

1938

38251

C0533/498
KENYA

38251

1) CONTROL OF FUGITIVE BELLIGERENTS LEGISLATION2) REFUGEES. LEGISLATION.

Previous				
		Mr. Cohen		L 297
		R. 297	30/6	Library Legal
1936		309	4/7	R 297
		Mr. Parkin	15/7	H. 342
		Mr. Dale	15/7	
		Mr. Dawson	19/20	
Subsequent		Mr. Parkin	21	
		Mr. Dale		
		R 297	26/8	
		309	26/8	
297	12/3	Mr. Summidge	24/8	
Mr. Parkin	15/3	297	27/8	
Mr. Dawson	18/3/38	309	6/10	
Mr. Dale	18.3	Mr. Parkin	6/x	
298	31/3	Mr. Dale	11.10	
297	4/4	Mr. Parkin	11	
Mr. Cook	5/6	303	13/10	
Mr. Cohen	6/4	308	20/10	
297	14/4	299	2/10	
307		298	25/10	
299	27/4	297	28/10	
297	28/4	297	11	
303	12/5	Mr. Parkin		
299	12/5	297		

TITLE

1. Gov. Kenya 173 Conf 23.12.37
Requests advice as to whether a state of hostilities still exists for the purpose of the Ordinance - comments regarding "de jure" recognition.
(Original in 38066/14/37)

- 2. to F.O. (1) (Draft in 38066/14/37) 17.2.38
 - 2a. " " (1/2) (ditto 38066/14/37) 17.2.38
 - 2b. " " (2) (1/2) (ditto 38066/14/37) 18.2.38
 - 3. F.O. (J.604/14/1) 8.3.38
- (2 lines) Comments as to position obtaining under the Ordinance.

This letter is partly the result of a telephone conversation between Mr. Lambert and myself.

(No) -
38066/14/36

He rang up to draw my attention to Foreign Office letter of the 18th of May, 1936, and said that as the Foreign Office had then suggested that the Italo-Ethiopian war should be regarded as having ended, there was very little more for the Foreign Office to say in reply to our letter of the 17th February. I pointed out to him, however, that this would make the Government of Kenya look rather foolish in that the Ordinance authorising the detention of belligerents "during the period of hostilities between Abyssinia and Italy" was not enacted until the 1st of June; i.e. after the date when, on the basis of the Foreign Office letter of the 18th of May, 1936, the war was to be regarded as having ended, and I asked him whether the Foreign Office could not suggest some later date.

They now consider "that those hostilities may be said to have come to an end some time in the autumn or at any rate the latter part of 1936". This is satisfactory to the extent that the majority of

of the Eritrean deserters can be regarded as having been lawfully detained under the Ordinance.

As pointed out, however, in our letter of the 17th February, a number of Eritrean deserters have entered Kenya and been detained under that Ordinance since the date on which we must now regard the war as having ended. This means that there is no legal authority for their detention. This applies also to those of the Abyssinians who were belligerents and who have been detained since the autumn of 1936.

It seems, therefore, clear that Kenya will have to enact a Validating Ordinance, which can easily be done. The only difficulty is as to what shall be said in the "objects and reasons", and orally in the Legislative Council when the Ordinance is introduced. I cannot see that it is possible for them to say anything else than that they have now been advised that "the period of hostilities between Abyssinia and Italy" which is mentioned in the definition of "belligerent" in Section 2 of the Ordinance, is now regarded as having come to an end some time in the latter part of 1936 and that it is accordingly necessary to validate the action taken by the Government of Kenya in detaining any members of the Abyssinian or Italian troops who entered the Colony after that period, but I think that before writing to Kenya we ought to agree with the Foreign Office

Office, the explanation to be given by the Government of Kenya as to the necessity for the Validating Ordinance. We should also indicate that, insofar as the action taken in regard to the internment of any Abyssinians, who were not "belligerents" as defined in the Ordinance, it will be also necessary for this action to be "validated".

Consult the Foreign Office as mentioned

as 'X' above.

is considered to have been taken under authority conferred by an Ordinance

① Underlines that Mr. Pashin is here referring to civilians. H.D.

J.P. 15/3

P.S. I find that I have omitted to state that the implications of an F.O. letter of 18/2/36 (No. 32066/14/36) in regard to the form of the legislation that was the case, was overlooked in the discussion on the v. of policy which is a matter of disposal of these Italian who deserters

J.P. 17/3

I agree with the action proposed by Mr. Pashin.

18/3/38 L.T. Duncan.

Make it clear that it will be suggested to the Gov. I not an instruction. A. T. M. M. M.

To J. Lambert (w/dfr deep) cons 20. 31. 38

May Cole
The papers

See 11.6.38
94.

See with

When F.O. reply, the J. Lambert
Pps. shld be put up with the
Kenya pps. so that J. Lambert
can also make a dispatch on
the terms of ^{encl. to} 4 in connection
with the Ordinance at 3 on 4/25/38

A. Blum
6/4

DESTROYED UNDER STATUTE

to offer on terms of draft despatch in which they occur

Then the deep may now issue
& send copies to F.O. W.O. YH.
& send to the Colon

J. J. Pennington
19/4

6 Lo. Kenya Conf. (3) - (4/6/38) cons. 26 APR 1938
(1. Amended)

Off to Sir W. G.
via draft (6)

Kenya 46 Conf
Remainder of no 20.
see to be put by

DESTROYED UNDER STATUTE

21.4.38

To FO (4/6) B/A }
8 - WO (4/6) B/A } 13 MAY 1938

9 To Sec Conf (4/6 (4/6 ends), 2/4 (4/6 ends), 3 & 6 (4/6 ends) - cons 16. 6. 38
The papers for
Action on 4/6/38
Draft and minutes on 4/6/38 Sec

10 4/6's dep 118 Conf 23.6.38

The memo by Atty Gen will draft
Bills and asks that any others thereon may
be telegraphed as it is desired to introduce
the legislation at forthcoming session of leg co
on 5 August!

11 4/6's dep 3/31
Supplies refer in no 10 23.6.38

It is not necessary to add very much to
the Acting A.G.'s very clear memorandum.

The position set out in the G. of E.'s
despatch at 6 is accepted and the present draft
legislation has been prepared on the basis that it
should not have the effect of requiring the removal
of persons affected from their present place of
detention. The reasons for this are set out on
page 3 of the memorandum and seem to me convincing.

The definitions required to validate the
detention of those who entered Kenya after the
cessation of hostilities have therefore been
related to their place of confinement, i.e. if
detained in the Internment Camp they are "belligerents",
if in the Refugee Camp at Isiolo they are "refugees."

A separate Ordinance has been provided
to regulate the detention of the refugees.

The

The amendment to the Control of Fugitive Belligerents Ordinance clarifies the points raised in 4 on -/37 and provides the necessary definition (at Section 7) to make those entering Kenya after the end of the war belligerents for the purpose of the Ordinance.

I think this is all in order.

The Refugees Bill contains two drastic clauses - Clause 8 which gives Government a completely clean bill for all past acts. No doubt the Legal Advisers will say whether the provision as worded is too generous; it would certainly look better if the indemnification applied to "reasonable acts done without negligence".

Clause 4 gives the Governor very wide powers to enact regulations for the control of the refugees; a tentative draft of the regulations in question is forwarded. The argument for this course is that Government do not know for how long they will have the refugees, or what measures of control may be necessary or when; therefore they prefer to err on the safe side and take power to enact regulations against almost any conceivable situation that could develop.

The draft regulations include the grant of statutory authority on the analogy of the Native Authority Ordinance to the refugees' own leaders and sub-leaders to exercise officially the powers they have hitherto used unofficially.

The regulations for the most part are derived from provisions of existing Ordinances as shown marginally. If Government is held to have established its case (as I think it has) for wielding these powers by regulation instead of Ordinance, I do not think there is much in the actual details of the regulations that need be questioned. Power given by regulation to arrest without warrant is rather a lot to swallow, but the circumstances are unusual and it seems to me reasonable that Government should have extra powers to deal with the difficult and delicate problem presented by the presence in Kenya of these refugees.

To Legal Advisers for opinions.
(Reply is asked for by telegraph).

(Signed) D.M. MACDOUGALL.

4.7.38.

18/6/38.

12.

R. Brooke-Popham (S.O.)

1. As regards x in Mr. MacDougall's minute, I am inclined to think that Clause 8 of the Refugees Bill is necessary as it stands. There has hitherto been no authority for what has been done in respect of these refugees, and it has even been said that they have been dealt with under the Control of Belligerents Ordinance.

2. The only other comments that occur to me are on Clause 7 of the Belligerents (Amendment) Bill:-

A. This Clause would validate the action taken in internment those Belligerents who are already in the camp, who arrived after the cessation of hostilities. But it makes no provision for the detention of any

*See 16 pages
s. 24 of the Belligerents
(Amendment) Ordinance
10?*

deserters from the Italian forces in the future. It seems to me that the possibility of deserters crossing the frontier in the future can not be ruled out, and that it would be prudent, while they are about it, to provide for this contingency.

Moreover, it would turn into "belligerents" persons of the kind mentioned in No. 12, but again would (apparently) not give power to deal with further similar transferees from the Refugee camp. (Though Clause 4 (i) (f) of the Refugees Bill would give power for their removal from the Refugee camp).

But what would be the answer if the question arose in the courts as to the date of "the cessation of hostilities"? On the information given to us by the Foreign Office, it could only be "sometime in the latter part of 1936"! Surely a provision so vague as this is most unsatisfactory for the purpose of an Ordinance. But unless they are to use it they will have to adopt some other device for validating the action taken as regards those belligerents who have been interned since the "cessation of hostilities".

J.P. Paskin
14/7

discussed this with Mr. Paskin. On reconsideration he was disposed to think that we should not make provision for members of the Italian or Abyssinian Forces who cross the border in the future; but he thought it essential to provide for refugees already there who may in the future be transferred to the Deserters' Camp, and also

But they might have crossed before the cessation of hostilities.

for any refugees going into the territory in the future. On the assumption that this is what is required, I have the following comments:-

Deserters Bill.

Clause 6. The Government is indemnifying itself against all measures taken "to the establishment and maintenance of good order and government in the Colony". This is preposterously wide, and will validate every single thing done in the past by the Government of Kenya in whatever connection. The presence of the words is particularly surprising in the light of (7) in the previous file. We originally suggested that the words "treatment of internees" in Section 24 of the principal Ordinance were perhaps not wide enough, but the Attorney General gave his opinion that they were quite wide enough. If it is not necessary to provide indemnification in respect of measures other than those described in the provision in Clause 6 of the Deserters Bill (with the omission of the words "or to the establishment and maintenance of good order and government in the Colony") they would have to particularise.

Clause 7. This is most awkwardly drafted. In addition to Mr. Paskin's objection about the uncertainty of being able to say when this section comes into operation, the section is drafted to come into operation on the date X; but it refers to events which would not happen until after that date in the past tense as if they had happened before that date. I suggest that subsection (2) of the proposed

Section 25 should be omitted, and that subsection (1) should be enacted as an integral part of the amending Bill and not as a new section to be added to the principal Ordinance and say "has crossed" and "has been interned".

Also instead of "person" ought they not to say "member of the Abyssinian or Italian troops", following the wording in Section 2 of the principal Ordinance? One does not presumably wish to give the impression that one has interned Italian civilians. I do not think this section is intended to deal with refugees transferred from the Refugee Camp, since they may or may not have crossed the border after the cessation of hostilities. These are presumably intended to be covered by the indemnity clause in the Refugees Bill; see comment below on this Bill, *supporting an additional clause.*

Refugees Bill: Preamble.

This refers to the past only and if the Bill is to deal with future refugees it must be altered.

Clause 2. For the same reason "refugee" must be defined in a general way so as to omit the qualification "subsequently resides in the Refugee Camp at Isiolo".

Clause 7. There should be added "so that no refugee shall be punished twice for the same act or omission".

Clause 8. The words "or to the establishment and maintenance of good order

and

and government in the Colony" appear again. These should be deleted for the reasons given above.

An additional clause giving power to transfer refugees to the Deserters' Camp and providing that refugees so transferred shall be deemed to be belligerents for the purpose of the Ordinance, will be required.

The clause might also be drafted to cover those refugees who have already been transferred.

W.D.

19.7.38.

Mr. Daws

I am afraid that I must trouble you with this telegram. I do not think you need bother about the details, but you will see that in both of these two Bills Kenya is not attempting to do more than to regularize her position in relation to those deserters and refugees who are already in Kenya. This seems to be a short-sighted policy as there might well be further parties of refugees (even if only small ones) who would have to be accommodated in the camp, and it seems to me only common prudence to make provision for this contingency.

I had also suggested in my minute of the 16th of July that Kenya ought to make similar provision for further deserters from the Italian forces, but after discussion with Mr. Dale I think probably it would be better to drop this idea. We could hardly suggest it without considering

*Agree
W.D.*

the matter with the Foreign Office, and, as you will see, the Governor has asked for an urgent reply by telegraph in order that these Bills can be introduced at the forthcoming session of the Legislative Council on the 5th of August.

