

1932

18117/6

18117/6

C0533/424

Land Commission.

Definition of term 'Highlands'

from file	Sir C. Bottenley	23/2
	R 297	17/3
	R 304	18/3
	R 297	
quent		
Reg 197		18/2
Mr Brewster		
Mr Allen	16/12	14/12
W. Mac		10
Mr Bottenley		6
Sir J. Stoddart		16/11/31
S. of S.		✓
Reg 297		3/2
Mr Brewster		3/2
Mr Crang		4/2
Mr Franklin		✓
297		22/2
Mr Brewster		22/2
Mr Brewster		22
Mr. Had		23

1 Governor Bygone 147 Conf (Au 27/31) _____ 3 Dec 32

State Commission has experienced some difficulty in interpreting term of reference regarding "Highlands" owing to absence of any definition of "privileged position". Submits proposed definition & requests approval by tel

At flag A

2 app. B

(1) In considering this matter Nos. 17-20 of 1933/30, which include Lord Passfield's discussion with the Kenya settler witness in Committee, and the Minutes below No. 17 B in that file are of importance. Further it does not seem desirable to take too much of the argument from the Native Policy Memorandum seeing e.g., that that memorandum might be quoted as in the policy as to "gold" land. Reference may also be invited to the last part of paragraph 7 of Lord Passfield's despatch of 10th April, 1931, in which he suggested inclusion of a definition of the Highlands. That despatch is intended to remain confidential.

14
K333/30

Kaggs
in case files

Concerned
Kaggs
(1933/30)

(2) I assume it must be accepted (pace Sir F. Leggett) that as regards the "Highland" area as ultimately defined alienations or transfers are to be limited to Europeans, i.e., the exclusion applied to natives as well as ~~Europeans~~ ^{Asiatics}.

Flag D in
12/17/32

(3) Starting from this basis it is necessary to consider the matter in relation to the Commission's terms of reference relating to (A) native claims over land (a) alienated (b) non-alienated, and (B) the setting aside of further areas for the present ^{or} and future occupancy of natives.

1. Governor Byrnes 147 Conf (H. 4/2/31) _____ 3 Dec 32

States Commission has experienced some difficulty in interpreting term of reference regarding 'Highlands' owing to absence of any definition of 'privileged position'. Submits proposed definition & requests approval by tele

At Key A

Flags B

14
16333/30

Flags C
in copy below.

See comment at
Key A.
(16333/30)

Flag D in
12/17/32

(1) In considering this matter Nos. 17-20 of 16333/30, which include Lord Passfield's discussion with the Kenya settler witnesses in Committee, and the minutes below No. 17 B in that file are of importance. Further it does not seem desirable to make too much of the argument from the Native Policy Memorandum seeing e.g., that that memorandum might be quoted against the policy as to "gold" land. Reference may also be invited to the last part of paragraph 7 of Lord Passfield's despatch of 30th April, 1931, in which he suggested inclusion of a definition of the Highlands. That despatch is intended to remain confidential.

(2) I assume it must be accepted (pace Sir H. Leggett) that as regards the "Highland" area as ultimately defined alienations or transfers are to be limited to Europeans, i.e., the exclusion applies to natives as well as ~~Europeans~~ ^{Asiatics} Europeans.

(3) Starting from this basis it is necessary to consider the matter in relation to the Commission's terms of reference relating to (A) native claims over land (a) alienated (b) non-alienated, and (B) the setting aside of further areas for the present and future occupancy of natives.

(4) As regards (A) the Elgin pledge cannot exclude (a) consideration of the grant in suitable cases of unalienated land in the present undefined Highland area as a possible form of compensation in respect of alienated land in that area to which the natives may now make good a claim or (B) the recognition of claims to unalienated land in that area made good by the natives.

(5) The setting aside within the present undefined Highland area of further areas for native occupancy ^{on the basis of need} is more difficult - but even this cannot be excluded from consideration. Any other course would make the second term of reference farcical in the case of such a Highland tribe as the Kikuyu.

(6) Therefore whatever boundaries the Commissioners might recommend without taking into account ^{above} possibilities arising out of (3) and (4) must be provisional and the final boundaries must depend on the Committee's recommendations and the Government's decisions in regard to (3) and (4), the Commission being entirely free to make recommendations, and the Government entirely free to take decisions, on matters arising out of ^{para 2 to 4 of here} the other terms of reference.

