

1937

38091

38091

CO 533/480  
KENYA

LABOUR

IMPORTATION OF FOREIGN LABOUR INTO KENYA

Previous

Mr Paskeu 2/9  
Mr. F. Wood 21/9

1936

Subsequent

1938

R. 297	4/37
R. 309	6/3
Mr. Roberts Army	10/3
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Sir C. Bottomley	11
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W. Flood	24
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297	20/4
R. 309	21/4

- 1. ACTING GOV. KENYA.....60.....25.1.37. 2  
 Encls. redraft of Bill to govern importation of foreign labour into Kenya and comments thereon trusting that that S. of S. will be able to agree to the introduction of the measure in its present form.

Mr Roberts - Kenya

Any views on this draft ordinance  
It seems all right to me.

S.S.S. 20/1/37  
6.3.

Mr Flood

I fear F.O. will not like the  
exception in favour of T.T. & legalised  
See especially (a) in para 6 of 7 in  
1935-6 pls.

Report from the F.O. has no  
comments except that the effect of the  
words 'otherwise' in the definition of  
immigrant labour is not very clear,  
as it comes before reference to mines  
manufactures etc. If those words are  
inserted they should preferably come  
after 'other work' (I wanted to  
insert them in the earlier draft.)

To Mr Roberts  
15/7/37

Yes -  
Point this out  
then be really  
good.

Sir C. Bottomley

Kenya want to regulate immigrant labour  
and prevent an influx of, say, Congolese or Kenakas.  
Naturally they do not want to exclude Uganda or T.T. men  
& therefore exempt them. F.O. might object on the ground that  
it would be discrimination in favour of British subjects.

But surely that is the 'open door policy' seen mad. It  
is reasonable for Kenya to wish to restrict any labour from  
outside and equally reasonable not to restrict immigration from

Uganda & T.P. which again Kenya. Indeed it would be hard to stop.

I think we can ignore the F.O. Antebellum view & agree to the Bill [in § 42 (c) 'of' should be 'in']

Note also the statement that Labour is getting short again in Kenya

? Accept Kenya's view & agree to the Bill

J.S.O. Hill  
10.3.

1975 file, no: 1

In 1935 Kenya sent a draft Ordinance to provide for the control of the importation of outside labour into Kenya. This had arisen out of the development of gold mining.

The matter was referred to the Foreign Office, who replied in many words (not all of them relevant) that there was no objection from the point of view of the Congo Basin <sup>Basin Treaties</sup> Acts, provided that there was no discrimination. The Governor was authorised to introduce the Bill, subject to alterations intended to remove the element of discrimination.

Kenya have now sent in a modified Ordinance in which, for reasons explained in the despatch, they wish to exclude natives of Uganda and Tanganyika from the restriction. It had previously been intended to include them, from the point of view of keeping up wage rates in Kenya, but it had been decided that the country could not always get on without this Uganda and Tanganyika labour which had become customary. This introduced <sup>Something close to</sup> the discrimination which the Foreign Office objected to but it is proposed to avoid Foreign Office objection to the new Bill by refraining from consulting them and to authorise the enactment of the Bill as it stands

stands.

On a previous occasion a Secretary of State took exception to our having consulted the Foreign Office on a somewhat similar point, because he would have preferred, if his hands had been left free, to risk the chance of trouble. It may be that this is another case where it is better to risk trouble than lose the advantage of <sup>preventing the</sup> wholesale importation of labour. As to the extent of the risk, it is difficult to form any opinion but I should say that, apart from any people who are on the look-out for breaches of the Congo Basin regime, the only chance of protest is from the French who might consider that the interests of their Comoro Islanders were prejudiced. But the restriction is only on unskilled labour and so far as I know all the Comoro Islanders who come to Kenya are at least semi-skilled.

Personally, I should like to chance it. There is good reason for excepting labour from Uganda and Tanganyika, not only because it would be very difficult to keep out but also because the movement of the labour across the borders has been a matter of custom for some time.

~~Substantive~~ <sup>are you Hill?</sup>

J.S.O.

11.3.37.

