

1935.

Kenya.

No. 3809/1

CO 533.

458

SUBJECT

Labour.

Importation of foreign Labour into Kenya.

Previous

3294/33.

Subsequent

1936.

M.F. & S.F. 23.

1. A / Governor Wade 150. 22 March 25.

6.5
Labour.

Immigration Restriction
Ordinance.

Considers that next his next session for legislation to control
importation of foreign labour, encls. draft Bill, states an early
decision is desirable & requests introduction of the measure into the Leg.
Council may be authorised.

To facilitate consideration of the draft
Bill I set out below brief particulars of the
position with regard to the importation of labour into
Kenya in recent years.

In 1925 applications were made to Govt. for
the importation of Portuguese East African labour.
No legal method existed by which companies could be
prevented from importing such labour, but it seems
that as many administrative obstacles were placed
in their way as possible. In 1926 Sir E. Grigg
stated in the Legislative Council that Govt. regarded
unfavourably the importation of contract labour,
partly because it was convinced that such importation
could not serve the best interests of the Colony and
partly because it knew of no suitable source.

Towards the end of 1926 and early in 1927
the Convention of Associations in E. Africa began to
consider the possibility of importing foreign labour
into Kenya under contract and they addressed a
questionnaire to H.M. Representatives at Peking, Tokyo,
Batavia and Cairo, enquiring the terms under which
indentured labour from China, Japan, Batavia and
Egypt would be permitted. This was done without the
authority of Govt. and was brought to the knowledge
of the Secretary of State by the D.O.T. and the F.O.
The upshot was that Sir E. Grigg was asked to inform
the Convention that H.M.G. was not prepared to
countenance any enquiries of foreign Govts. for the
purpose of the introduction of foreign labour into
Kenya under contract. The Governor was also asked
to

Recd
13/7/25
CK

See No 1
XP 6922/26

See X 10202/27

No 12
X 10202/27

to point out to the Convention the declared policy of Govt.

In August 1933 the Acting Governor pointed out the desirability of providing some means of controlling the introduction of indentured labour, should necessity arise, either as a result of the possible expansion of the Kakamega or other goldfields. At that time no representations had been received that indentured labour was required. The draft Bill enclosed with the Acting Governor's despatch on that occasion aimed at control rather than at prohibition. The Department was inclined to the view that any sort of indentured outside labour should be prohibited absolutely. The Bill also contained doubtful features from a legal aspect.

The Acting Governor has now reported that an actual need has arisen for some measure of controlling legislation. The draft Bill now submitted differs from the former Bill in that it is drafted as an amendment to the Immigration Restriction Ordinance and not as formerly a new Ordinance entitled "The Foreign Labourers Ordinance".

Section 2 permits the Governor in Council by Proclamation to restrict or prohibit the entry into the colony of immigrant labourers from any country, territory or place specified in the Proclamation in such manner and subject to such conditions or limitations as he may deem fit; and to introduce a quota system.

system.

This involves questions of Treaty rights but presumably the Ordinance would be administered in such a way as would not be likely to give rise to complaints of discrimination from any country. The views of the Foreign Office on "discrimination" are set out in No.13 on 92001/12/32, Straits. (An extract is annexed.)

The former Bill contained clauses imposing heavy penalties on ship owners for the illegal landing of immigrant labourers. Those clauses have not been reproduced in the present Bill but powers have been taken to cover by Rules the subjects previously dealt with.

If the policy of control rather than absolute prohibition is accepted the first step appears to be to send copies to the Foreign Office and to the Board of Trade for their observations. A copy of the former Bill might also be enclosed for comparison.

C.R. Ross with
23/7/31-

2 Govt. Bygone No. 53) — 16.10.31

Enquire whether circumstances yet permit of a
STATUTE
copy to (1)

I left this to look into the question of comparative legislation in other Colonies - e.g. B. Guyana & S. Selts, but have never, I am afraid, got down to it.

? Do the Guyanese propose - a bill

lyn. that Spt. is in wrap with
other interested Dept.

14/12/35

1 cont. this: dft. here will.
20.7.35

3. Governor No. 173. ----- 3 April, 1936.
Ref. Nos. 1 & 2; enquires whether reply can now be made.

4 So S. O. (info. encl. to
Mansel - 2 encl.) case 29 JUL 1936
to 1 on 3294/33

5 To Kenya, 570 (1+2 answer) 29 JUL 1936

6 So B/Trade (info. 4 encl.) 11 AUG 1936

See 1936 file
Gardner
exchange

BR

1 A
4

Extract from Foreign Office letter
of 3rd December, 1932. (No 13 on 92001/12/32 S.S.)

I am directed by Secretary Sir John Simon to
acknowledge receipt of your letter No. 92001/12/32 of the
14th October enclosing a copy of a draft Bill to regulate
the immigration of aliens into the Straits Settlements.