(7) To turn to the formula proposed. Experience of formulae in the case of Kenya makes one shy of them: but there

there are two considerations (i) whatever formula is adopted it should not be capable of being represented as introducing a change of policy. For this reason the distinction between "non-European immigrants" and Africans and the definite reference to the latter is open to misrepresentation. (ii) It should be regarded as an ad hoc formula for the guidance of the Commission, and not a binding declaration determining aspects of policy, which can only be settled, subject to the Elgin pledge, when the Commission has reported.

(8) The case might be met by amending the formula by omitting the phrase "over any non-European immigrant" and the words "to non-natives" and substituting "non Europeans" for "African Natives".

(9) The Joint Select Committee did not deal with the specific question of the area of the "Highlands" nor is it mentioned in the report of the interview Lord Passfield gave to the Kenya native witnesses.

(10) If it is accepted that no change of policy is involved we need not bring in in this case either the India Office or the Japanese Treaty question which has come up in connection with the town plots.

(11) For convenience and to reduce minuting, I have translated these views into the form of a draft telegram ^X for consideration. The definition as amended would read, the alterations being shown in red, as in the copy appended as No.2 in this file.

H.T.Allen.

14.12.32.

*This depends on
alternative definition
of non-Europeans
- see draft tel
18/12*

*X The draft is a
series of notes drawn
up after discussion.
18/12
14/2*

T.O

Perhaps it would be convenient if I now summarised the position.

I was asked whether I thought the declarations of 1906 and 1908 excluded natives from agricultural land in the Highlands. I do think so. It is true that the 1908 declaration only refers to Asiatics. I think this is probably due to the fact that the subject under discussion which gave rise to the declaration was the Indian question. In any case, I do not think that there is anything in the 1908 declaration which is sufficient to detract from the clear meaning of the 1906 declaration that the Highlands should be reserved for Europeans.

At the same time I suggested a revised form of definition, and Mr. Allen and I have now concocted a revised paragraph of the proposed telegram, which we hope will make it clear that while it is for the Commission to define the area and to make recommendations on the other matters, it will be open to the Government to consider the report as a whole, and if necessary to adjust the area as defined in the light of the recommendations under the other heads in the terms of reference.

H/S 16.12.32.

Sir J. Shackburgh:

Mr. Bushe's minute and the new draft follow discussion with me yesterday when we found it necessary to break away altogether from the formula contained in the Governor's despatch.

The

The only point which I need mention is that dealt with by Mr. Bushe as to the relation of the Elgin statement of 1908 to that of 1906, the latter of which will be found in No. 7 (page 43) of H.L. 159, 1907.

As a matter of fact the 1906 pronouncement equally with the later one arose out of the Indian controversy. ~~and~~ ^{no} one in either year dreamt of individual native land holding in the interior. I am glad to have Mr. Bushe's definite opinion, as the point has been rather troublesome since Lord Passfield's statement of native policy was issued definitely limiting the highlands to Europeans on the strength of Lord Elgin's 1908 decision. Native requirements of all kinds can now be dealt with by Sir Morris Carter's Commission with the knowledge that the natives equally with Indians cannot be provided for by ordinary land grants in the area now to be defined.

W.S.
16.12.32

P.L.
20/12/32

S. To Gen. tel. 279 (copy) (1 issued)
20/12/32

of Question

Worthily to No 1 yet received.

3-2-33
Regatt

? send a copy 3 pm by air
mail informing to para (c) of 3
and asking to be informed if the
suggested definition has been accepted.

J. S. P. P. P. P. P.
5/1/33

I assume that it will be
through - desirable to clear up the
point - submit - & - deposited

J. S. P. P. P. P. P.
4/1/33

Yes, when the current definition arrives, the
Government will be on his way to E. L. But
it may be that the definition has already
been agreed, and the last sentence in No 3
has been misquoted. In any case, a reminder
will do no harm.

J. S. P. P. P. P. P.
1/2/33

By Air Mail
2/2/33

To Gov. Conf (2) ←
(1 answer) 6 FEB 1933

5 Gov. Deputy of case 81 _____ 30 Jan 33
States Gov. had no objection to proposed definition of
Highlands & the Commission has been informed of S. of S. views.

? Publicly
J. S. P. P. P. P. P.

27/2/33
L. P. P. P. P.
22/1

The Point
You should see this file

Seen - with some astonishment
- see 7/2/33 23.2

was 23.2.33
with

(initials)

Standard, Harold
acknowledges (c) and draws attention
to (3)
DESTROYED UNDER STATUTE

Publicly
J. S. P. P. P. P. P.
10/2/33
at once

(initials)

5

KENYA.

No. 81.



GOVERNMENT HOUSE,
NAIROBI,
KENYA.

