

1936

Kenya

No. 38091/1

SUBJECT

C0533/466
Labour

Importation of Foreign Labour
into Kenya

Previous

1935

Subsequent

1937

1936 CORRESPONDENCE.

1. F.O.J 5845/1926
 No. 4 and; transmits observations on the legal problems raised by the Draft Bill as affected by the Congo Basin Treaties.

If the F.O. conclusions are accepted, then Kenya cannot be empowered to introduce anything in the nature of a quota system for immigrant labourers. Although it is said that "the proposed Kenya legislation... is not in point of fact discriminatory so far as it goes", it seems useless to give the port power to discriminate as between labourers from different countries if the use of that power would in fact be unjust. The new clause 42 should accordingly be amended by the deletion

- a) In sub-clause (1) of the words "from ... place"
- b) In sub-clause 2(a) of the words "from ... place"

A.

As to prohibition of immigration for which this clause also provides, the suggestion in para: 6 of the F.O. letter is that it would

be contrary to the spirit of the
Treaty but is this so, provided
that prohibition is absolute
& not directed against
the immigrants from a particular
country? The material welfare
of the inhabitants of Kenya
might under the prohibition
of foreign labour most desirably
& surely the port could claim
the right to take steps to this
end in view of the obligation
imposed by Art 11 of the 11
German Treaty on the contracting
powers to supervise the improve-
ment of the wellbeing of the
native population.

It will be noted that
from the definition of "immigrant
labourer" that labourers from
Uganda & T.T. are within
the scope of the Ordinance. This
seems correct for otherwise
there would be discrimination
in favour of labourers from those
territories. It occurs to me, however,
that it might be advisable,
for administrative purposes,
that the ports of the two territories
should be given advance notice
of the introduction of the legislation.

In the first place, the
views of the legal Adviser should
be sought on the F.O. letter & the
draft Ordinance, an earlier version of
which was seen by Mr Roberts-Wray
in file 3294/32.

I have ascertained that
the BQT do not propose to comment
on this yet.

G. J. Evans

24.5.36

It is not without interest to recall that
in the case of the S.S. Order, the F.O. letter
(No. 13 on 9200/11/32) containing comments
on the Bill, (Govt. No 1A on this file is an extract)
was received so late that the Bill was passed
before the letter could be sent out. Nevertheless
the F.O. advised (No. 1 on 13046/33) that their
views should be brought to the notice of the
Gov. & that, in the actual exercise of
the powers conferred by the Order, care
should be taken to avoid any formal
appearance of discrimination against
the Chinese. The proclamation enclosed with
No. 8 on that file shows what can be
done in ~~circumstances~~ the way of effectually
restricting the immigration of persons of
one nationality, without any appearance of
discrimination.

I have no doubt therefore that
the Kenya Bill, if passed with the

can they think of putting it in
the Regs (See para 3 & 4) I
suggest passing in any
criticism of the jurisdiction of
innocent visiting owners etc.

J. G. Roberts
1/10.

This is not too easy a matter. What
Kenya wants to do is to exclude not foreigners
as such but all kinds of foreign labourers.
There should be no question of having anything
like a quota system or introducing anything like
the Straits Proclamations.

I am disposed to agree with Mr. Evans
and Mr. Roberts-Wray that an absolute
prohibition of all immigration could not be
regarded as discriminatory in the sense of
allowing the nationals of one power and not the
nationals of another. Kenya has no intention
of allowing even British subjects to enter,
though I do not suppose that they will in
practice take any steps to exclude natives of
Uganda or Tanganyika. The Foreign Office,
however, appear to have got it into their heads
that the place ought to be a sort of ever open
door into which anybody must be allowed to
enter unless he or she is of notorious bad
character. This is, of course, not so and I
think just so long as Kenya issues perfectly
general Proclamations against not people of
particular nationalities, but particular classes
of persons (in this case immigrant labourers)
and so long as the rules are applied without

fear

fear or favour they will be all right.

I think, then, that we need not endeavour to
convert the Foreign Office to our view but can proceed
to write to Kenya agreeing to their proposals with
Mr. Evans's modification and explaining that the
Foreign Office have some doubt as to whether it would
not be an infringement of the Congo Basin Treaties
so that they will have to be very careful to make
regulations of general application and not direct
them against natives of any particular part of the
world.