This certainly raises an awkward question that it be raised? Is there any need to make provision for the control of the importation of outside labour?

J.S.O.  
10.3.

Sir J. Maffey.

2 Please see Mr. Flood's note attached. The direct evidence on the question you have raised is

(1) The statement in No. 1 in the 1936 file that applications had been received for permission to import foreign labour. These applications appear to have come from goldmining companies and it is possible that the demand was temporary. It is possible also that it was due not to scarcity of labour but to a desire to obtain cheap labour.

(2) The fact that in the present despatch we are told that there is a real shortage of labour. It is this shortage which has led the Kenya Government to propose that there should be no restriction of Uganda and Tanganyika labour, which in any case it would be difficult to keep out.

There is certain to be a conflict sooner or later between the attractions to the natives of home cultivation and working for wages. We have had a respite during the period of depression but it is possible, because of that depression, that farmers have not been able to afford the labour-saving appliances which were pressed on them as the solution of their labour difficulties

difficulties before the depression.

We could, with this question of discrimination to contend with, ask Kenya how far the necessity for dealing with the question is urgent pointing out the dilemma between allowing importation of cheap labour which would unduly reduce wages in Kenya, and restricting the importation of labour which may be essential to production in Kenya. But I think that we might also ask them whether it would be possible to get over the discrimination difficulty by limiting control to the case of the importation of unskilled labour under contract. That would still allow the spontaneous movement of natives from Uganda and Tanganyika but it is not likely that there would be any similar spontaneous movement from overseas. The Immigration Ordinance requires a deposit to be paid on entering the country <sup>by sea</sup> and although in the case of a deck passenger it would be small it would be more than the spontaneously arriving labourer could pay for himself, while nobody would advance him the money unless there was a definite contract.

I am not sure that there is much in this suggestion but it may be worth while having it examined locally.

*W.C.S.*  
18.3.37.

*S.S. should see at this stage.*  
*Jan 22/37*

To allow labour other than African labour into Kenya will inevitably raise difficult questions with the Government of India which I hope will not be repeated. I have no objection to African native labour being allowed in under proper conditions from any African territory but I don't want (a) more Indians (b) still less cheap whites.

One of the questions which alarms me most in connection with Kenya is the future employment of the Kenya born children of the European well to do Europeans there already. I do not believe it is to the interest of any community in Kenya least of all the British white settlers to have Greeks & Italians & Syrians etc. to add to the already complicated social order in Kenya if the settlers will not take the time & cost the short view of what is the real interest of their community.

W.D. 22.3.37

3 So Kenya - 789 - (Ansd)

7/4/37

H. Govt. dep. 538. 9.9.37.  
states that it is not proposed to proceed with the draft Bill to govern the importation of foreign labour which will be kept in reserve.

? Put by.

Mr. ...  
21.9.

J.J. ...  
2/9.

at ...

m: ... to see.

all the ...!

AIR MAIL

KENYA

No. 538



6  
4  
GOVERNMENT HOUSE  
NAIROBI  
KENYA

9  
RECEIVED  
20 SEP 1957  
C. O. REGY

3809/11

Sir,

3. With reference to correspondence terminating with your despatch No. 289 of the 7th April last regarding a draft Bill to govern the importation of foreign labour into this Colony; I have the honour to inform you that after consulting his Executive Council, the Governor does not propose to proceed with the legislation for the present, and that the draft Bill will be kept in reserve for enactment should the occasion arise.

I have the honour to be,

Sir,

Your most obedient,

humble servant,

GOVERNOR'S DEPUTY.

THE RIGHT HONOURABLE

W. ORMSBY GORE, P.C., M.P.,

SECRETARY OF STATE FOR THE COLONIES,

DOWNING STREET,

LONDON. S.W. 1

G. O.

Mr. Flood. 24-3

Mr.

Mr.

Sir C. Parkinson.

Sir G. Tomlinson.

X Sir C. Bottomley

Sir J. Shuckburgh.

X Perm. U.S. of S.

Parly. U.S. of S.

Secretary of State.

(Conson.)