RECEIVED
20 FEB 1933
OFFICE

50 1/2
JANUARY, 1933.

No 3

Sir,

With reference to your Confidential Telegram No.279 of the 20th December, 1932, on the subject of the definition of Highlands, I have the honour to inform you that the Governor had no objection to the definition proposed in paragraph (a) of your telegram, and that the Commission was informed of your views and of the contents of paragraph (b).

I have the honour to be,

Sir,

Your most obedient, humble servant,

M. L. Malone

GOVERNOR'S DEPUTY.

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

C. O.



18/17/6/32

C. Kenya 7
4

Mr. Reay 4/2/33

Mr. Fernald 4 ff.

Mr. Parkinson.

Mr. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

for consn.

DRAFT.

Kenya

Conf (2)

Gen

For Air Mail - 7 Fely.

Answered by Nos
(see also b)

6 Feb 1933

Sir,

With reference
to your letter No. 147/
of the 3rd
of Dec^r, I have etc to
you are prepared to agree to
whether the definition
of the "privileged position"
to be accorded to Europeans
in the "Highlands", which was
suggested in my Conf. of the 20th of Dec^r,

(1)

(3)

No. 279

C. O.

Mr. Allen.

Mr.

Mr.

Mr. Parkinson.

Mr. Tomlinson.

Sir C. Bottomley. 16/12

+ Sir J. Shuckburgh. 16/14 31

Permd. U.S. of S.

Parly. U.S. of S.

Secretary of State.

PM

Answered by No 5

Code desent
9.45 pm. 2/12/32

No. 279.

C. D.
R 21 DEC
D 22

Confidential.

Your confidential despatch 147

DRAFT.

tel. for conson vide mins.

GOVERNOR

NAIROBI.

(a) I should prefer following definition

begins: The privileged position in question involves:

(1) The right of Europeans

to acquire by grant or transfer agricultural land in an area now to be defined and to occupy land therein;

(2) 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: ends.

(b) Areas as defined by Commission will no doubt need reconsideration and possibly adjustment by Government in the light of recommendations under paragraphs 2, 3 and 4 of terms of reference of Commission.

(c) I do not wish you to accept my suggested definition if you have any

misgiving and I shall be glad-

to learn whether you agree.

Secer.

misgiving and I shall be glad

to learn whether you agree.

Secer.

Proposed Definition - Atkinson's 2⁹
suggestions shown in red.

Is this new?

The privilege in question is the sole right of any European ~~over any non-European immigrant~~ to the grant or subsequent acquisition by transfer of agricultural land in an area now to be defined which is available for alienation ~~to non-natives~~ and within which grants of land to and subsequent acquisition of non-Europeans land by transfer by ~~African natives~~ shall not be permitted."

1932 A 100

H.T. Allen.

14.12.32.

This is now replaced } a new definition
drawn up after discussion - send draft to