This has involved the preparation of a rather long telegram, but I think it very desirable that these Bills should be passed and that it would be better not to delay the matter further by sending a despatch, instead of a telegram.

J.J. Paine
21.7.38.

(Attm)
HJM
21/7

13 Tel No 90 Cofl to Governor Kenya 21/7/38

14 Extract from Kenya Gazette No 39 of 21/7/38

15 Extract from Kenya Gazette No 39 of 21/7/38
Blank for receipt of the Ordinances.
Cloth & White 28/8

24/8/38
at 11.4

16 Governor's Deputy 176 21/7/38 8

Spares to
Library } 17

Two authenticated and twelve printed copies of Ordinance No 21 of 1938 - Control of Fugitive Belligrants (Amendment) Ordinance with Legal Report.

Governor's Deputy 177 21/7/38
Two authenticated and twelve printed copies of Ordinance No 22 of 1938 - Refugee Ordinance with Legal Report.

16. The Ordinance differs from the Bill submitted to the Secretary of State in (10) only in the two respects suggested in (13).

? Signify non-disallowance L.F.

17. With one exception, the respects in which the Refugees Ordinance differs from the Bill do not require detailed comment. Sections 7 and 10 of the Ordinance contain alterations suggested in No. 13, and Section 8 appears adequately to give effect to the suggestion made in No. 13. Section 5 contains an alteration removing an inconsistency between Clauses 2 and 3 of the Bill.

Sections 2 and 9 of the Ordinance require more detailed comment. "Refugee" is now defined as a person who "at the commencement of this Ordinance is residing in the Refugees Camp at Isiolo." In No. 13 it was suggested that the definition of "refugee" should be worded in general terms avoiding the particularisation in the phrase "subsequently resides in the Refugees Camp at Isiolo," which appeared in

"the

the definition of refugees contained in the Bill. The object of this suggestion was in order that the Ordinance should apply also to future refugees. The effect of the alteration embodied in the Ordinance would appear to be to make the definition even more restricted than before. Once the Ordinance is in force, no person can become a refugee as at present defined, whereas previously it was possible for new arrivals from Abyssinia to become refugees, as defined in the Bill, if they subsequently went to the camp at Isiolo. However, under Section 9 the provisions of the Ordinance are extended to any Ethiopian who enters the Colony from Ethiopia after the commencement of the Ordinance, and who would under the Immigration Restriction Ordinance be a prohibited immigrant. This means that (1) Erythraeans and Italian Somalis are excluded from treatment as refugees for the future even if they enter Kenya through Ethiopia. Moreover, (2) all Ethiopians who are prohibited immigrants within the meaning of [Section 5 of] the Immigration Restriction Ordinance and who enter Kenya from Ethiopia will no longer be dealt with under the Immigration Restriction Ordinance, but will be treated as refugees, whether or not it would have been more suitable prior to the passing of this Ordinance to deal with them under the Immigration Restriction Ordinance. Section 5 of that Ordinance defines eight classes of prohibited immigrants. It is normally to be expected that refugees will fall under class (a) viz. persons "without visible means of support

copy attached
B is of hand - way
min

1 sub class (g) would
be applicable

..... who are likely to become paupers or a public charge." It is however at least possible that relatively well-to-do refugees might come over in the future, in which case (unless they fall under classes (b)(c)(d)(e)(h) which is not normally to be expected) it would be necessary for administrative action to be taken to bring them under classes (f) or (g) before they could be treated as refugees.

Both these points (1) and (2) would appear to be rather awkward, but the Ordinance no doubt embodies what is considered to be the best arrangement in these circumstances. It would seem preferable to signify non-disallowance of the Ordinance as it stands rather than to embark on a discussion of possible alternatives to Section 9.

To Mr. Dale for legal observations.

Clare White
6.10.38.

J.P. Bacon
6/x

Presumably some long time
Y.P. ... the law already existed ...
commencement of the Ordinance) in the camp at Isiolo - then
was there is another part: see report of refugees ...
Dept. is content to accept this ...

W.D. ...
H.L.

then ...
Y.P. Bacon

DESTROYED UNDER STATUTE
Kenya 621 - 16 removed } 21.10.38
Kenya 622 - 17 removed } 21.10.38

To: Foreign Office (17/16) Nov. 25 OCT 1938

23 Extract from Kenya Gazette No 47 - 20/9/38

? Pub 62.

Mrs. M.

4.11

A. Mace

R. P. James

J.

GOVERNMENT NOTICE No. 704
THE CONTROL OF FUGITIVE BELLIGERENTS
ORDINANCE, 1936
RULES

IN EXERCISE of the powers conferred upon him by the Control of Fugitive Belligerents Ordinance, 1936, His Excellency the Governor has been pleased to make the following Rules:—

1. These Rules may be cited as the Internees (Treatment in Hospital) Rules, 1938.

2. (1) In the case of any serious illness of an internee detained in an internment camp in which there is not suitable accommodation for such internee, any magistrate may, on the certificate of a medical officer in the service of the Government, make an order for his removal to a Government hospital or to any fit place for the custody and treatment of sick persons, which may from time to time be appointed by the Governor for that purpose either within a prison or elsewhere.

(2) In the case of emergency such removal may be made by the Commandant without complying with the provisions of sub-rule (1) of this Rule.

3. So long as any internee who shall have been removed to any hospital or place under the provisions of Rule 2 hereof shall remain therein he shall be deemed to be in lawful custody. The medical officer of the hospital or the person in whose charge the internee is placed shall, at the end of every month, transmit to the Commandant a certificate signed by him that it is in his opinion necessary that such internee should remain in the hospital or place, as the case may be.

4. So soon as, in the opinion of the medical officer of the hospital or of the person in whose charge the internee is placed, it is no longer necessary that any internee who shall have been removed to the hospital or place remain therein, he shall transmit to the Commandant stating that such necessity has ceased, and thereupon the Commandant shall forthwith cause such internee to be brought to the internment camp.

5. Every precaution shall be taken by the medical officers and other officers of a hospital or by the person in whose charge the internee is placed to prevent the escape of any internee who may at any time be under treatment in such hospital or place, and it shall be lawful for the said officers and person to take such measures for preventing the escape of any such internee as shall be necessary: Provided that nothing in this Rule contained shall confer any authority to do any act which in the opinion of a medical officer is likely to be prejudicial to the health of such internee.

By Command of His Excellency the Governor
Nairobi,
This 15th day of September, 1938.
A. DE V. WADE,
Chief Secretary.

11
21

C. O.

38251/38. Kenya

Miss Simpson 13/10

Mr. Edmonds

Mr.

Mr. A. J. Dawe.

Sir H. Moore.

Sir G. Tomlinson.

Sir J. Shuckburgh

Permi. U.S. of S.

Parly. U.S. of S.

Secretary of State.

17 OCT
20-

84

21 Oct. 1938.

DRAFT

Sir,

KENYA

I have, etc. to ack. the

receipt of your despatch No. 177

Confidential of the 21st of Sept.

transmitting copies of Ordinance

No. XXII. of 1938 and to invite

your attention to my despatch No. 622

of the 21st October.

I have, etc.

(Signed) MALCOLM MacDONALD.

Confidential (2)

Gov.

4 Drafts. ✓

FURTHER ACTION.

Despatch
Sec. to fill
in please

KENYA
No. 177



17
12
GOVERNMENT HOUSE
NAIROBI
KENYA

21 September, 1958.

CONFIDENTIAL.



Sir,

13
I have the honour to refer to your Confidential telegram No. 90 of the 21st July last and to forward two authenticated and twelve printed copies of Ordinance No. XXII of 1958 entitled "An Ordinance to Regularise the Residence in the Colony of Certain Refugees from Ethiopia" together with a Legal Report thereon and enclosure prepared by the Attorney General.

2. This Ordinance passed its third reading in the Legislative Council on the 18th of August and the Governor assented to it in His Majesty's name on the 15th of September, 1958.

Amund (21)
I have the honour to be,

Sir,

Your most obedient, humble servant,

Arthur W. ...

GOVERNOR'S DEPUTY.

THE RIGHT HONOURABLE

MALCOLM MACDONALD, M. P.,

SECRETARY OF STATE FOR THE COLONIES,

DOWNING STREET,

LONDON, S.W. 1.

LEGAL REPORT

THE REFUGEES BILL, 1938

The object of this Bill is set out in the preamble thereto.

The Bill, prior to its introduction into Legislative Council, was submitted to the Secretary of State, and was approved by him in a telegram dated the 21st July, 1938.

A copy of the Bill showing in red ink the amendments made since the original Bill was sent to the Secretary of State is enclosed for transmission to the Secretary of State.

As the Bill has received the approval of the Secretary of State, I am of opinion that His Excellency the Governor may properly assent to this Bill in the name and on behalf of His Majesty.

Nairobi,
18th August, 1938

W. H. A. J.
ATTORNEY GENERAL

14
C O P Y
O F
THE REFUGEES BILL, 1938, SHOWING IN
RED INK THE AMENDMENTS MADE SINCE
THE ORIGINAL BILL WAS SENT TO THE
SECRETARY OF STATE

15

**A Bill to Regularize the Residence in the Colony
of Certain Refugees from Ethiopia**

WHEREAS on divers occasions during the years 1936 and 1937 certain refugees entered the Colony from Ethiopia:

AND WHEREAS such persons were under the Immigration Restriction Ordinance (Chapter 62 of the Revised Edition of the Laws of Kenya) liable to be treated as prohibited immigrants and to be returned thereto:

AND WHEREAS it was considered inexpedient to enforce the said Ordinance with regard to the said refugees:

AND WHEREAS the said refugees have since been residing in a camp established at Isiolo by the Government of the Colony in the interests of law and order and the well-being and good government of the said refugees:

AND WHEREAS it is now considered desirable that the residence in the Colony of the said refugees be regularized by law:

AND WHEREAS it is also considered desirable that powers should exist for the control of any refugees who enter the Colony subsequent to the commencement of this Ordinance:

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

1. This Ordinance may be cited as the Refugees Ordinance, 1938. Short title.

2. In this Ordinance, unless the context otherwise requires:— Interpretation.

“Officer in Charge” means a public officer appointed by the Governor by notice in the Gazette to be Officer in Charge of a camp.

"refugee" means a person who entered the Colony from Ethiopia and who at the commencement of this Ordinance is residing in the Refugees Camp at Isiolo;

"regulations" means regulations made under the provisions of this Ordinance.

3. (1) The Governor may by notice in the Gazette declare any area, district or place to be a residential camp (in this Ordinance referred to as a camp) and may require any refugee to reside therein.

(2) The Refugees Camp at Isiolo is hereby declared to be a camp for the purposes of this Ordinance.

4. (1) The Governor may make regulations providing for the maintenance of law and order in a camp and for the well-being, good government, discipline and safe custody of refugees residing therein or employed beyond the limits thereof, and without prejudice to the generality of the foregoing for all or any of the following purposes:—

- (a) the safe custody, classification, hours of labour, mode of employment, clothing, maintenance, instruction, discipline, physical exercise, treatment and correction of refugees;
- (b) the duties and powers of the Officer in Charge and other officers and persons;
- (c) the delegation of powers of the Officer in Charge to other officers;
- (d) communications with and visits from friends and others;
- (e) the relations of refugees with the exterior;
- (f) the removal of refugees from a camp for disciplinary purposes;
- (g) the censorship of letters, newspapers, books, magazines, pamphlets or other publications;
- (h) the medical inspection of refugees and camps and the prevention of contagious and infectious diseases;
- (i) the hygiene, sanitation and cleanliness of a camp;
- (j) the disarming of refugees and the disposal of arms and ammunition, military equipment and papers of refugees;
- (k) the liberation and repatriation of refugees;

(l) the registration of births, deaths, marriages, divorces and separations of refugees;

(m) the use of force to ensure surrender of refugees when escaping, attempting to escape, or using violence;

(n) the appointment, duties, powers, conditions of engagement and conduct of leaders, sub-leaders and other persons employed in a camp and for the punishment of such leaders, sub-leaders and persons;

(o) the provision, maintenance and regulation of food and water supply in a camp;

(p) the burial of refugees who die in a camp and any other matters arising out of the death of refugees;

(q) the issue to and carrying by refugees of identification discs;

(r) the compulsory attendance of refugees at census or on any occasion when required by the Officer in Charge;

(s) prohibiting or restricting the admission to a camp of persons, other than refugees; and

(t) notwithstanding the provisions of any law for the time being in force in the Colony, providing for the arrest without a warrant of refugees leaving or attempting to leave a camp without permission and of persons other than refugees entering a camp without a permit.

(2) Any such Regulations may require acts or things to be performed or done to the satisfaction of the Officer in Charge, an administrative officer, a medical officer, a leader, a sub-leader or other person appointed by the Officer in Charge and may empower any such officer, leader, sub-leader or other person to issue orders requiring acts or things to be performed or done prohibiting acts or things from being performed or done and may prescribe periods or dates upon which or before which such acts or things shall be performed or done.

5. Any person who contravenes the Regulations or who disobeys or fails to comply with any lawful order issued by the Officer in Charge, an administrative officer, a medical officer, a leader, sub-leader or other person appointed by the Officer in Charge in pursuance of the powers conferred by the Regulations shall be guilty of an offence and shall be liable on conviction to a fine not exceeding ten pounds or to imprisonment for a term not exceeding two months.