A

J. E. W. Flood

3.10.36.

On second thoughts need we trouble
about prohibition? All the bill does in
that direction is to make steps to be
taken to prohibit immigration of
labourers - that is restriction of
immigration - not prohibition or
"unreasonable restriction" (see 7)

As regards A above, F.O. do not
suggest that restriction would offend
against the treaty if it does not discriminate - in
exchange with this clear?

J. G. Roberts

Then we can approve the bill: making it clear
that they must not discriminate against any particular

natim

J. L. G. 7. Kund

8.10

about

Zo Kenya 833. (w/c 7) 21 061 1956
1 answer

1/6 30 vide 8

9 - 7. F. O. - 7. 8. 7. and - A. L. - 28. 10. 36.

G. O.

38091/1/36.

Mr. Evans. 14/10

Mr. Roberts *14/10*

Mr. Paskeu *15/7*

Sir C. Parkinson.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Perm. U.S. of S.

Parly. U.S. of S.

Secretary of State.

October, 1936.

file
1937
17 OCT

Amad

Sir,

I have the honour to refer to

(1) your despatch No.150 of the 22nd of March, 1935, forwarding a draft of a

Bill to govern the importation of foreign labour into Kenya and to inform

you that it was thought desirable, in

view of the possibility that the

provisions of the Bill might be regarded

as in the nature of discrimination in

the face of treaty obligations, to

ascertain the views of the Secretary of

State for Foreign Affairs on them.

2. I transmit to you herewith a

copy of a letter from the Foreign Office

on this subject and in the light of the

views expressed therein I am prepared to

approve the ^{introduction of the measure} enactment subject to the

ommission of the words " from any

country

DRAFT. Conson.

KENYA.

NO. 833

GOVERNOR.

9
Dep. to FO (w.s.c.)

~~7.~~

FURTHER ACTION.

Copy to F.O. under LF ref. 7.

consideration of the points raised below and to in para 3 below and to

approve the ^{introduction of the measure} enactment subject to the ommission of the words " from any

C. O.

Mr.

Mr.

Mr.

Sir C. Parkinson.

Sir G. Tomkinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

1/3294/33.

DRAFT.

4. I note also that the draft does not contain the provisions imposing liabilities on the masters, owners, charterers or agents of ships which were included in Clause 6 of the draft Ordinance forwarded with ^{Mr Moore's} your despatch No. 463 of the 8th of August, 1933, but that this aspect will fall to be dealt with by Rules. The Rules will ^{probably} presumably embody provisions on the lines of Clause 6 of the earlier draft and ^{if so} in this regard the question seems to me to arise whether it is fair to penalise ^(Envisaged in that Clause) shipmasters etc. to the extent I agree that it accords with principle to say that ignorance of the law is no ^{of very doubtful} excuse, but it is a question whether any liability should attach when the master ^{charterer or agent} far less the owner, ^{etc.} - does not know ^{a traveller} that ~~the person~~ is an immigrant labourer or that he does not come within ^a the quota, or that he intended to land, and possibly

FURTHER ACTION.

possibly when the master had done his
best to prevent him from landing.

This point will no doubt
be borne in mind when the proposed

Rules are in preparation.

I have, etc.

(Signed) W. ORMSBY GORE

possibly when the master had done his
best to prevent him from landing.

This point will no doubt
be borne in mind when the proposed

Rules are in preparation.

I have, etc.

(Signed) W. ORMSBY GORE

In any further communication on this subject, please quote

No. J 6845/192/60

and address—

not to any person by name

sent to—

The Under-Secretary of State,
Foreign Office,
London, S.W. 1



FOREIGN OFFICE.

S.W.1.

11th September, 1936.

Sir,

(4) With reference to Colonial Office letter of July 29th (38091/35) enclosing a copy of a bill to regulate the importation of labourers into Kenya, I am directed by Mr. Secretary Eden to state, for the information of Mr. Secretary Ormsby-Gore, that he has considered in the light of the Congo Basin Treaties the legal problems raised by the bill in question. The following are his views thereon:

2. The Congo Basin Treaties contain no provision regarding the entry of foreigners into the Conventional area for purposes of immigration and settlement. Article 3 of the Convention of St. Germain-en-Laye of 1919 (which is the most relevant article in the treaties as it provides for the equal treatment of nationals) can, strictly speaking, be interpreted as applying only to the treatment of persons who have been admitted to the territory and as having nothing to do with the question of admission. (It undoubtedly prescribes equality of treatment in the case of persons already admitted as regards inter alia the acquisition of real property).

