till now, when such a case is of the rarest occurrence.

During the last fifteen years both master and slave have learnt the one to accept and the other to appreciate the altered conditions that now exist. The slave has learnt that his bondage is of the lightest and can be

escaped from with ease, and the master with the fatalism of his race has learnt to bow to the inevitable.

Having regard to the past history of the whole question in West Africa and the quiet and speedy manner in which it is in practice working out its own solution, any attempt to hasten the end by immediate abolition would in my opinion be better avoided.

The ultimate extinction of the system with all its stagnating and demoralising effects is earnestly to be desired, but seeing the stage at which it has already arrived in its natural progress to that end, and that the process is working without friction and gives time for new conditions to grow up and take the place of the old, it is a matter for serious consideration whether it would not be wiser from every point of view to abstain from interference.

Since the general upheaval and the dislocation of labour caused by the decree of 1890 which brought many Arab land-owners to ruin have normal conditions have been slowly reasserting themselves, these would again be upset by immediate abolition and it would take years before matters would again return to a normal state.

Past experience in other parts of the world has shown the unwisdom of immediate abolition. If, however, it should be decided on, coupled with compensation, it will be necessary to exercise the greatest care to prevent the Government being defrauded. A rigid census of slaves will have to be compiled without allowing a suspicion to leak out of the ultimate object with which it is made. Otherwise collusive claims of every sort will be made, the truth of which it would be practically impossible to ascertain.

The cost of compensation would in any case be considerable taking the average price per slave as \$1.25 i.e. £.4 and allowing for 10,000 slaves being proved.

The cost, however, should not enter into a consideration of the matter if there were any moral obligation on the government to pronounce for immediate abolition. But seeing that the obligation lies rather in the opposite direction and that abolition would only mean attacking by a short cut an object which must be reached in a few years, and that at the cost of reopening sore feelings long since healed and disrupting the natural process of change from the old style to the new without any definite corresponding advantages it does not appear to me to be called for by any consideration of policy, economy, or moral obligation.

W. H. Hamilton

Principal Judge.

1855

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MEMORANDUM on Slavery in the Zanzibar Dominions of His
Highness the Sultan of Zanzibar.

Since the decrees of Ali bin Said dated the 1st August 1890 and of Khalifa bin Said, dated the 13th September 1890, slavery has been a fast decaying institution in the Sultan's dominions. The principal effects of the first decree were (1) that all dealing or traffic in slaves was abolished and made an offence, (2) slaves could be inherited only by the children of their deceased masters if no children, then the slaves were free, (3) ill treatment of slaves was made an offence, (4) all slaves who had obtained their freedom were unable to own slaves, (5) slaves were granted the right to bring and prosecute complaints and claims before the Kadis.

The decree also gave slaves the right to purchase their freedom but this was subsequently revoked by a decree of 20th August 1890.

Seyyed Khalifa bin Said's decree enacted that all persons born in the Sultan's dominions after 1st January 1900 should be free.

It will then be seen that slavery must gradually die out under the existing law leaving out of consideration the fact that numbers of slaves are freed by their masters or purchase their freedom by agreement.

The effect of a wholesale emancipation would most likely be to considerably retard the development of the coast strip. The result of the decrees before referred to was doubtless to throw land out of cultivation and cripple existing industries; total emancipation would considerably increase those evils. The idea of employing hired

labour is slow to appeal to Arabs accustomed to the benefits of slave labour and the process of education must necessarily be slow; thus the gradual abolition of slavery would appear to be eminently more suited to the economical position than an abrupt and complete emancipation. Such emancipation if adopted, ^{must} in my opinion, be accompanied by adequate compensation and a great difficulty arises owing to the fact that no register of slaves exists; the numbers and the consequent expense of freeing are therefore not readily estimable.

It is possible and more than probable that many bogus and collusive claims will be brought unless some preliminary steps are taken to prevent such possibility. I would suggest compulsory registration of slaves with a fee payable by the owner on each slave so registered. This registration should precede any hint as to the intention of the Government to emancipate and it would be useful whether emancipation were afterwards enforced or not. Compensation should then only be payable on registered slaves.