Saving of
other law

6. The powers conferred by this Ordinance shall be in addition to and not in derogation of the powers conferred by any other law for the time being in force in the Colony.

Refugees not
relieved from
liability under
the ordinary
law.

7. Nothing in this Ordinance contained shall be construed to relieve a refugee from the liability of being proceeded against by the ordinary course of law for any offence against any other law for the time being in force in the Colony, but so that no refugee shall be punished twice for the same act or omission.

Transfer of
refugees from
any camp to
interment
Camp
No. 11 of 1936

8. (1) The Governor may, if he considers it advisable, transfer any refugee from any camp to the interment camp established under the provisions of the Control of Fugitive Belligerents Ordinance, 1936, and any refugee so transferred shall be deemed to be a belligerent and to be subject to the provisions of that Ordinance.

No. 11 of 1936

(2) It is hereby declared that any refugee who, before the commencement of this Ordinance, was transferred from the Refugee Camp at Juba to such interment camp was lawfully transferred, and any such refugee shall be deemed to have been and to be a belligerent and to be subject to the provisions of the Control of Fugitive Belligerents Ordinance, 1936.

Ordinance to
apply to refugees
who enter the
Colony after
the cessation
of hostilities
Cap. 62

9. The provisions of this Ordinance shall apply to any Ethiopian who enters the Colony from Ethiopia after the commencement of this Ordinance and who would under the provisions of the Immigration Restriction Ordinance be deemed to be a prohibited immigrant, in like manner and to the same extent as if such Ethiopian were a refugee within the meaning of this Ordinance.

Validation of
acts previously
done and
indemnity
therefor

10. All acts heretofore done by the Governor or by any officer of the Government or by any person acting under the direction of the Governor or of any officer of the Government in regard to any matter relating to the control, treatment or residence of refugees, or to prevent the escape of refugees, are hereby authorized and declared to be lawful and are confirmed as of and from the time of performance of such acts, and the Governor and every such officer or person as aforesaid are hereby freed, acquitted, discharged and indemnified as well against the King's Most Gracious Majesty his heirs and

successors as against all and every person and persons whatever from all legal proceedings of any kind whatsoever whether civil or criminal in respect of any such acts, as aforesaid.

OBJECTS AND REASONS

The object of this Bill is fully set out in the preamble thereto.

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



Colony and Protectorate of Kenya

IN THE SECOND YEAR OF THE REIGN OF

HIS MAJESTY KING GEORGE VI

HENRY ROBERT MOORE BROOKE-POPHAM
G.C.V.O., K.C.B., C.M.G., D.S.O., A.F.C. *Governor*

Assented to in His Majesty's
name this _____ day of _____

1938

10 SEP. 1938

R. BROOKE-POPHAM

Governor

AN ORDINANCE TO REGULARIZE THE
RESIDENCE IN THE COLONY OF CERTAIN
REFUGEES FROM ETHIOPIA

ORDINANCE No. XXII of 1938

An Ordinance to Regularize the Residence in the Colony of Certain Refugees from Ethiopia

WHEREAS on divers occasions during the years 1936 and 1937 certain refugees entered the Colony from Ethiopia;

AND WHEREAS such persons were under the Immigration Restriction Ordinance (Chapter 62 of the Revised Edition of the Laws of Kenya) liable to be treated as prohibited immigrants and to be returned thereto;

AND WHEREAS it was considered inexpedient to enforce the said Ordinance with regard to the said refugees;

AND WHEREAS the said refugees have since been residing in a camp established at Isiolo by the Government of the Colony in the interests of law and order and the well-being and good government of the said refugees;

AND WHEREAS it is now considered desirable that the residence in the Colony of the said refugees be regularized by law;

AND WHEREAS it is also considered desirable that powers should exist for the control of any refugees who enter the Colony subsequent to the commencement of this Ordinance;

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

1. This Ordinance may be cited as the Refugees Ordinance, 1938. Short title.

2. In this Ordinance, unless the context otherwise requires:— Interpretation.

“Officer in Charge” means a public officer appointed by the Governor by notice in the Gazette to be Officer in Charge of a camp;

"refugee" means a person who entered the Colony from Ethiopia and who at the commencement of this Ordinance is residing in the Refugees Camp at Isiolo;

"regulations" means regulations made under the provisions of this Ordinance.

Residential
camp

3. (1) The Governor may by notice in the Gazette declare any area, district or place to be a residential camp (in this Ordinance referred to as a camp) and may require any refugee to reside therein.

(2) The Refugees Camp at Isiolo is hereby declared to be a camp for the purposes of this Ordinance.

Regulations

4. (1) The Governor may make regulations providing for the maintenance of law and order in a camp and for the well-being, good government, discipline and safe-custody of refugees residing therein or employed beyond the limits thereof, and without prejudice to the generality of the foregoing for all or any of the following purposes:

- (a) the safe custody, classification, hours of labour, mode of employment, clothing, maintenance, instruction, discipline, physical exercise, treatment and correction of refugees;
- (b) the duties and powers of the Officer in Charge and other officers and persons;
- (c) the delegation of powers of the Officer in Charge to other officers;
- (d) communications with and visits from friends and others;
- (e) the relations of refugees with the exterior;
- (f) the removal of refugees from a camp for disciplinary purposes;
- (g) the censorship of letters, newspapers, books, magazines, pamphlets or other publications;
- (h) the medical inspection of refugees and camps and the prevention of contagious and infectious diseases;
- (i) the hygiene, sanitation and cleanliness of a camp;
- (j) the disarming of refugees and the disposal of arms and ammunition, military equipment and papers of refugees;
- (k) the liberation and repatriation of refugees;

- (l) the registration of births, deaths, marriages, divorces and separations of refugees;
 - (m) the use of force to ensure surrender of refugees when escaping, attempting to escape, or using violence;
 - (n) the appointment, duties, powers, conditions of engagement and conduct of leaders, sub-leaders and other persons employed in a camp and for the punishment of such leaders, sub-leaders and persons;
 - (o) the provision, maintenance and regulation of food and water supply in a camp;
 - (p) the burial of refugees who die in a camp and any other matters arising out of the death of refugees;
 - (q) the issue to and carrying by refugees of identification discs;
 - (r) the compulsory attendance of refugees at census or on any occasion when required by the Officer in Charge;
 - (s) prohibiting or restricting the admission to a camp of persons other than refugees; and
 - (t) notwithstanding the provisions of any law for the time being in force in the Colony, providing for the arrest without a warrant of refugees leaving or attempting to leave a camp without permission and of persons other than refugees entering a camp without a permit.
- (2) Any such Regulations may require acts or things to be performed or done to the satisfaction of the Officer in Charge, an administrative officer, a medical officer, a leader, a sub-leader or other person appointed by the Officer in Charge and may empower any such officer, leader, sub-leader or other person to issue orders requiring acts or things to be performed or done and may prescribe periods or dates upon which such acts or things shall be performed or done.

5. Any person who contravenes the Regulations or who disobeys or fails to comply with any lawful order issued by the Officer in Charge, an administrative officer, a medical officer, a leader, sub-leader or other person appointed by the Officer in Charge in pursuance of the powers conferred by the Regulations shall be guilty of an offence and shall be liable on conviction to a fine not exceeding ten pounds or to imprisonment for a term not exceeding two months.

Saving of
other law

6. The powers conferred by this Ordinance shall be in addition to and not in derogation of the powers conferred by any other law for the time being in force in the Colony.

Refugees not
relieved from
liability under
the ordinary
law

7. Nothing in this Ordinance contained shall be construed to relieve a refugee from the liability of being proceeded against by the ordinary course of law for any offence against any other law for the time being in force in the Colony, but so that no refugee shall be punished twice for the same act or omission.

Transfer of
refugees from
any camp to
internment
camp

No. 11 of 1936

8. (1) The Governor may, if he considers it advisable, transfer any refugee from any camp to the internment camp established under the provisions of the Control of Fugitive Belligerents Ordinance, 1936, and any refugee so transferred shall be deemed to be a belligerent and to be subject to the provisions of that Ordinance.

(2) It is hereby declared that any refugee who, before the commencement of this Ordinance, was transferred from the Refugees Camp at Isiolo to such internment camp was lawfully transferred, and any such refugee shall be deemed to have been and to be a belligerent and to be subject to the provisions of the Control of Fugitive Belligerents Ordinance, 1936.

No. 41 of 1936

Ordinance to
apply to refugees
entering Colony
after commence-
ment thereof.
Cap. 62

9. The provisions of this Ordinance shall apply to any Ethiopian, who enters the Colony from Ethiopia after the commencement of this Ordinance and who would under the provisions of the Immigration Restriction Ordinance be deemed to be a prohibited immigrant, in like manner and to the same extent as if such Ethiopian were a refugee within the meaning of this Ordinance.

Validation of
acts previously
done and
indemnity
therefor

10. All acts heretofore done by the Governor or by any officer of the Government or by any person acting under the direction of the Governor or of any officer of the Government in regard to any matter relating to the control, treatment or residence of refugees, or to prevent the escape of refugees are hereby made and declared to be lawful and are confirmed as on and from the time of performance of such acts, and the Governor and every such officer or person as aforesaid are hereby freed, acquitted, discharged and indemnified as well as the King's Most Gracious Majesty his heirs and successors against all and every person and persons whatsoever from all legal proceedings of any kind whatsoever whether civil or criminal in respect of any such acts as aforesaid.

Passed in the Legislative Council the eighteenth day of August, in the year of Our Lord one thousand nine hundred and thirty-eight.

This printed impression has been carefully compared by me with the Bill which passed the Legislative Council and is presented for authentication and assent as a true and correct copy of the said Bill.

R. W. BAKER, CLERK

Acting Clerk to the Legislative Council.

KENYA
No. 176



16
21
GOVERNMENT HOUSE
NAIROBI
KENYA

RECEIVED
27 SEP 1958
O.O. REGY

21 September, 1958.

~~CONFIDENTIAL~~

copy all

Sir,

13
I have the honour to refer to your Confidential telegram No.90 of the 21st July last and to forward two authenticated and twelve printed copies of Ordinance No. XXI of 1958 entitled "An Ordinance to Amend the Control of Fugitive Belligerents Ordinance, 1956", together with a Legal Report thereon and enclosure prepared by the Attorney General.

2. This Ordinance passed its third reading in the Legislative Council on the 16th of August and the Governor assented to it in His Majesty's name on the 15th of September, 1958.

[Signature] (19)

I have the honour to be,

Sir,

Your most obedient, humble servant,

[Signature]

GOVERNOR'S DEPUTY.

THE RIGHT HONOURABLE

MALCOLM MACDONALD, M.P.,

SECRETARY OF STATE FOR THE COLONIES,

DOWNING STREET,

LONDON, S.W. 1.

LEGAL REPORT

THE CONTROL OF FUGITIVE BELLIGERENTS (AMENDMENT)
BILL, 1958

In the Principal Ordinance "belligerent" is defined as any member of the Abyssinian or Italian troops who, during the period of hostilities between Abyssinia and Italy, crosses the neutral frontier and takes refuge in the Colony. Government has been advised that hostilities may be regarded as having come to an end some time in the latter part of 1956.

The object of this Bill is to regularize the position with regard to members of Abyssinian or Italian troops who entered the Colony since that date.

Opportunity has been taken to amend the Principal Ordinance in certain minor respects.

The Bill, prior to its introduction into Legislative Council, was submitted to the Secretary of State, and was approved by him in a telegram of the 21st July, 1958.

A copy of the Bill, showing in red ink the amendments made since the original Bill was sent to the Secretary of State and showing the sections of the Principal Ordinance which are affected by the amending Bill, is enclosed for transmission to the Secretary of State.

As the Bill has received the approval of the Secretary of State I am of opinion that His Excellency the Governor may properly assent to this Bill in the name and on behalf of His Majesty.

Nairobi,

18th August, 1958

W. N. ...
ATTORNEY-GENERAL

C O P Y
O F
THE CONTROL OF FUGITIVE BELLIGERENTS
(AMENDMENT) BILL, 1958. SHOWING IN
RED INK THE AMENDMENTS MADE SINCE
IT WAS SENT TO THE SECRETARY OF
STATE AND SHOWING THE SECTIONS OF
THE PRINCIPAL ORDINANCE AFFECTED
BY THE AMENDING BILL.

Control of
internment
camps.

Section 7 of the Principal Ordinance which it is proposed to amend:—

7. (1) The Commander shall be in charge of any internment camp established in accordance with the provisions of the last preceding section and shall be responsible for the discipline of internees.

(2) The Commander may, with the approval of the Governor, appoint a Commandant to be in charge of an internment camp, and may detail such other persons as may be necessary to ensure proper control of internment camps to serve under such Commandant.

Section 19 of the Principal Ordinance which it is proposed to amend:—

19. Any internee who—

- (a) attempts to escape;
- (b) disobeys the order of any person in whose charge he is placed;
- (c) fails to declare his true name, rank, or number on interrogation,

shall be deemed to have committed an offence against this Ordinance.

Offences against discipline.