3. Nevertheless, Mr. Eden doubts whether an international tribunal would hold that the convention permitted discrimination on the grounds of nationality in the matter of immigration and settlement against the nationals of a State which was to be regarded

Copy to Kenya (8)

The Under-Secretary of State,
Colonial Office.

regarded as a party to the Convention. Equality of treatment for the nationals and the trade of States parties to the Convention is the predominant theme of the whole instrument as of its predecessors the Brussels and Berlin Acts and indeed consideration of the broad objects which are assumed to underlie the Congo Basin Treaties leads to the conclusion that in the development of the territories in the area to which the Congo Basin Treaties apply, the intention was to provide equal treatment for nationals of all the Powers party thereto. For instance, Article 3 of the Saint-Germain Convention providing for equality of treatment cannot have much scope or effect if it is possible for the States ruling the area in question to exclude the national of other Powers altogether, and there is little doubt, if the history of the Berlin Act is considered, that the equal opportunities which were guaranteed thereby were, so to speak, the price or condition upon which the appropriation of these large undeveloped areas in Africa by a certain number of Powers was to be accepted by the remaining Powers. In fact, it was thought that there would be less international difficulty and rivalry over the acquisition of areas in Africa if the establishment of possession by one State nevertheless left open the economic benefits of trade and development equally to all the others. Mr. Eden considers therefore that there are strong grounds for thinking that an international tribunal in a dispute on this point would refer back to the history of the matter and on this basis put a broad interpretation upon the meaning of any specific article in the Congo Basin Treaties.

4. It is likely therefore that although these Treaties do not in terms forbid discrimination in the matter of immigration

matter of immigration as such, but on the other hand, the spirit and general intention of both are similar.

I am,

Sir,

Your obedient Servant,

W. H. B. Boswell

C. O.

Mr. Flood 20.7.53
 Mr.
 Mr.
 Sir C. Parkinson.
 Sir G. Tomlinson
 Sir C. Bottomley
 Sir J. Shuckburgh.
 Perm. U.S. of S.
 Excl. U.S. of S.
 Secretary of State

C.D.
 H 21 JUL
 D 27

Downing Street,

29 July, 1953.

DRAFT.

THE UNDER SECRETARY OF STATE,
FOREIGN OFFICE.

... to transmit to you,
 to be laid before Mr. Secretary Eden,
 the enclosed copy of a Bill which has
 been prepared for introduction into
 the Legislature of Kenya to regulate
 the importation of labourers. The
 Governor states that occasional
 applications are received for permission
 to import foreign labour and he
 considers that the need has arisen for
 some controlling legislation.

The draft now prepared is in
 the form of an ^{addition} ~~amendment~~ to the
 existing Immigration Restriction
 Ordinance, ~~copy of which is enclosed~~
~~for convenience~~, and a copy of an
 earlier Bill to deal separately with

Copy (with notes) to B/T. (6)

enc in NO1.
 enc to N-1 in 3294/33

FURTHER ACTION.

Copy to B/T 4.

the subject is also enclosed.

Mr. Eden will observe that the

Bill as now prepared empowers the Governor-

in-Council to restrict the entry of immigrant

labourers from any country, territory, or

place specified in such proclamation, and, by

limitation of numbers, to introduce a system

of labour quotas and to impose such conditions

as he may think fit. Mr. Ormsby Gore does not

object to such legislation in principle and,

indeed, thinks it desirable that the importation

of labour into Kenya should be prevented as far

as possible, but he would be glad to learn whether,

in Mr. Eden's opinion, any such measures as are

now proposed could be regarded as in the nature

of discrimination in the face of Treaty obligations.

(for instance)
It might be contended that under the

existing Treaties all foreign nationals have a

right to enter Kenya, and that to impose restrictions

against any one race or nationality would be a

violation of those Treaties, though a general prohibition
of the entrance of labourers might not be open to question.

A copy of this letter is being sent to

the Board of Trade.

(Signed) J. J. PASKIN

I am, etc.