When considering this question it must be remembered that we hold the coast strip for a term of years only and its ultimate fate on the expiration of such term does not appear to be determined. If it is purchased or acquired by other means as a British possession then for sentimental reasons alone it might be worth the expenditure of the large sum that will be necessary to free it of slavery. It would scarcely be fair in such circumstances to enforce the opinion of the law officers of the Crown given in 1897 that "it is unlawful for a British subject to detain a slave" without recompensing the owners.

(Ed.) J. W. Barth.

MEMORANDUM.

According to the opinion of All bin Salim, the Assistant Liwall of Mombasa, there are from ten thousand to twelve thousand slaves in this Protectorate. If therefore it were decided to free all slaves it would be necessary to compensate the owners for the loss they would incur. A fair average sum would be Sixty rupees per slave. I am inclined to think that the owners would readily agree to this. But many difficulties would arise; natives have never registered their slaves, nor have they any deeds to prove their ownership. We should consequently have claims for many more slaves than actually exist and it would be impossible for the Courts to prove the genuineness of the claims.

On the other hand slavery is gradually dying out and will cease to exist in the course of a few years. Even although we might be willing to procure the emancipation of the slaves I doubt whether many would claim the privilege, certainly not the older people, who are given a piece of land by their masters, and when too old to cultivate it, are supported by them. The natives do not consider slavery a hardship; in fact many who were freed by the Church Missionary Society some years ago returned to their masters.

(Sd.) C. R. W. Lane.

H. E. Sub-Commissioner,

June 2nd 1905.

MEMORANDUM.

....

I have the honour to submit the following observations on the subject of abolishing the legal status of slavery in the Sultan's dominions.

There are two classes of so called slaves, those purchased anterior to Sultan Ali's Decree prohibiting the sale or purchase of slaves, and those born in slavery.

The former class are generally employed on plantations as cultivators and cocconut planters, under the control of a head slave, who is generally freed by his master. I may state that the extent of the plantations entirely rests with the slaves themselves and not with their masters as land is free and unlimited in area. The slave takes as much as he requires for his private use and has two days a week for cultivating his own plot. The master generally resides in the coast towns, in order to be near the mosque. He visits his plantation on an average twice a year, about the time the crops are being harvested, in order to get his own share of the proceeds.

The second class are known as "Wazalia" or household slaves and are regarded as free members of their master's family. These people are not expected to do any hard work or cultivation, the male members are employed as domestic servants, artisans and police, while the females are employed as concubines and cooks. If they were offered their freedom, I am confident that 75 % of them would refuse because they would have to leave their homes and work for their living.

To my mind there is very little difference, if any, between the master and his slave: they live together, have their

their meals together, and work together.

At the present moment there are three or four groups of slaves, who owing to their owners having died without lawful heirs, were entitled to their freedom, but notwithstanding my letters requesting them to present themselves at my Office for their freedom papers, they merely informed me that the distance (20 miles) was too far for them to travel for a piece of paper, the possession of which they asserted would not contribute to their happiness.

This is one of the many instances which would indicate that slavery in East Africa is merely a term and people at home appear to be under a delusion as to the actual condition of things relative to slavery in these parts.

Slaves freed in large numbers by the late Imperial British East Africa Company and by the various Missionary Societies did not turn out a success and they became a source of constant trouble and anxiety to the Administration simply because they would not work.

I recollect having issued letters of freedom to considerable numbers of slaves belonging to persons who rebelled against the lawful authority of the Government, 50 % of whom returned to their masters as soon as tranquillity was restored.

The various Decrees issued by His Sultan of Zanzibar have been attended with such extraordinary success that in a period of 17 years, or since the advent of the late Imperial British East Africa Company to these regions, 75 % of the entire slave population have obtained their freedom. Freeing the remaining slaves at once would not in my opinion be to the advantage of either the slave himself or his master. Taking into consideration the fact that slavery on the coast strip will die a natural death within the next decade, I hold the opinion that the matter had

better be allowed to solve itself.

(Sd.) K. MacDougall.

H.M. Sub-Commissioner.

1899.
26th 1904.

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