A Bill to Amend the Control of Fugitive Belligerents Ordinance, 1936

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

1. This Ordinance may be cited as the Control of Fugitive Belligerents (Amendment) Ordinance, 1936, and shall be read as one with the Control of Fugitive Belligerents Ordinance, 1936, hereinafter referred to as the Principal Ordinance.

short title.

No. 11 of 1936.

2. Sub-section (2) of section 7 of the Principal Ordinance is hereby amended

Amendment of section 7 of the Principal Ordinance.

- (a) by substituting the word "appoint" for the word "detail" which occurs in the third line thereof; and
- (b) by deleting the words "to serve under such Commandant" which occur in the fourth and the fifth lines thereof.

3. Section 19 of the Principal Ordinance is hereby amended by substituting the following paragraph for paragraph (a) thereof:—

Amendment of section 19 of the Principal Ordinance.

- "(a) escapes or attempts to escape."

Section 20 of the Principal Ordinance which it is proposed to amend:—

Punishment for offences against discipline.

20. (1) The Commander or the Commandant may inquire into any act of insubordination or any offence against discipline and thereupon punish the offender by—

- (a) solitary confinement not exceeding thirty days; or
- (b) reduction of rations.

or both.

(2) In awarding punishment the period during which an internee is under arrest awaiting trial or punishment shall be deducted from the sentence.

(3) A statement of the facts constituting the act of insubordination or the offence against discipline shall be drawn up in writing without delay by the officer inquiring into such offence.

Section 22 of the Principal Ordinance which it is proposed to amend:—

Arrest and use of force when necessary to escape.

22. (1) Any internee attempting to escape from an internment camp may be arrested.

(2) If such internee refuses to surrender when called upon it shall be lawful for an officer to use or to order any person or persons under his command to use such degree of force as may be necessary in the circumstances of each case to cause his surrender.

Provided that resort shall not be had to the use of force unless such officer has reasonable ground to believe that he cannot otherwise prevent the escape.

Section 24 of the Principal Ordinance which it is proposed to amend:—

Validity of acts performed done and intended thereby.

24. All acts heretofore done by the Governor or by any officer of the Government or by any person acting under the direction of the Governor or of any officer of the Government in regard to any matter relating to the treatment of internees are hereby made and declared to be lawful and are confirmed as on and from the time of the performance of such acts, and the Governor and every such officer or person as aforesaid are hereby freed, acquitted, discharged and indemnified as well against the King's Most Gracious Majesty his heirs and successors as against all and every person and persons whatsoever from all legal proceedings of any kind whatsoever whether civil or criminal in respect of any such acts as aforesaid.

4. Sub-section (1) of section 20 of the Principal Ordinance is hereby amended by substituting the comma and words "the Commander or such other officer authorized by the Commander in that behalf" for the words "or the Commandant" which occur in the first line thereof.

Amendment of section 20 of the Principal Ordinance.

5. Section 22 of the Principal Ordinance is hereby amended:—

Amendment of section 22 of the Principal Ordinance.

(a) by substituting the words "who escapes or attempts" for the word "attempting" which occurs in the first line of sub-section (1) thereof;

(b) by substituting the words "secure his capture or to prevent his escape" for the words "ensure his surrender" which occur in the fourth and the fifth lines of sub-section (2) thereof; and

(c) by substituting the words "secure the capture of the internee or prevent his escape" for the words "prevent the escape" which occur in the last line of sub-section (2) thereof.

6. Section 24 of the Principal Ordinance is hereby amended by substituting the words "control, treatment or internment of belligerents, or to prevent the escape and/or resumption of hostilities by internees" for the words "treatment of internees" which occur in the fourth line thereof.

Amendment of section 24 of the Principal Ordinance.

The words "or to the establishment and maintenance of peace and government in the Colony" have been deleted.

7. Every member of the Abyssinian or Italian troops who since the cessation of hostilities between Abyssinia and Italy has crossed the neutral frontier and has been interned in the internment camp established under the provisions of section 6 of the Principal Ordinance shall be deemed to be a belligerent for the purposes of that Ordinance.

Application of Ordinance to persons interned after cessation of hostilities.

OBJECTS AND REASONS

In the Principal Ordinance "belligerent" is defined as any member of the Abyssinian or Italian troops who during the period of hostilities between Abyssinia and Italy, crosses the neutral frontier and takes refuge in the Colony. Government has been advised that hostilities may be regarded as having come to an end some time in the latter part of 1936.

The object of this Bill is to regularize the position with regard to members of Abyssinian or Italian troops who entered the Colony since that date.

Opportunity has been taken to amend the Principal Ordinance in certain minor respects.

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



Colony and Protectorate of Kenya

IN THE SECOND YEAR OF THE REIGN OF
HIS MAJESTY KING GEORGE VI

HENRY ROBERT MOORE BROOKE-POPHAM
G.C.V.O., K.C.B., C.M.G., D.S.O., M.C. Governor

Assented to in His Majesty's
name this 13th day of
1938

R. BROOKE-POPHAM

Governor

AN ORDINANCE TO AMEND THE CONTROL
OF FUGITIVE BELLIGERENTS ORDINANCE,

1936

ORDINANCE No. XXI of 1938

An Ordinance to Amend the Control of Fugitive Belligerents Ordinance, 1936

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as the Control of Fugitive Belligerents (Amendment) Ordinance, 1938, and shall be read as one with the Control of Fugitive Belligerents Ordinance, 1936, hereinafter referred to as the Principal Ordinance. Short title
No. 11 of 1936.

2. Sub-section (2) of section 7 of the Principal Ordinance is hereby amended— Amendment of section 7 of the Principal Ordinance.

- (a) by substituting the word "appoint" for the word "detail" which occurs in the third line thereof; and
- (b) by deleting the words "to serve under such Commandant" which occur in the fourth and the fifth lines thereof.

3. Section 19 of the Principal Ordinance is hereby amended by substituting the following paragraph for paragraph (a) thereof:— Amendment of section 19 of the Principal Ordinance.

- "(a) escapes or attempts to escape."

4. Sub-section (i) of section 20 of the Principal Ordinance is hereby amended by substituting the comma and words "the Commandant or such other officer authorized by the Commander in that behalf" for the words "or the Commandant" which occur in the first line thereof. Amendment of section 20 of the Principal Ordinance.

5. Section 22 of the Principal Ordinance is hereby amended— Amendment of section 22 of the Principal Ordinance.

- (a) by substituting the words "who escapes or attempts" for the word "attempting" which occurs in the first line of sub-section (i) thereof;

GOVERNMENT NOTICE No. 597

His Excellency the Governor in Council has approved of the following Bill being introduced into the Legislative Council.

R. W. BAKER BEALL,
Acting Clerk to the Legislative Council.

A Bill to Amend the Electric Power Ordinance

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

1. This Ordinance may be cited as the Electric Power (Amendment) Ordinance, 1938, and shall be read as one with the Electric Power Ordinance (Chapter 165 of the Revised Edition), hereinafter referred to as the Principal Ordinance, and shall be deemed to have come into force on the 31st day of July, 1938.

Short title and commencement.

2. Sub-section (5) of section 18 of the Principal Ordinance is hereby amended by substituting a colon for the full stop which occurs at the end thereof, and by adding, immediately after such colon, the following proviso:—

Amendment of section 18 (5) of the Principal Ordinance.

"Provided that the Governor in Council may, in his absolute discretion, where the circumstances are such as in his opinion render such a course necessary, exercise the powers conferred upon him by this section notwithstanding that more than six months after the receipt of the application have expired."

OBJECTS AND REASONS

The object of this Bill is to enable the Governor in Council in exceptional circumstances to grant or refuse an application for a distributing licence notwithstanding that the statutory period of six months prescribed by section 18 (5) of the Principal Ordinance has expired.

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

GOVERNMENT NOTICE No. 598

His Excellency the Governor in Council has approved of the following Bill being introduced into the Legislative Council.

R. W. BAKER BEALL,
Acting Clerk to the Legislative Council.

A Bill to Regularize the Residence in the Colony of Certain Refugees from Ethiopia

WHEREAS on divers occasions during the years 1936 and 1937 certain refugees entered the Colony from Ethiopia:

AND WHEREAS such persons were under the Immigration Restriction Ordinance (Chapter 62 of the Revised Edition of the Laws of Kenya) liable to be treated as prohibited immigrants and to be returned thereto:

AND WHEREAS it was considered inexpedient to enforce the said Ordinance with regard to the said refugees:

AND WHEREAS the said refugees have since been residing in a camp established at Isiolo by the Government of the Colony in the interests of law and order and the well-being and good government of the said refugees:

AND WHEREAS it is now considered desirable that the residence in the Colony of the said refugees be regularized by law:

AND WHEREAS it is also considered desirable that powers should exist for the control of any refugees who enter the Colony subsequent to the commencement of this Ordinance:

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

1. This Ordinance may be cited as the Refugees Ordinance, 1938.

2. In this Ordinance, unless the context otherwise requires:—

"Officer in Charge" means a public officer appointed by the Governor by notice in the Gazette to be Officer in Charge of a camp;

"refugee" means a person who entered the Colony from Ethiopia and who at the commencement of this Ordinance is residing in the Refugees Camp at Isiolo;

"regulations" means regulations made under the provisions of this Ordinance.

3. (1) The Governor may by notice in the Gazette declare any area, district or place to be a residential camp (in this Ordinance referred to as a camp) and may require any refugee to reside therein.

(2) The Refugees Camp at Isiolo is hereby declared to be a camp for the purposes of this Ordinance.

4. (1) The Governor may make regulations providing for the maintenance of law and order in a camp and for the well-being, good government, discipline and safe custody of refugees residing therein or employed beyond the limits thereof, and without prejudice to the generality of the foregoing for all or any of the following purposes:—

(a) the safe custody, classification, hours of labour, mode of employment, clothing, maintenance, instruction, discipline, physical exercise, treatment and correction of refugees;

(b) the duties and powers of the Officer in Charge and other officers and persons;

(c) the delegation of powers of the Officer in Charge to other officers;

(d) communications with and visits from friends and others;

(e) the relations of refugees with the exterior;

(f) the removal of refugees from a camp for disciplinary purposes;

(g) the censorship of letters, newspapers, books, magazines, pamphlets or other publications;

(h) the medical inspection of refugees and camps and the prevention of contagious and infectious diseases;

(i) the hygiene, sanitation and cleanliness of a camp;

(j) the disarming of refugees and the disposal of arms and ammunition, military equipment and papers of refugees;

(k) the liberation and repatriation of refugees;

Residential camp.

Regulations.

Short title

Interpretation.

- (l) the registration of births, deaths, marriages, divorces and separations of refugees;
- (m) the use of force to ensure surrender of refugees when escaping, attempting to escape, or using violence;
- (n) the appointment, duties, powers, conditions of engagement and conduct of leaders, sub-leaders and other persons employed in a camp and for the punishment of such leaders, sub-leaders and persons;
- (o) the provision, maintenance and regulation of food and water supply in a camp;
- (p) the burial of refugees who die in a camp and any other matters arising out of the death of refugees;
- (q) the issue to and carrying by refugees of identification discs;
- (r) the compulsory attendance of refugees at census or on any occasion when required by the Officer in Charge;
- (s) prohibiting or restricting the admission to a camp of persons, other than refugees; and
- (t) notwithstanding the provisions of any law for the time being in force in the Colony, providing for the arrest without a warrant of refugees leaving or attempting to leave a camp without permission and of persons other than refugees entering a camp without a permit.
- (2) Any such Regulations may require acts or things to be performed or done to the satisfaction of the Officer in Charge, an administrative officer, a medical officer, a leader, a sub-leader or other person appointed by the Officer in Charge and may empower any such officer, leader, sub-leader or other person to issue orders requiring acts or things to be performed or done prohibiting acts or things from being performed or done and may prescribe periods or dates upon which or before which such acts or things shall be performed or done.

5. Any person who contravenes the Regulations or who disobeys or fails to comply with any lawful order issued by the Officer in Charge, an administrative officer, a medical officer, a leader, sub-leader or other person appointed by the Officer in Charge in pursuance of the powers conferred by the Regulations shall be guilty of an offence and shall be liable on conviction to a fine not exceeding ten pounds or to imprisonment for a term not exceeding two months.

6. The powers conferred by this Ordinance shall be in addition to and not in derogation of the powers conferred by any other law for the time being in force in the Colony.

Saving of other law.

7. Nothing in this Ordinance contained shall be construed to relieve a refugee from the liability of being proceeded against by the ordinary course of law for any offence against any other law for the time being in force in the Colony, but so that no refugee shall be punished twice for the same act or omission.

Refugees not relieved from liability under the ordinary law.

8. (1) The Governor may, if he considers it advisable, transfer any refugee from any camp to the internment camp established under the provisions of the Control of Fugitive Belligerents Ordinance, 1936, and any refugee so transferred shall be deemed to be a belligerent and to be subject to the provisions of that Ordinance.

Transfer of refugees from any camp to internment camp. No. 11 of 1936.