**DRAFT.**

KENYA.

NO. 289

O.A.G.

1-APR  
5

Ans'd 4  
H

Downing Street,

March 1937

7 APR 1937

Sir,

I have the honour to acknowledge the receipt of your despatch No. 60 of the 25th of January, in which you enclosed <sup>(the draft of)</sup> a Bill to govern the transportation of foreign labour into Kenya.

I note that the Bill, as now drafted, does not apply to Natives of the adjoining Territories of Uganda and Tanganyika, and that, at the present time, a considerable number of Natives of those Territories do actually find employment in Kenya.

2. Some doubt is felt ~~there~~ as to whether this <sup>general</sup> prohibition with the ~~excep~~ exception of Uganda and Tanganyika does not in fact amount to a discrimination in favour of natives of those Territories, but I am not of opinion that the point is one of importance. It can hardly be contended that the right of working

and I note that your Attorney does not think that any heavy obligation will be imposed.

**FURTHER ACTION.**

as a labourer in Kenya is a matter of importance to the natives of any Territory in Africa and, indeed, the Governments of other Territories might well object to recruitment of their populations for work in British Territory.

In general, I should have no objection to the entry into Kenya of African native labour, under proper conditions, from any African Territory, which would, in practice, reduce to the Territories of Uganda and Tanganyika, since Kenya would hardly be in a position to compete with the South African mines for labour from Southern Africa and it would be too expensive a matter to bring native labourers from other Territories. If it were desired to import labour, then the most probable source would be either India or China. There are grave political objections to recruitment in either place, and I do not suppose that you would contemplate the importation of Asiatic labour with equanimity.

On the whole, I think that the apparent

G. O.

Mr.

Mr.

Mr.

Sir C. Parkinson.

Sir G. Tomlinson.

Sir C. Bottomley

Sir J. Shuckburgh.

Parly. U.S. of S.

Parly. U.S. of S.

Secretary of State.

**DRAFT.**

**FURTHER ACTION.**

8

apparent advantage lies in the introduction of the Ordinance as proposed by you. In the draft of Section 41 the words "or otherwise" appear to have been misplaced and should come after the word "waterworks", while in Section 42(c) the word "or" appears to be an error for the word "or".

I have, etc.,

(Signed) W. ORMSBY GORE.



E

I think that there is now a real need for the control of imported labour <sup>(from outside of E.A. Area)</sup> Not that there is any at present, but it is always likely that mine owners or farmers would wish to import a labour force. We know that at the present time signs are coming up that there will be a shortage of labour in Kenya.

Now we don't want to have indentured coolie labour in Kenya. The only places from which it could be got are India and China. We have already enough of a problem with Indians, and I don't imagine that the Indian Government would view with any favour any kind of coolie labour going to Kenya. China can be ruled out for many and good reasons. Then there is the possibility of importing labour from other parts of Africa, such as Nyasaland or Rhodesia. In that event Kenya would be competing with the South African mines and there is already trouble enough about native <sup>e</sup> ~~immigration~~ <sup>(from those places)</sup> without raising any more.

I therefore think that it is expedient to prohibit the introduction of any form of indentured labour.

The Foreign Office point of view is very hard to understand, - what we have got to maintain in the Congo Basin area is "no discrimination" That means, I think, that we should not give privileges to one nationality rather than to another. Now it can hardly be argued that the right to work as an indentured labourer in Kenya is a privilege. In fact, I could quite understand people prohibiting their subjects from going to Kenya as indentured labourers. We know perfectly well that the Belgians do not like the inhabitants of the Congo going to Uganda

Uganda and the French would also view with considerable annoyance any proposal to recruit labour from their African Territories. In the case of Comoro Islanders, they would, as Sir Cecil Bottomley says, probably come under the head of skilled labour.