H.T. Allen

16/12/32

~~~~~

Proposed definition - Section 29  
suggests above is

Is this new?

The privilege in question is the sole right of any European ~~over any non-European immigrant~~ to the grant or subsequent acquisition by transfer of agricultural land in an area now to be defined which is available for alienation ~~to non-natives~~ and within which grants of land to and subsequent acquisition of land by transfer by ~~African natives~~ <sup>non-Europeans</sup> shall not ~~be~~ <sup>made or</sup> permitted."

13/1/32 100

H.T. Allen.

14.12.32.

This is now replaced } a new definition  
drawn up after discussion - see draft 14

H.T. Allen

16/1/32

116



GOVERNMENT HOUSE,  
NAIROBI,  
KENYA.

KENYA.

No. 147

CONFIDENTIAL.

BY AIR MAIL.

RECEIVED  
13 DEC 1952  
COLLECTOR OFFICE

37a December, 1952.

*Grant*

No 14

16338/30

*Amwood (4)*

*20/12/52 (No. 2)*

*Amos. Tel. 20/12/52*

I have the honour to refer to the  
Passfield's report of the 25th April, 1952,  
in which directions were given (paragraph 10)  
that the subject of the definition of the  
"Highlands" was to be included in the scope of  
the Land Enquiry Commission.

2. The reference to the Commission is in  
the following terms:-

"(6). 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 1952".

3. The Chairman of the Commission has  
experienced some difficulty in interpreting  
this term of reference, owing to the absence  
of any definition of the "privileged position"  
which persons of European descent are to enjoy  
within the area of "Highlands".

Sir Morris Carter has requested that,  
in order to enable the Commission fully to  
consider this term of reference in all its  
hearings, a definition of the "privileged  
position" be supplied.

4. The White Paper on the Indian Question  
(1928) deals almost entirely with the relation-  
ship between Europeans and Asiatics.

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.



GOVERNMENT HOUSE,  
NAIROBI,  
KENYA.

KENYA.

No. 147

CONFIDENTIAL.

BY AIR MAIL.

RECEIVED  
13 DEC 1952  
COLLECTOR OFFICE

December, 1952.

Sir,  
I have the honour to refer to Lord Passfield's despatch of the 30th April, 1951, in which directions were given (paragraph 7) that the subject of the definition of the "Highlands" was to be included in the scope of the Land Enquiry Commission.

2. The reference to the Commission is in the following terms:-

"(6). 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 1951".

3. The Chairman of the Commission has experienced some difficulty in interpreting this term of reference, owing to the absence of any definition of the "privileged position" which persons of European descent are to enjoy within the area of "Highlands".

Sir Morris Carter has requested that, in order to enable the Commission fully to consider this term of reference in all its hearings, a definition of the "privileged position" be supplied.

4. The White Paper on the Indian question (1925) deals almost entirely with the relationship between Europeans and Asiatics.

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.

*Handwritten notes:*  
No 14  
1633/30  
20/12/52 (No. 2)  
Armed. Tel. 20/12/52  
Turner (H)

110

KENYA.

No. 147.

CONFIDENTIAL.

BY AIR MAIL.



GOVERNMENT HOUSE,  
NAIROBI,  
KENYA.

3rd December, 1933.

RECEIVED  
13 DEC 1932  
COLLECTOR OFFICE

*Handwritten:*  
No 14  
16330/30

*Handwritten:*  
Amund (A)  
Arund. Tel. 20/12/32 (No. 2)

I have the honour to refer to Lord Passfield's despatch of the 30th April, 1931, in which directions were given (paragraph 7) that the subject of the definition of the "Highlands" was to be included in the scope of the Land Enquiry Commission.

2. The reference to the Commission is in the following terms:-

"(6). 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 1931".

3. The Chairman of the Commission has experienced some difficulty in interpreting this term of reference, owing to the absence of any definition of the "privileged position" which persons of European descent are to enjoy within the area of "Highlands".

Sir Morris Carter has requested that, in order to enable the Commission fully to consider this term of reference in all its bearings, a definition of the "privileged position" be supplied.

4. The White Paper on the Indian question (1923) deals almost entirely with the relationship between Europeans and Asiatics.

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.



KENYA.

No. 147

CONFIDENTIAL.

BY AIR MAIL.



GOVERNMENT HOUSE,  
NAIROBI,  
KENYA.

RECEIVED  
13 DEC 1963  
COLLECTOR OFFICE

3rd December, 1963.

*Handwritten:* No 14  
16330/30

*Handwritten:* Arnold, Tel. 20/12/62 (No. 2)

I have the honour to refer to Lord Passfield's despatch of the 30th April, 1961, in which directions were given (paragraph 7) that the subject of the definition of the "Highlands" was to be included in the scope of the Land Enquiry Commission.

2. The reference to the Commission is in the following terms:-

"(6). 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 1953".

3. The Chairman of the Commission has experienced some difficulty in interpreting this term of reference, owing to the absence of any definition of the "privileged position" which persons of European descent are to enjoy within the area of "Highlands".

Sir Morris Carter has requested that, in order to enable the Commission fully to consider this term of reference in all its bearings, a definition of the "privileged position" be supplied.

4. The White Paper on the Indian question (1923) deals almost entirely with the relationship between Europeans and Asiatics.

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.

END

(As) *See memo. to H. Passfield*  
(b) *See file C*

The Memorandum on Native Policy in East Africa (1930) [and Lord Passfield's despatch under reference do,] however, appears to contemplate the exclusion of the "Highlands" from the areas in which Native land holding, as distinct from Native occupation of land within the Reserves, may be permitted.

My advisers propose the following formula which appears to me to be satisfactory:-

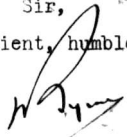
"The privilege in question is the sole right of any European over any non-European [immigrant] to the grant or subsequent acquisition by transfer of agricultural land in an area now to be defined which is available for alienation to non-Natives, and within which grants of land to, or subsequent acquisition of land by transfer by African Natives will not be made or permitted".

5. I shall be grateful if you will inform me by telegraph if you approve of this definition of the "privileged position" and of my informing the Commission to that effect.

I have the honour to be,

Sir,

Your most obedient, humble servant,



Brigadier-General.

GOVERNOR.