(2) It is hereby declared that any refugee who, before the commencement of this Ordinance, was transferred from the Refugees Camp at Isiolo to such internment camp was lawfully transferred, and any such refugee shall be deemed to have been and to be a belligerent and to be subject to the provisions of the Control of Fugitive Belligerents Ordinance, 1936.

No. 11 of 1936.

9. The provisions of this Ordinance shall apply to any Ethiopian who enters the Colony from Ethiopia after the commencement of this Ordinance and who would under the provisions of the Immigration Restriction Ordinance be deemed to be a prohibited immigrant, in like manner and to the same extent as if such Ethiopian were a refugee within the meaning of this Ordinance.

Ordinance to apply to refugees entering Colony after commencement thereof. Cap. 67.

10. All acts heretofore done by the Governor or by any officer of the Government or by any person acting under the direction of the Governor or of any officer of the Government in regard to any matter relating to the control, treatment or residence of refugees, or to prevent the escape of refugees are hereby made and declared to be lawful and are confirmed as on and from the time of performance of such acts; and the Governor and every such officer or person as aforesaid are hereby freed, acquitted, discharged and indemnified as well against the King's Most Gracious Majesty his heirs and successors as against all and every person and persons whatever from all legal proceedings of any kind whatsoever whether civil or criminal in respect of any such acts as aforesaid.

Validation of acts previously done and indemnity therefor.

OBJECTS AND REASONS

The object of this Bill is fully set out in the preamble thereto.

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

August 2, 1938

GOVERNMENT NOTICE No. 599

ARRIVALS

Name	Rank	From Leave or on 1st Appointment	Date of Leaving England	Date of Embarkation	Date of Arrival at Mombasa
J. Riddell	Clerk, Agricultural Department	Leave	8th July, 1938*	—	20th July, 1938
Miss M. Coleman	Junior Female Postal Clerk and Telegraphist	—	—	—	—
A. E. Cooner	Postmaster	—	11th July, 1938†	—	—
E. J. Petrie	Assistant Treasurer	—	1st July, 1938	2nd July, 1938‡	21st July, 1938
Miss L. Parsons	Nursing Sister	—	25th June, 1938	—	—
D. S. Barrett	Foreman, F. W. D.	—	—	—	—
A. Patrick	Company Sergeant Major, Northern Brigade, K. A. R.	1st Appointment	—	—	—
S. Fraser	Inspector, Class I, K. U. R. & H.	—	—	—	—
W. T. Chappel	Asst. Loco. Supdt., K. U. R. & H.	Leave	25th June, 1938	25th June, 1938	—

* Durban. † Beira. ‡ Mombasa.

DEPARTURES

Name	Rank	On Leave or Termination of Appointment	Date of Departure
N. J. B. Sabine	District Officer	Leave	15th July, 1938
D. Borton	Education Officer	—	25th July, 1938
W. N. Dalton	Inspector of Schools	—	21st July, 1938
C. A. G. Lane	Executive Magistrate	—	—
W. In Titman	Laboratory Assistant, Medical Dept.	—	—
H. Williams	Chief Clerk, Government Comptroller	—	—
E. V. Lohar	Junior Draughtsman, Class I, K. U. R. & H.	—	—
G. B. Robson	Foreman, Class I, K. U. R. & H.	—	—
F. Lynch	Driver, K. U. R. & H.	—	—
J. Stewart	Foreman, Class I, K. U. R. & H.	—	—
G. W. Smith	Inspector, Class I, K. U. R. & H.	—	—
W. H. Davies	Driver, Class I, K. U. R. & H.	—	—

APPOINTMENTS

THOMAS GARRETT ASEWITH to be District Officer (Cadet), Central Kavirondo District, Nyanza Province, with effect from the 19th July, 1938.

MURDO JOHN MURRAY to be District Surveyor, Department of Local Government, Lands and Settlement, with effect from the 1st January, 1938.

REVERSIONS

GILBERTON ADELBERT GUSTAVUS LANE reverted to his substantive post of Resident Magistrate with effect from 20th July, 1938.

FRANCIS HENRY CLARKE, Acting Game Warden, reverted to his substantive post of Senior Assistant Game Warden with effect from the 26th July, 1938.

A. DE V. WADE,
Chief Secretary.

August 2, 1938

989

5. Section 5 of the Penal Code (Amendment) Ordinance, 1936, is hereby amended by substituting the word "purchasers" for the word "purchasers" which occurs in the third line thereof.

Amendment of section 5 of Ordinance No. 31 of 1936.

OBJECTS AND REASONS

The object of Clause 2 of the Bill is to bring the laws relating to sedition and importation of undesirable publications into general accord with that of the other British dependencies.

Clause 3 is designed to remedy an obvious defect in section 166 of the Penal Code.

Clauses 4 and 5 correct typographical errors in the Principal Ordinance and in the Penal Code (Amendment) Ordinance, 1936.

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

GOVERNMENT NOTICE No. 596

His Excellency the Governor in Council has approved of the following Bill being introduced into the Legislative Council.

R. W. BAKER-BEALL,
Acting Clerk to the Legislative Council.

A Bill to Amend the Control of Fugitive Belligerents Ordinance, 1936

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

1. This Ordinance may be cited as the Control of Fugitive Belligerents (Amendment) Ordinance, 1938, and shall be read as one with the Control of Fugitive Belligerents Ordinance, 1936, hereinafter referred to as the Principal Ordinance.

Short title.

No. 11 of 1936.

2. Sub-section (2) of section 7 of the Principal Ordinance is hereby amended—

Amendment of section 7 of the Principal Ordinance.

- (a) by substituting the word "appears" for the word "detail" which occurs in the third line thereof; and
(b) by deleting the words "to serve under such Commandant" which occur in the fourth and the fifth lines thereof.

3. Section 19 of the Principal Ordinance is hereby amended by substituting the following paragraph for paragraph (a) thereof:—

Amendment of section 19 of the Principal Ordinance.

- "(a) escapes or attempts to escape;"

Section 7 of the Principal Ordinance which it is proposed to amend:—

7. (1) The Commander shall be in charge of any internment camp established in accordance with the provisions of the last preceding section and shall be responsible for the discipline of internees.

(2) The Commander may, with the approval of the Governor, appoint a Commandant to be in charge of an internment camp, and may detail such other persons as may be necessary to ensure proper control of internment camps to serve under such Commandant.

Section 19 of the Principal Ordinance which it is proposed to amend:—

19. Any internee who—

- (a) attempts to escape;
(b) disobeys the order of any person in whose charge he is placed;
(c) fails to declare his true name, rank, or number on interrogation,

shall be deemed to have committed an offence against discipline.

Control of internment camps.

Offence against discipline.

August 2, 1938

Section 20 of the Principal Ordinance which it is proposed to amend:—

Punishment for offence against discipline.

20. (1) The Commander or the Commandant may inquire into any act of insubordination or any offence against discipline and thereupon punish the offender by—

- (a) solitary confinement not exceeding thirty days; or
(b) reduction of rations,
or both.

(2) In awarding punishment the period during which an internee is under arrest awaiting trial or punishment shall be deducted from the sentence.

(3) A statement of the facts constituting the act of insubordination or the offence against discipline shall be drawn up in writing without delay by the officer inquiring into such offence.

Section 22 of the Principal Ordinance which it is proposed to amend —

Arrest and use of force when internees attempt to escape.

22. (1) Any internee attempting to escape from an internment camp may be arrested.

(2) If such internee refuses to surrender when called upon it shall be lawful for an officer to use or to order any person or persons under his command to use such degree of force as may be necessary in the circumstances of each case to ensure his surrender.

Provided that resort shall not be had to the use of force unless such officer has reasonable ground to believe that he cannot otherwise prevent the escape.

Section 24 of the Principal Ordinance which it is proposed to amend —

Validity of acts previously done and retroactive operation.

24. All acts heretofore done by the Government or by any officer of the Government or by any person acting under the direction of the Governor or of any officer of the Government in regard to any matter relating to the treatment of internees are hereby made and declared to be lawful and are confirmed as on and from the time of the performance of such acts, and the Governor and every such officer or person as aforesaid are hereby freed, acquitted, discharged and indemnified as well against the King's Most Gracious Majesty his heirs and successors as against all and every person and person whatever from all legal proceedings of any kind whatsoever whether civil or criminal in respect of any such acts as aforesaid.

4. Sub-section (1) of section 20 of the Principal Ordinance is hereby amended by substituting the comma and words "the Commander or such other officer authorized by the Commander in that behalf" for the words "or the Commandant" which occur in the first line thereof.

Amendment of section 20 of the Principal Ordinance.

5. Section 22 of the Principal Ordinance is hereby amended—

Amendment of section 22 of the Principal Ordinance.

(a) by substituting the words "who escapes or attempts" for the word "attempting" which occurs in the first line of sub-section (1) thereof;

(b) by substituting the words "secure his capture or to prevent his escape" for the words "ensure his surrender" which occur in the fourth and the fifth lines of sub-section (2) thereof; and

(c) by substituting the words "secure the capture of the internee or prevent his escape" for the words "prevent the escape" which occur in the last line of sub-section (2) thereof.

6. Section 24 of the Principal Ordinance is hereby amended by substituting the words "control, treatment or internment of belligerents, or to prevent the escape and/or resumption of hostilities by internees," for the words "treatment of internees" which occur in the fourth line thereof.

Amendment of section 24 of the Principal Ordinance.

7. Every member of the Abyssinian or Italian troops who since the cessation of hostilities between Abyssinia and Italy has crossed the neutral frontier and has been interned in the internment camp established under the provisions of section 6 of the Principal Ordinance shall be deemed to be a belligerent for the purposes of that Ordinance.

Application of Ordinance to persons interned after cessation of hostilities.

OBJECTS AND REASONS

In the Principal Ordinance "belligerent" is defined as any member of the Abyssinian or Italian troops who, during the period of hostilities between Abyssinia and Italy, crosses the neutral frontier and takes refuge in the Colony. Government has been advised that hostilities may be regarded as having come to an end some time in the latter part of 1936.

The object of this Bill is to regularize the position with regard to members of Abyssinian or Italian troops who entered the Colony since that date.

Opportunity has been taken to amend the Principal Ordinance in certain minor respects.

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

Sub-section (5) of section 18 of the Principal Ordinance which it is proposed to amend:

Procedure on consideration of application for renewal of distributing licence.

(5) Within six months after the receipt of such application and after such inquiry as he may deem necessary, the Governor in Council may grant the application on such terms and conditions and for such period as he may deem fit, or he may refuse the application.

G. O.

Called sent
8 P.M.
21/7/38 13

X Mr. Pashley 20.7.

Mr. Dale 20.7.

Mr. Damer 21.7

Sir H. Moors.

Sir G. Tomkinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Perms. U.S. of S.

Parly. U.S. of S.

Secretary of State.

Alt
(10)

No 90 Conf.

Your Conf. Insp. No 118

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I approve introduction of
legislation subject to
following comments

Belligerents Bill

Clause 6 - words "or to the
establishment
maintenance of good order
and government in the
colony" must be words of
widest possible
effect of measures other than
those described they should
be particularised

Clause 7 - in view to
objection as to indefiniteness
of date when it would
come into operation. Moreover
the ~~words are confusing~~
if provision were added
to existing Ordinance part

DRAFT. Code 141.

Governor

Secretary

FURTHER ACTION.

These would be inappropriate
Suggest sub-section (1) should be
inserted as integral part of
amending Bill and that
wording should be "has crossed"
and "has been returned" ^{admission of sub-section (2)}
that "person" should be replaced by
"member of the organization or
Italian troops" vide definition
of "belligerent" ©

Refugees Bill © Suggest that
provision should be made for
possible future refugees ©

Clause 2 © ^{Definition of} Suggest "refugee" should conform with
to meet "qualification" subsequently
resides abroad ©

Clause 7 © add "that no refugee
shall be punished ^{there} for the same
act or omission".

Clause 8 © See comment on
Belligerents Bill clause 6 ©

N.P. } Suggest additional clause giving
power to transfer refugees to Detention
Camp and providing "that refugees so
transferred shall be deemed to be
"Belligerents" for the purpose of the
Bill.

Clause shd. be drafted as
Cases referred already as transferred
(12) vide your letter of 18th June ①

EXTRACT FROM LETTER FROM AIR CHIEF MARSHAL

SIR ROBERT BROOKE-POPHAM, TO THE

RT. HON. MALCOLM MACDONALD,

DATED 18TH JUNE, 1938.

.....

We are having a bit of trouble with the Abyssinian refugees at Isiolo. This seems to be entirely due to anti-British propaganda that has started as a result of the recent decisions in regard to the acknowledgment of Italian sovereignty in Abyssinia. The propaganda has been done partly by a paper called the "Times of Gondar" and partly by letters including, apparently, one from the late Emperor. One of the aspects of the trouble was a deputation demanding that men in the camp should be given arms and allowed to march back into Abyssinia. They have been told that there is nothing to stop them going to Abyssinia if they wished, but they can't be given any arms. We are introducing censorship and have transferred six of the ringleaders to the deserters' camp which is some few miles off. The people in charge also did one or two very sensible things, such as marching a company of The King's African Rifles round the camp headed by a band. But I mention this once again just to stress the necessity of getting some solution for the refugee problem. Amongst other things, the strict legal position is not too satisfactory.