It might be possible to impose an effective check by requiring any importer of labour to pay <sup>a</sup> deposit in respect of each imported labourer and to make that deposit forfeitable whether the labourer remains with him or not. This, however, would operate unjustly since an employer could hardly be expected to exercise control over the labourer for all time, and, if he dismissed the labourer, would in any case be liable to see that he was sent back home. The only result would be that an employer who wished to get rid of his imported labour would see that they were sent back, which he would have to do in any case, while

It is quite obvious that you cannot legislate against Uganda and Tanganyika. To do so would merely result in depriving natives of those Territories of profitable employment and it is very doubtful whether <sup>such</sup> legislation would be effective. It would, in some cases, but if Government were to enforce it, it could only irritate both the natives and their employers and irritate them to no purpose. I think myself the balance of advantage lies in enacting the Ordinance and chancing it with the Foreign Office. If any Power comes along and complains that its nationals are not being allowed to enter Kenya to work as indentured labourers

labourers, while British protected persons from Uganda and Tanganyika are, I should be surprised and interested, and we can then consider what we are to say about it. In any event the discrimination such as there is, is not in favour of British subjects generally, but only of British protected persons in two adjoining territories, both of which are in the Congo Basin. A native of Nigeria or the Gold Coast would be debarred from entering Kenya to work just as much as a French or Belgian native.

J. G. K. [Signature]

17.3.1937

The 1926 con<sup>o</sup> ending with 5843/26 shows that Govt. was then against having indentured labour.

if they desired they would have to be caught and returned to him or sent home

KENYA.

No. 60



GOVERNMENT HOUSE,  
NAIROBI,  
KENYA.

25 January, 1937.

Sir,

I have the honour to refer to your despatch No.833 of the 21st October, 1936, on the subject of a Bill to govern the importation of foreign labour into this Colony, and to enclose for your consideration a redraft of the Bill effecting the amendments requested in paragraphs 2 and 3 of your despatch.

2. It will be observed that in the redrafted Bill Uganda and the Tanganyika Territory have been specifically excluded from the definition of the term "immigrant labourer".

3. A similar exclusion was in fact contemplated when the draft Bill enclosed in my despatch No.150 of the 22nd March, 1935, was under consideration, as it was not desired, while prohibiting the introduction of any form of indentured labour in the ordinarily accepted sense of the term, to prevent the free flow of voluntary labour between neighbouring territories.

The exclusion of Uganda and the Tanganyika Territory would, however, have permitted the introduction of mass labour from these territories, and it was feared at the time that this might result, in times of economic stress, in the importation of labour at a low rate of wage and the consequent deflation

THE RIGHT HONOURABLE  
W. ORMSBY GORE, P.C., M.P.,  
SECRETARY OF STATE FOR THE COLONIES,  
DOWNING STREET,  
LONDON, S.W. 1.

(8) in 1936 FILE

*Handwritten scribble*

(1) 22 3809/1/37

2.

deflation of the wage level in this Colony.

As, therefore, in the Bill as it then stood the inclusion of these territories would not necessarily have affected the normal free flow of labour, since the Governor in Council was empowered to exempt such labour from its provisions or, if necessary to control its importation in such a way as to safeguard the interests of the local natives, specific exclusion was found not to be necessary.

4. In view, however, of paragraph 2 of your despatch, the Bill as now drafted no longer contains this enabling provision; and any proclamation issued would therefore, but for the exclusion of the territories concerned from the definition, result in the complete closing of the normal supply of labour.

I am advised that in the meantime the labour position has materially altered, and that there is at present a certain shortage of labour in this Colony. With increasing prosperity the demand has increased and will continue to increase, and this, coupled with the advance of native agriculture in the Reserves, is likely to make the labour position still more difficult.

I understand that approximately 4,000 natives from the Tanganyika Territory and 12,000 from Uganda are at present employed in this Colony, and it will be readily appreciated that in the areas where this labour is employed the position would be likely to become acute were this source of supply to be closed.

3.

5. In view of these considerations, and also of the practical impossibility of controlling the flow of labour between immediately adjoining territories, it is clearly undesirable to include Uganda and the Tanganyika Territory in the proposed legislation, and I am advised by the Attorney General that he does not consider their exclusion would constitute any infringement of treaty obligations. I trust, therefore, you will be able to agree to the introduction of the measure in its present form.