2. Sir John Simon has considered the draft Bill
closely in regard to its effect on the political relations
existing between this country and China. It has always
been in principle, as Secretary Sir Philip Cunliffe-Lister
is aware, the policy of His Majesty's Government carefully
to avoid anything in the shape of discrimination which,
though legally possible in the absence of treaty
obligations, could be represented as an unfriendly action
incompatible with good relations and would therefore be
resented and in some cases might lead to reprisals. If
general restrictions or regulations exist affecting aliens
but exemptions are made in favour of the nationals of a given
foreign country, it is necessary to extend this exemption to
the nationals of all other foreign countries with whom most-
favoured-nation treaties exist. This constitutes a legal
obligation, but while there is no legal obligation to extend
such exemptions to the nationals of countries with whom no
most-favoured-nation treaty exists, as in the case of China,
failure to do so undoubtedly constitutes discrimination
against any such country, and although China would have no
legal right to complain such discrimination would undoubtedly
come under the class of unfriendly actions referred to above

KENYA.

No. 150.



GOVERNMENT HOUSE,
NAIROBI,
KENYA.

RECEIVED
10 APR 1955
C. O. REGY

22nd March, 1955.

Sir,

I have the honour to refer to Mr. Moore's despatch No. 465 of the 8th August, 1955, enclosing a draft Bill governing the importation of foreign labour into this Colony.

2. The expansion of gold-mining activities in the Colony has resulted in applications for permission to import foreign labour, and I consider that an actual need has arisen for some measure of controlling legislation.

5. In substitution for the enclosure in Mr. Moore's despatch I enclose a draft Bill which will be seen to differ from the original draft in that the definite provisions in Clauses 4 - 10 imposing liabilities on ship-owners have been omitted.

Powers have, however, been taken in the last clause of the new Bill to cover by Rules the subjects previously dealt with in those clauses.

4. An early decision on this matter is, in present circumstances, desirable, and I trust you will now be in a position to authorise the introduction of the measure in its new form into Legislative Council.

I have the honour to be,

Sir,

Your most obedient, humble servant,

W. O. Lister

ACTING GOVERNOR.

MAJOR THE RIGHT HONOURABLE
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

No. 1.

3294/53

(5)

Involvement

(4)

Answer

copy incl. to R.H.

copy to F.O.

6

A BILL TO AMEND THE IMMIGRATION RESTRICTION
ORDINANCE.

2c

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

Short title. 1. This Ordinance may be cited as the Immigration Restriction (Amendment) Ordinance, 1955, and shall be read as one with the Immigration Restriction Ordinance (Chapter Cap.62 of the Revised Edition) hereinafter referred to as the Principal Ordinance.

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 Part VI:-

" PART VI
IMMIGRANT LABOURERS

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

"immigrant labourer" means any person whatsoever travelling by sea or land from any port or place outside the Colony ~~or the Uganda Protectorate or the Mandated Territory of Tanganyika~~ to a place of destination in the Colony for the purpose of exercising or performing any labour in agriculture or otherwise, or in or upon mines, manufactures, roads, tunnels, railways, canals or water works therein.

For the purposes of this Part the onus of proving that a person is not an immigrant labourer shall be on the person alleging the same: Provided that

that

that neither a first nor a second class passenger on any ship, nor the personal servant of such passenger, nor a person on the articles of a ship, shall be deemed to be an immigrant labourer.

Powers to restrict immigration of labourers.

42.(1) The Governor in Council may by proclamation in the Gazette restrict [or prohibit] the entry into the Colony of immigrant labourers [from any country, territory or place specified in such proclamation] in such manner and subject to such conditions or limitation 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 [from such country, territory or place]; and
- (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.

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 hereof shall

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be guilty of an offence, and shall be liable to a fine not exceeding two hundred pounds.

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 and of such ship may be cancelled; and
- (d) generally, for carrying out the provisions of this Part of this Ordinance.

(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, as the Governor in Council may think fit."

OBJECTS AND REASONS.

9
end

-It is considered that the time has arrived when the entry of labourers into this Colony should be controlled, and this Bill effects this purpose by providing that the Governor in Council may by Proclamation restrict or prohibit the entry into the Colony of immigrant labourers from any country, territory or place specified in such Proclamation. Any immigrant labourer found in the Colony in contravention of the provisions of such a Proclamation shall be deemed to be a prohibited immigrant, and may be dealt with accordingly, and it is made an offence to aid or abet any immigrant labourer to enter the Colony in contravention of a Proclamation issued by the Governor in Council. Power is given to the Governor in Council to make rules for the carrying out of the purposes of the legislation.

No expenditure of public moneys will be involved if the provisions of this Bill become law.