.....

SECRET.



THE SECRETARIAT,
NAIROBI,
KENYA.

23rd June, 1938.

WHEN REPLYING
PLEASE QUOTE
No. S.A. MIL. 70/6/29
AND DATE

The Acting Chief Secretary of the Colony and Protectorate of Kenya presents his compliments to the Under Secretary of State for the Colonies and, with reference to the Governor's Deputy's Confidential despatch No. 118 of the 23rd June, has the honour to state that the reference in paragraph 5 of the Memorandum enclosed therein is to the Secret Despatch of the 19th August, 1936, from Mr. Ormsby-Gore (now Lord Harlech).

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Mem 3875/36



CONFIDENTIAL.

23 June, 1958.

Sir,

I have the honour to refer to the Confidential (3) despatch of the 26th April last from Mr. Orasby-Gore (now Lord Harlech) on the subject of measures to validate the action which has been taken in respect of any of those members of the Italian and Abyssinian forces who have taken refuge in the Colony since the latter part of 1936, and to enclose, for consideration, a copy of a memorandum with enclosures which has been furnished by the Attorney General.

2. On the advice of the Attorney General I have considered it desirable in the first instance to submit the draft legislation enclosed in the memorandum for your prior approval.

3. I regard it as essential that, if possible, the two Bills should be introduced at the forthcoming session of the Legislative Council which it is anticipated will commence on the 5th August, and it will be appreciated therefore if any observations which you may wish to offer on their provisions can be communicated as early as possible by telegram.

4. In the event of it not being possible for your observations to be communicated in the time available, I shall be glad to receive your authority to proceed with the legislation, any amendments which you may ultimately consider necessary being made on the receipt of your instructions.

I have the honour to be,
Sir,
Your most obedient, humble servant,

W. Sangaris
GOVERNOR'S DEPUTY.

MEMORANDUM.

The present position with regard to the Ethiopians who during the past few years have entered the Colony is as follows:-

(a) Those, who deserted from the Italian Army, are confined in the Internment Camp established under the provisions of Section 6 of the Control of Fugitive Belligerents Ordinance, 1936. The Camp is under the control of the Commander of the Northern Brigade and all persons confined therein are or should be subject to the provisions of that Ordinance.

(b) Those who sought refuge in the Colony (hereinafter referred to as "Refugees") are confined in an entirely different camp which is controlled by the civil authorities.

2. I propose in this paragraph and in paragraph 3 to deal with those falling within the first category referred to in the preceding paragraph. It is pointed out in paragraph 1 of the Despatch Confidential (3) of the 26th April, 1938, and in paragraphs 2, 3 and 4 of the Foreign Office letter No. J 604/14/1. of the 8th March, 1938, which formed an enclosure thereto, that as

(a) "belligerent" is defined in Section 2 of the Control of Fugitive Belligerent Ordinance, 1936, as a member of the Abyssinian or Italian troops who during the period of hostilities between Abyssinia and Italy crossed the frontier and took refuge in the Colony;

(b) under Section 6 of that Ordinance the Governor may, in order to maintain law and order in the Colony, intern belligerents; and

(c) in the opinion of the Secretary of State for Foreign Affairs hostilities between Italy and Ethiopia may be said to have ceased in the autumn or the latter part of 1936, the internment of all members of the Italian or Ethiopian troops who entered the Colony prior to the autumn or latter part of 1936 is legal.

3. Unfortunately some deserters who are at present interned in the Internment Camp do not fall within the definition of "belligerent" because although they were members of the Italian troops, they did not cross the frontier until after the autumn or latter part of 1936. It is therefore necessary to legalize their internment retrospectively. This, it is proposed to do, by Clause 7 of the Control of Fugitive Belligerents (Amendment) Bill (Annexure III). The object of Clauses 3 and 4 of the Bill is to give effect to certain suggestions of the Commander, Northern Brigade, with a view to facilitating the administration of the Camp while by Clauses 5 and 6 opportunity has been taken to give effect to the suggestions of the Secretary of State in his despatch of the 19th August, 1936.

4. In this paragraph and the succeeding paragraphs of this Memorandum I will consider the question of the refugees and the legislation which is required in order to legalize their detention. While it is true that all the refugees entered the Colony after the latter part of 1936, a certain number of them could be legally detained under the Control of Fugitive Belligerents Ordinance, 1936, (if Clause 6 of the Amendment Bill becomes law because they are members of the Italian or Ethiopian troops) but it is

1936 file

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considered undesirable to deal with them under the provisions of that Ordinance for the following reasons:-

(a) as they are not deserters there is no good reason to detain them under military control:

(b) in view of the fact that they were accompanied by their elderly relations and wives and children when they entered the Colony and have been with them ever since it would be extremely difficult, not to say harsh, to separate them now;
and

(c) if they were so separated it would tend not only to ill feeling towards, and mistrust of, the authorities but would lead to unrest and quite conceivably to trouble in both camps.

5. It is therefore considered that all Refugees (irrespective of the fact that some of them could be dealt with under the Control of Fugitive Belligerents Ordinance if amended as suggested by Clause 6 of the Amendment Bill referred to in paragraph 3 supra) should continue to reside in the Refugees' Camp, and that, having regard to the fact that the camp is under the control of the Civil Authorities while the Deserters' Camp is controlled by the Military Authorities their past detention should be legalised and their further detention should be governed by an entirely separate Ordinance.

6. With this end in view a Bill (Annexure "B") has been drafted. It will be observed that it is an enabling Bill and it has been drafted in this form because it is impossible to gauge the period during which the refugees will remain in the Colony and as it is not easy to foresee what measures may be necessary to ensure the effective

administration of the Camp it is desirable that Government should be in a position to legislate for an emergency as it arises; it will be appreciated that this can be more quickly effected by amending Regulations than by an Amending Ordinance.

7. Clauses 3 and 4 of the Bill empower the Governor to declare any area to be a camp and to make regulations for the effective administration thereof while Clause 5 provides a penalty for a breach of the Regulations. Clauses 6 and 7 are common form in legislation of this character while Clause 8 provides the necessary indemnity.

8. As the powers conferred by Clause 4 may appear to be rather wide I have prepared a tentative draft of the Regulations (Annexure "C") in order that the Secretary of State may be in a position to see the type of Regulations which it is proposed to promulgate.

9. Although the origin of each of the Regulations is shown in the margin thereto it might perhaps be as well to give a brief explanation of the reasons why such Regulations are considered necessary.

Regulations 3, 11 to 19, 21 and 22 follow closely the provisions of the Control of Asylum Seekers Ordinance, 1936, and are considered by the Officer in Charge, Northern Frontier District, to be useful especially in the event of any further refugees entering the Colony. Regulations 4 to 10 follow similar provisions in the Native Authority Ordinance, 1937. Up to the present time the Officer in Charge has been administering the Camp on these lines but without statutory powers the leaders and sub-leaders have had to rely on their personality; it is considered by the Officer in Charge that the grant of powers to the leaders

and sub-leaders similar to those conferred upon headmen by the Native Authority Ordinance would have the effect of making them more responsible and would facilitate the administration of the Camp. Regulation 19 follows a similar provision in the Prisons Rules, 1930.

Regulations 23 to 26 and 28 give legal sanction to what, for want of a better expression, I might term the present by-laws in force in the Camp although until the proposed Regulations are brought into operation such by-laws are entirely administrative and carry no penalty for the breach thereof.

I should draw particular attention to the remaining Regulations. Regulation 27 is a reproduction of Section 14 of the Prisons Ordinance, 1930, which was approved by the Secretary of State in his Despatch Kenya No. 894 of the 12th December, 1931.

Under Regulations 29 and 30 it will be observed that arrest without a warrant is authorised. It is submitted that, although it is unusual to find such power conferred by Regulations, it is nevertheless intra vires clause 4(t) of the Bill. While it is not contemplated that it will be necessary to utilise the authority conferred it is considered essential to have such powers in order that any threatened disturbance can be dealt with quickly and effectively.

T. D. WALLACE

AG. ATTORNEY GENERAL.

Nairobi,

16th June, 1938.

COLONY AND PROTECTORATE OF KENYA



A BILL TO AMEND THE CONTROL OF
FUGITIVE BELLIGERENTS ORDINANCE, 1936

A Bill to Amend the Control of Fugitive Belligerents Ordinance, 1936

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

1. This Ordinance may be cited as the Control of Fugitive Belligerents (Amendment) Ordinance, 1938; and shall be read as one with the Control of Fugitive Belligerents Ordinance, 1936, hereinafter referred to as the Principal Ordinance.

Short title

No. 11 of 1938

2. Sub-section (2) of section 7 of the Principal Ordinance is hereby amended—

Amendment of sub-section (2) of the Principal Ordinance

- (a) by substituting the word "appoint" for the word "detail" which occurs in the third line thereof; and
- (b) by deleting the words "to serve under such Commandant" which occur in the fourth and the fifth lines thereof.

3. Sub-section (1) of section 20 of the Principal Ordinance is hereby amended by substituting the comma and words "the Commandant or such other officer authorized by the Commander in that behalf" for the words "or the Commandant" which occur in the first line thereof.

Amendment of section 20 of the Principal Ordinance

4. Section 22 of the Principal Ordinance is hereby amended—

Amendment of section 22 of the Principal Ordinance

- (a) by substituting the words "who escapes or attempts" for the word "attempting" which occurs in the first line of sub-section (1) thereof;
- (b) by substituting the words "secure his capture or to prevent his escape" for the words "ensure his surrender" which occur in the fourth and the fifth line of sub-section (2) thereof; and
- (c) by substituting the words "secure the capture of the internee or prevent his escape" for the words "prevent the escape" which occur in the last line of sub-section (2) thereof.

COLONY AND PROTECTORATE OF KENYA



A BILL TO REGULARIZE THE RESIDENCE IN
THE COLONY OF CERTAIN REFUGEES FROM
ETHIOPIA

1140-50c. A.O.-17 4 28

PRINTED BY THE GOVERNMENT PRINTER, NAIROBI

**A Bill to Regularize the Residence in the Colony
of Certain Refugees from Ethiopia**

WHEREAS on divers occasions during the years 1936 and 1937 certain refugees entered the Colony from Ethiopia:

AND WHEREAS such persons were under the Immigration Restriction Ordinance (Chapter 62 of the Revised Edition of the Laws of Kenya) liable to be treated as prohibited immigrants and to be returned thereto:

AND WHEREAS it was considered impolitic to enforce the said Ordinance with regard to the said refugees:

AND WHEREAS the said refugees have since been residing in a camp established at Isiolo by the Government of the Colony in the interests of law and order and the well-being and good government of the said refugees:

AND WHEREAS it is now considered desirable that the residence in the Colony of the said refugees be regularized by law:

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

1. This Ordinance may be cited as the Refugees Ordinance, 1938.

Short title.

2. In this Ordinance, unless the context otherwise requires:—

Interpretation.

"Officer in Charge" means a public officer appointed by the Governor by notice in the Gazette to be Officer in Charge of a camp;

"refugee" means a person who having entered the Colony from Ethiopia subsequently resides in the Refugees Camp at Isiolo;

"regulations" means regulations made under the provisions of this Ordinance.

- (o) the provision, maintenance and regulation of food and water supply in a camp;
- (p) the burial of refugees who die in a camp and any other matters arising out of the death of refugees;
- (q) the issue to and carrying by refugees of identification discs;
- (r) the compulsory attendance of refugees at census or on any occasion when required by the Officer in Charge;
- (s) prohibiting or restricting the admission to a camp of persons, other than refugees; and
- (t) notwithstanding the provisions of any law for the time being in force in the Colony, providing for the arrest without a warrant of refugees leaving or attempting to leave a camp without permission and of persons other than refugees entering a camp without a permit.

(2) Any such Regulations may require acts or things to be performed or done to the satisfaction of the Officer in Charge, an administrative officer, a medical officer, a leader, a sub-leader or other person appointed by the Officer in Charge and may empower any such officer, leader, sub-leader or other person to issue orders requiring acts or things to be performed or done prohibiting acts or things from being performed or done and may prescribe periods or dates upon which such acts or things shall be performed or done.

5. Any person who contravenes the Regulations or who disobeys or fails to comply with any lawful order issued by the Officer in Charge, an administrative officer, a medical officer, a leader, sub-leader or other person appointed by the Officer in Charge in pursuance of the powers conferred by the Regulations shall be guilty of an offence and shall be liable on conviction to a fine not exceeding ten pounds or to imprisonment for a term not exceeding two months. Penalty

6. The powers conferred by this Ordinance shall be in addition to and not in derogation of the powers conferred by any other law for the time being in force in the Colony. Saving of other law

7. Nothing in this Ordinance contained shall be construed to relieve a refugee from the liability of being proceeded against by the ordinary course of law for any offence against any other law for the time being in force in the Colony. Refugees not released from liability under the ordinary law.

W. L. ...

Validation of
acts previously
done and
indemnity
therefor.