I have the honour to be,

Sir,

Your most obedient, humble servant,

*Lord Wade*

ACTING GOVERNOR.

14  
COPY

A BILL TO AMEND THE IMMIGRATION RESTRICTION  
ORDINANCE.

BE IT ENACTED by the Governor of the Colony  
of Kenya, with the advice and consent of the Legisla-  
tive Council thereof, as follows -

Short title.

1. This Ordinance may be cited as the  
Immigration Restriction (Amendment) Ordinance, 1937,  
and shall be read as one with the Immigration Restric-  
tion Ordinance (Chapter 62 of the Revised Edition)  
hereinafter referred to as the Principal Ordinance.

Cap. 62.

Amendment of  
the Principal  
Ordinance.

2. The Principal Ordinance is hereby amended  
by the addition thereto after Part V thereof of the  
following Part to be numbered as Part VI -

"  
PART VI

IMMIGRANT LABOURERS.

Interpretation. 41. In this Part, unless the context otherwise  
requires -

"immigrant labourer" means any person whatsoever,  
(other than a first or a second class  
passenger on any ship, or the personal  
servant of such passenger, or a person on  
the articles of a ship) travelling by sea  
or land from any port or place outside the  
Colony, the Uganda Protectorate or the  
Tanganyika Territory to a place of  
destination in the Colony for the purpose  
of exercising or performing any unskilled  
manual labour in agriculture or otherwise,  
or in or upon mines, manufactures, roads,  
tunnels, railways, canals or water works  
therein.

The

2.

The burden of proving that any person is an immigrant labourer within the meaning of this Part shall lie upon the person alleging that fact: Provided that when such person has proved that the alleged immigrant labourer has entered the Colony subsequent to the issue of a proclamation under section 42 of this Ordinance and has since such entry been engaged in performing unskilled manual labour of the class or type specified in such proclamation, he shall be deemed to have established a presumption that such person is an immigrant labourer and the burden of rebutting such presumption shall lie upon such alleged immigrant labourer.

Powers to restrict immigration of labourers.

42. (1) The Governor in Council may by proclamation in the Gazette prohibit the entry into the Colony of immigrant labourers or may restrict such entry in such manner and subject to such conditions or limitations as he may deem fit.

(2) Without prejudice to the generality of the powers conferred by sub-section (1) of this section, the Governor in Council may in such proclamation -

- (a) limit the number of immigrant labourers that may, during a specified period of time, enter the Colony;
- (b) limit the number of immigrant labourers that may, during a specified period of time, be brought to the Colony on any ship, and such limitation may be based on registered tonnage or on any other basis whatsoever; and
- (c) specify the activities of occupations which shall be deemed to be unskilled manual labour.

x  
? or.  
2

43. Any immigrant labourer found in the Colony in contravention of the provisions of any proclamation issued under the provisions of the last preceding section shall be deemed to be a prohibited immigrant, and may be dealt with accordingly.

44. Any person aiding or abetting or taking any part in or arranging for or in any way assisting in the entering into the Colony of any person in contravention of the provisions of any proclamation issued under the provisions of section 42 of this Ordinance shall be guilty of an offence, and shall be liable to a fine not exceeding two hundred pounds.

Power to  
makes rules.

45. (1) The Governor in Council may make rules for the following purposes -

- (a) for regulating the conduct and responsibility of the masters of ships carrying immigrant labourers;
- (b) for ensuring, so far as is possible, that no immigrant labourers shall be landed in the Colony in contravention of any proclamation issued under section 42 of this Ordinance;
- (c) for laying down the reasons for which and the conditions under which a ship from which an immigrant labourer is suspected to have landed in contravention of the provisions of a proclamation issued under section 42 of this Ordinance may be detained and the conditions upon which the detention of such ship may be cancelled; and
- (d) generally, for carrying out the provisions of this Part of this Ordinance.



4.

(2) There may be annexed to the breach of any rule made under this section such penalty not exceeding one hundred pounds or such term of imprisonment not exceeding six months or both such fine and such imprisonment as the Governor in Council may think fit."