8. All acts heretofore done by the Governor or by any officer of the Government or by any person acting under the direction of the Governor or of any officer of the Government in regard to any matter relating to the control, treatment or residence of refugees, or to prevent the escape of refugees, or to the establishment and maintenance of good order and government in the Colony are hereby made and declared to be lawful and are confirmed as on and from the time of performance of such acts, and the Governor and every such officer or person as aforesaid are hereby freed, acquitted, discharged and indemnified as well against the King's Most Gracious Majesty his heirs and successors as against all and every person and persons whatever from all legal proceedings of any kind whatsoever whether civil or criminal in respect of any such acts as aforesaid.

OBJECTS AND REASONS

The object of this Bill is fully set out in the preamble thereof.

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

THE REFUGEES ORDINANCE, 1938

REGULATIONS

IN EXERCISE of the powers conferred upon him by section 4 of the Refugees Ordinance, 1938, His Excellency the Governor has been pleased to make the following Regulations:—

1. These Regulations may be cited as the Refugees Regulations, 1938.

2. In these Regulations:—

"Ordinance" means the Refugees Ordinance, 1938,

"officer" means any administrative officer and any police officer of or above the rank of Assistant Inspector and for the purposes of Regulation 27 of these Regulations includes any police officer. New.

Any term defined in and for the purposes of the Ordinance shall, when used in these Regulations, bear the same meaning as is assigned to it in the Ordinance.

3. (1) The Officer in Charge shall supervise and control all matters in connexion with the camp, and shall be responsible to the Governor for the conduct and treatment of officers and other persons placed under him and of refugees under his control, and for the observance by officers and other persons placed under him and by refugees of the provisions of these Regulations. New.

(2) The Officer in Charge may by writing under his hand delegate to any officer any of his powers and duties under these Regulations.

4. The Officer in Charge may appoint any refugee or other person he may think suitable to be the leader (hereinafter referred to as leader) of any section of refugees in the camp the names of whom shall be specified in such appointment at the time or at any time subsequent thereto, and may also appoint sub-leaders subordinate to such leader, and may at any time suspend or cancel any such appointment. Section 3 of Ordinance 2/37.

5. It shall be the duty of every leader or sub-leader to maintain order among the refugees under his control, and for such purpose he shall have and exercise the powers by these Regulations conferred over such refugees. Section 4 of Ordinance 2/37.

Section 6 (1) of Ordinance 2/37. 6. Any leader or sub-leader may interpose for the purpose of preventing, and shall, to the best of his ability prevent, the commission of any offence by any refugee under his control.

Section 6 (2) of Ordinance 2/37. 7. Any leader or sub-leader knowing of a design by a refugee to commit an offence shall forthwith report the fact to an officer.

Section 8 of Ordinance 2/37. 8. Any leader or sub-leader may from time to time issue orders to be obeyed by the refugees under his control for all or any of the purposes following:

- (a) (i) prohibiting or restricting the manufacture, distilling, consumption or possession of intoxicating liquors and the supply of such liquor to any persons;
- (b) (ii) prohibiting or restricting the holding of drinking bouts;
- (c) (iii) prohibiting or restricting the carrying of weapons;
- (d) (iv) prohibiting any act or conduct which in the opinion of the leader or sub-leader might cause a riot or a disturbance or a breach of the peace;
- (e) (v) preventing the pollution of the water in any stream, watercourse, or water-hole, and preventing the obstruction of any stream or watercourse;
- (f) (vi) regulating the cutting of timber and prohibiting the wasteful destruction of trees;
- (g) (vii) preventing the spread of disease, whether of human beings or animals;
- (h) (viii) requiring the proper burial of deceased refugees in cemeteries or otherwise;
- (i) (ix) prohibiting any act or thing which may cause damage to any Government property or to any work constructed or maintained for the benefit of the refugees;
- (j) (x) requiring refugees to attend, for any purpose in the interest of good government, before the Officer-in-Charge or officer at any time and at the place appointed by him, or before himself;
- (k) (xi) for any other purpose approved by the Governor in writing.

Section 9 of Ordinance 2/37. 9. Any leader or sub-leader shall be guilty of an offence against these Regulations if he commits the following acts:

- Cf. section 13 of Ordinance 2/37.
- (a) if when summoned by the Officer in Charge or officer he neglects without good and sufficient excuse to obey such summons;

(b) if he wilfully neglects to exercise the powers by these Regulations conferred on him;

(c) if he wilfully refuses to issue or cancel an order which he may be directed to issue or cancel by the Officer in Charge or any officer.

10. (1) Whenever the Officer in Charge or an officer considers that, for the proper administration and good government of the refugees for whom a leader or sub-leader has been appointed, it is necessary or desirable that any order or orders should be issued for any of the purposes enumerated in Regulation 8 of these Regulations he may direct the leader or sub-leader to issue and enforce such order or orders as aforesaid as to the Officer in Charge or to such officer may seem proper. If any leader or sub-leader neglects to issue any order or orders as aforesaid the Officer in Charge or officer may himself issue the order or orders.

(2) Whenever the Officer in Charge or officer considers that any order issued by a leader or sub-leader should not have been issued or should not be enforced he may direct the leader or sub-leader to cancel the order or to refrain from enforcing the order.

11. All refugees shall be disarmed and their arms, ammunition, equipment and papers shall be taken from them, and all such arms, ammunition, equipment and papers shall be disposed of in such manner as the Governor may direct.

12. Every refugee shall, if interrogated by the Officer in Charge, officer or by a person authorized in that behalf by the Officer in Charge, declare his true name, rank and such other particulars as may be required by such officer or person.

13. All refugees shall be supplied with an adequate amount of clothing, and with a ration of drinking water and food of a quantity and quality as shall be approved by the Governor.

14. All refugees shall be provided with sufficient water for bodily cleanliness.

15. Adequate facilities for engaging in physical exercises shall be afforded to all refugees.

16. A medical officer shall from time to time make a medical inspection of the camp and of all refugees.

Section 13 of Ordinance 11/36.

17. Any refugee who, in the opinion of a medical officer has contracted a serious malady or whose condition necessitates surgical treatment shall be removed as soon as possible to hospital.

Section 14 of Ordinance 11/36.

18. Refugees shall be permitted complete freedom in the performance of their religious duties in so far as it is consistent with the routine and regulation of the camp.

Section 15 of Ordinance 11/36.

19. Refugees shall be allowed to communicate with friends and to receive communications, presents or books in accordance with the following provisions:—

Rule 26 of the Prisons Rules, 1930.

(a) Any letter to and from the camp may be read by the Officer in Charge or a person deputed by him, and if the contents are considered objectionable, it shall not be forwarded, or the objectionable part erased in the discretion of the Officer in Charge.

(b) When it is found necessary to withhold an outward going letter from a refugee because objectionable matter is contained therein, the refugee shall be given an opportunity of rewriting it, omitting the objectionable matter.

(c) An inward coming letter addressed to a refugee containing matter which is considered objectionable shall be returned to the writer with an intimation that the letter may be re-submitted with the objectionable matter omitted before it is delivered to the refugee to whom it is addressed.

(d) The Officer in Charge shall keep a register of letters in which shall be noted any action taken as regards withholding letters or return of letters to the writer for alteration or to be rewritten.

New.

20. The Officer in Charge may in the interests of the safety or tranquillity of the refugees prohibit the importation into the camp under his control of any newspaper, magazine, pamphlet, book or other publication.

Section 16 of Ordinance 11/36.

21. Refugees may be employed according to their rank and ability, and shall be paid a rate of wages corresponding to that paid to ordinary persons in the Colony doing equivalent work; Provided that they shall not be entitled to receive pay for work in connexion with the administration, internal management and maintenance of the camp.

Section 17 of Ordinance 11/36.

22. No refugee shall be employed on work for which he is physically unsuited or on unhealthy or dangerous work.

23. Every refugee shall be provided with an identification disc. Such disc shall on demand by the Officer in Charge, an officer, leader or sub-leader, be produced by the refugee for inspection.

24. It shall be the duty of the nearest relation of the refugee, and in default of such relation; of the leader or sub-leader under whose control such refugee is, to register the birth and death of every refugee in the camp, with the officer or person appointed for such purpose by the Officer in Charge. Every person, whose duty it is to register the birth or death, who fails to register the birth or death as required by this Regulation shall be guilty of an offence.

25. Every marriage, divorce or separation of a refugee shall be registered by the husband within one month after such marriage, divorce or separation, as the case may be, with the officer or person appointed for such purpose by the Officer in Charge and every such husband who without lawful excuse fails to register such marriage, divorce or separation as required by this Regulation shall be guilty of an offence.

26. Every refugee shall attend at a census when required by the Officer in Charge.

27. It shall be lawful for any officer to use his weapons against any refugee when such refugee—

Section 14 of the Prisons Ordinance, 1930.

- (1) is escaping or attempting to escape;
- (2) is engaged in any combined outbreak or in any attempt to force or break open the outside gate or enclosure of the camp, and an officer may continue to use such weapons so long as such combined outbreak or attempt is actually prosecuted;
- (3) is using violence to any officer or other person;

Provided that resort shall not be had to the use of any such weapons—

(a) as authorized under paragraph (1) of this Regulation unless such officer has reasonable ground to believe that he cannot otherwise prevent the escape nor unless such officer shall give a warning to such refugee that he is about to use the weapons against him;

(b) authorized under paragraph (3) of this Regulation unless such officer has reasonable ground to believe

that the officer or other person is in danger of life or limb, or that other grievous bodily harm is likely to be caused to him:

Provided further that no officer shall, in the presence of his superior officer, use his weapon against a refugee as authorized under paragraphs (1) and (2) of this Regulation except under the orders of such superior officer:

And provided further that the use of weapons under this Regulation shall be as far as possible to disable and not to kill:

28. No refugee shall—

- (a) leave the camp without the authority of the Officer in Charge;
- (b) refuse to work in connection with the administration, internal management and maintenance of the camp;
- (c) make a false entry in his labour ticket or otherwise misuse his own or other refugee's labour ticket;
- (d) kindle fire in a hut which is unprovided with fireproof walls and a fireplace, or in any way fail to take proper precautions against the spread of fire;
- (e) wilfully destroy any Government property or fail to return tools belonging to Government;
- (f) wash in unauthorized parts of the camp or in a camp;
- (g) urinate or defecate in any place other than the latrines provided for such purpose;
- (h) obtain or attempt to obtain more rations than he is entitled to;
- (i) erect any building or hut or extend any building or hut without authority of the Officer in Charge;
- (j) bury a dead person outside the cemetery and without first obtaining a permit from an officer;
- (k) fail to notify cases of infectious or other serious diseases to the Medical Officer or to the leader or sub-leader concerned.

29. Any refugee who leaves a camp or attempts to leave a camp without the permission of the Officer in Charge may be arrested without a warrant.

30. No person, other than refugees and persons employed in connection with a camp, shall enter a camp without a permit in writing from the Officer in Charge, and any such person found within the camp may be arrested without a warrant.

By Command of His Excellency the Governor.

Nairobi,

This day of, 1938.

Chief Secretary.

C. O.

- Miss Simpson 13/10
- Mr. Edmonds *4/10*
- Mr. *84*
- Mr. A. J. Dunn
- Sir H. Moore
- Sir G. Tomlinson
- Sir J. Shackburgh
- Pres. U.S. of S.
- Parly. U.S. of S.
- Secretary of State

21 Oct, 1938.

DRAFT.

Sir,

CONFIDENTIAL

Confidential

Gov.

I have, etc. to ack. the

receipt of your despatch No. 176

(16) Confidential of the 21st of Sept.

transmitting copies of Ordinance

No. XXI of 1938 and to invite your

attention to my despatch No. 621

of the 21st October.

I have, etc.

(Signed) MALCOLM MacDONALD.

4 Drafts *4*

FURTHER ACTION.

Despatch
Sec. to fill
in please.

C. O.

38251/36 Kenya

Mr. Paskin 21/3/38

Mr. Duncan 23/3/38

Mr. Dawe 24:3 (for F.O. concurred)

Sir H. Moore.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

To go to F.O. for concurrence with draft herewith.

As has been agreed
with the Com. on 19/4/38

DOWNING STREET.

26 April 1938

Sir,

DRAFT.

With further reference to

KENYA
CONFIDENTIAL (3)
GOVERNOR

your confidential despatch No. 173

of the 25rd of December in which you

raised the question whether, for the

purpose of the Control of Fugitive

Belligerents Ordinance, you were

justified in regarding a state of

hostilitie still to exist between

Italy and Spain. I have etc. to

transmit to you for your consideration

a copy of a letter from the Foreign

Office from which it will be observed

that, in the view of the Secretary of

State for Foreign Affairs, the

hostilities

Pl. F.O. 8/3/38 (8)

FURTHER ACTION.

Major G. J. de Lee
Mr. Cohen

Copies to Mr. G. J. de Lee
Mr. Cohen

Review to Mr. Cohen

Copy to Mr. G. J. de Lee
Mr. Cohen
Copy to Mr. G. J. de Lee
Mr. Cohen
Copy to Mr. G. J. de Lee
Mr. Cohen

hostilities between Italy and ^{Abyssinia} ~~Somalia~~

may be said to have come to an end some

time in the autumn or at any rate the

latter part of 1936, though it is not

possible to fix a precise date for the

cessation of those hostilities.

2. It follows from this that any members of the Italian or Abyssinian forces

who have crossed the Frontier and taken

refuge in the Colony since some date in the

latter part of 1936 are not "belligerents"

as defined in the Ordinance, and that there

has accordingly been no legal authority

for their internment in Kenya. In the

circumstances it seems desirable that

steps should be taken

to validate the action which has been

taken in respect of any of those

members

members

C. O.

Mr.

Mr.

Mr.

Sir H. Moore.

Sir G. Tomkinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

DRAFT.

FURTHER ACTION.

members of the Italian and Abyssinian

forces who have taken refuge in the

Colony since the latter part of 1936.

3. In paragraph 2 of your

confidential despatch of the 23rd of

December 1937, you mention that the internment

not only of the Eritrean deserters but

also of the ^{Abyssinian} ~~Ethiopian~~ refugees is

governed by the Control of Fugitive

Belligerents Ordinance. Even apart

however, from the question of the date

on which such persons took refuge in

the Colony, the Ordinance would only

apply to such of these persons as were

"belligerents" as defined in the

Ordinance, i.e. those who were

"members of the Abyssinian or Italian

troops". If, therefore, it is

necessary

necessary to regard the internment of
 the civilian refugees as being governed
 by that Ordinance, it would seem necessary
 for legislation to be enacted either
 specifically validating the action that
 has been taken or, alternatively, *by amending*
the Ord. to make it applicable to
~~bringing~~ these people ~~under the Ordinance~~
 retrospectively.

4. As regards the explanation which
 should be given as to the necessity for the
 introduction of legislation relating to
 "belligerents" who have taken refuge in the
 Colony since the latter part of 1936, it
 should be said that the Government of Kenya
 has now been advised that "the period of
 hostilities between Abyssinia and Italy",
 which is mentioned in the definition of
 "belligerents" in Section of the Ordinance,
 is now regarded as having come to an end

some

C. O.

Mr.
 Mr.
 Mr.

Sir H. Moore.
 Sir G. Tomlinson.
 Sir C. Bottomley.
 Sir J. Shuckburgh.
 Perm. U.S. of S.
 Parly. U.S. of S.
 Secretary of State.

DRAFT.

some time in the latter part of 1936,
 and that it is accordingly necessary
 to validate the action taken by the
 Government of Kenya in interning
 persons, who would otherwise be
 covered by the definition, who have
 entered the Colony since the cessation
 of hostilities.

5. On the other hand, so far
 as concerns the position of the
 Government of Kenya vis-à-vis the
 Italian Government in this matter, it
 will be observed that the Secretary
 of State for Foreign Affairs does not
 consider that the Government of Kenya
 is under any obligation to return the
 Italian native deserters to the
 Italian authorities.

FURTHER ACTION.

(Signed) W. ORMSBY GORE, I have, etc.

G. O.

Mr. Paskin 21/3/38 f

Mr.

Mr.

Sir H. Moore.

Sir G. Tomlinson.

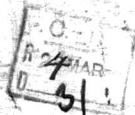
Sir C. Bottomley.

Sir J. Shuckburgh.

Permt. U.S. of S.

Party U.S. of S.

Secretary of State.

S.O. for Mr. Paskin's signature

31 March, 1938.

Dear Lambert,

Arising out of the Foreign

Office letter J.604/1471 of the 8th

of March, I have prepared the enclosed

draft despatch to Kenya in regard to

the situation created by the view

that the period of hostilities between

Italy and Abyssinia is to be regarded

as having come to an end some time

in the autumn or at any rate the

latter part of 1936, and I should be

glad to know whether you concur in

its terms.

Yours sincerely,

(Signed) J. J. PASKIN

DRAFT.

J.H.U. LAMBERT, ESQ.,

Foreign Office.

To Gov. Kenya. Dft. h/with.

FURTHER ACTION.

DRAFT.

SECRET.

CONFIDENTIAL.

GOVERNOR.

Downing Street,

Sir,

With further reference to your confidential despatch No. 173 of the 23rd of December in which you raised the question whether, for the purpose of the Control of Fugitive Belligerents Ordinance, 1906, you were justified in regarding a state of hostilities still to exist between Italy and Abyssinia, I have the honour to transmit to you for your consideration a copy of a letter from the Foreign Office from which it will be observed that, in the view of the Secretary of State for Foreign Affairs, the hostilities between Italy and Abyssinia

may

may be said to have come to an end some time in the autumn or at any rate the latter part of 1936, though it is not possible to fix a precise date for the cessation of those hostilities.

2. It follows from this that any members of the Italian or Abyssinian forces who have crossed the frontier and taken refuge in the Colony since some date in the latter part of 1936 are not "belligerents" as defined in the Ordinance, and that there has accordingly been no legal authority for their internment in Kenya. In the circumstances it seems desirable that steps should be taken to validate the action which has been taken in respect of any of those members of the Italian and Abyssinian forces who have taken refuge in the Colony since the latter part of 1936.

3. In paragraph 2 of your confidential despatch of the 23rd of December, 1937, you mentioned that the internment not only of the Eritrean deserters

but also of the Abyssinian refugees is governed by the Control of Fugitive Belligerents Ordinance. Even apart, however, from the question of the date on which such persons took refuge in the Colony, the Ordinance would only apply to such of these persons as were "belligerents" as defined in the Ordinance, i.e. those who were "members of the Abyssinian or Italian troops." If, therefore, it is necessary to regard the internment of the civilian refugees as being governed by that Ordinance, it would seem necessary for legislation to be enacted either specifically validating the action that has been taken or, alternatively, by amending the Ordinance to make it applicable to these people retrospectively.

4. As regards the explanation which should

should be given as to the necessity for the introduction of legislation relating to "belligerents" who have taken refuge in the Colony since the latter part of 1936, it should be said that the Government of Kenya has now been advised that "the period of hostilities between Abyssinia and Italy," which is mentioned in the definition of "belligerents" in Section 2 of the Ordinance, is now regarded as having come to an end some time in the latter part of 1936, and that it is accordingly necessary to validate the action taken by the Government of Kenya in interning persons, who would otherwise be covered by the definition, who have entered the Colony since the cessation of hostilities.

5. On the other hand, so far as concerns the position of the Government of Kenya vis-a-vis the Italian Government in this matter, it will be observed that the Secretary of State for Foreign Affairs does not consider that the Government of Kenya is under any obligation to return the Italian native deserters to the Italian authorities.

In any further communication on this subject, please quote

NoJ 604/14/1

and address—

not to any person by name

but to—

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

Page 2 R 283
RECEIVED
9 - MAR 1938
C. O. F. O. Y.

~~2~~ 3
FOREIGN OFFICE.

S.W.1.

8th March, 1938.

Sir,

2
I am directed by Viscount Halifax to acknowledge the receipt of your letter No. 38066/14E/37 of the 17th February last on the subject of the operation in Kenya of the Control of Fugitive Belligerents Ordinance, 1936.

See 3200/14E
2. In the letter from this department of the 18th May 1936 (J 4903/60/1) it was suggested that the position of the Italian deserters in Kenya should be reconsidered on the assumption that the Italo-Ethiopian war was ended. In the light of subsequent events, however, Lord Halifax has no reason for assuming that the Ordinance was put into force at a date (the 1st June, 1936) which was subsequent to the cessation of Italo-Ethiopian hostilities. In this connexion

See 700/14E
I am to invite a reference to Foreign Office letter No. J 6359/1448/1 of the 23rd July, 1936, regarding the de facto application, in connexion with the Italo-Ethiopian conflict, of the laws of neutrality in the United Kingdom and British colonies, protectorates and mandated territories; the third paragraph of that letter makes it plain that hostilities were regarded as being still in progress in the middle of July, 1936. On the other hand it is correct that, as is pointed out in the ninth paragraph of your letter under reference, a statement was drawn up by the Foreign Office on the 28th April, 1937, for production to His Majesty's Courts of Justice in connexion with the case of the Bank of Ethiopia versus the National Bank of Egypt and another, to the effect that by the

second/

The Under-Secretary of State,
Colonial Office.

second part of December, 1936, the position had been reached that His Majesty's Government had recognised the Italian Government as the government de facto of the parts of Ethiopia which they controlled and that at the date on which that statement was made His Majesty's Government understood the Italian Government to be in control of the whole of Ethiopia with the exception of certain areas in the south and south-west of the country. Although, therefore, it is not possible to fix a precise date for the cessation of hostilities between Italy and Ethiopia, Lord Halifax considers that those hostilities may be said to have come to an end some time in the autumn or at any rate the latter part of 1936. He does not think it is possible, for the purpose of the Ordinance, to take a later date, because the phrase employed in Section 2 of the Ordinance is "the period of hostilities between Italy and Abyssinia" and the subsequent fighting can scarcely be regarded as hostilities between the two countries.

3. Whatever the precise date of the cessation of Italo-Ethiopian hostilities may be, however, it seems to Lord Halifax unnecessary to assume that the Control of Fugitive Belligerents Ordinance, 1936, ceased to take effect on that date. The only reference in the Ordinance to the Italo-Ethiopian hostilities is in the definition of "belligerent" in Section 2, under which a "belligerent" is a member of the Ethiopian or Italian troops who, during the period of hostilities between Ethiopia and Italy, crossed the frontier and took refuge in Kenya colony. Except in so far as any of the persons concerned may have entered Kenya after whatever date is taken as the termination of those hostilities, there is no doubt that the members of the Ethiopian forces who are now under detention in Kenya come within/

66

within the above-mentioned definition and that the Ordinance is legally applicable to them. There is nothing in the Ordinance to suggest that its operation (apart from the definition of belligerent) was to cease on the termination of hostilities; and it is impossible to suppose that this can have been its intention, since, if it were, the Ordinance would have ceased to operate automatically on a certain date, which the Government of Kenya certainly could not have known in advance, and without their having any opportunity for getting rid of the internees.

4. So far as the point raised in your letter with regard to the wording of Section 6 of the Ordinance is concerned, it seems clear that the necessity referred to in that section of maintaining law and order in Kenya Colony must continue after the termination of Italo-Ethiopian hostilities. He feels little doubt (although this is a matter to be decided by the courts of Kenya) that the legal position is that the Ordinance continues in force for so long as it may be necessary to maintain the internment camps contemplated by the section in the interests of law and order. If so, the only difficulty arises in that apparently some of the internees, either because of the fact that they were not members of the Ethiopian forces or on account of the date on which they entered Kenya Colony, do not fall within the definition in Section 2 of the Ordinance. This difficulty, however, could presumably be met, if necessary, by an amending Ordinance containing a section on the lines of Section 24 of the existing Ordinance.

5. Lord Halifax does not consider that the Government of Kenya are now under any obligation, under international law, to return the Italian native deserters in Kenya to the

Italian/

67

authorities. Such a claim on the part of those authorities could only be made on the basis of some Treaty which was applicable; and even if there were some such Treaty which would be applicable on the assumption that Ethiopia was to be regarded as Italian territory, that situation could not arise until His Majesty's Government in the United Kingdom have recognised the Italian position in Ethiopia de jure. This being so, the question whether the Government of Kenya have any right to continue to detain the deserters appears to be one of local law and to be covered by what has already been said on the subject of the Control of Fugitive Belligerents Ordinance, 1936.

6. As Mr. Ormsby Gore is already aware, the question of the future of the Ethiopian refugees in Kenya and British Somaliland and of the Eritrean deserters in Kenya is being borne in mind by His Majesty's Ambassador at Rome in connexion with the forthcoming Anglo-Italian conversations, and Lord Perth has instructions to raise the matter with the Italian Government when a suitable opportunity presents itself.

I am,

Sir,

Your obedient Servant,

Reginald Campbell

629

Recd (B) L

2/18

Draft

17 February 1938.

36066/142/37.

SIR,

With reference to the letter from this Department of the 10th of December 1937, I have the honour to transmit to you to be laid before Mr. Secretary Men a copy of a despatch from the Governor of Kenya dated the 23rd of December, enclosing a copy of the proceedings of the magistrate's enquiry into the circumstances of the deaths of the Italian native Internos who lost their lives in the course of the riot at the camp at Isio on the 15th of December. A copy of the Control of Partisan Belligerents Ordinance 1936 was sent to the Foreign Office on the 10th of August 1936. Under Colonial Office reference No. 20251/36, and I am to request that consideration may be given to the question whether, for the purposes of that Ordinance, the "period of hostilities between Abyssinia and Italy" which is mentioned in the definition of "belligerent" in section 2 of the Ordinance, is to be regarded as continuing, or as having ended; and if the

letter

THE UNDER SECRETARY OF STATE,
FOREIGN OFFICE.

36066/142/37 (10)
 copy sent to Mr. Secretary Men 17/2/38

letter, as from what date.

Although the interpretation of an ordinance is a matter for the Courts, it is to be presumed that if this question were raised in a court in Kenya, the court would apply to the Governor for information as to the view taken by His Majesty's Government on the questions whether hostilities are still in progress between Italy and Abyssinia and if not, as to the date on which they ceased.

3. It may well be the case that the question is not likely to be raised unless and until the Italian annexation of Abyssinia is recognised de jure. But in this connection I wish to invite reference to the statement in evidence on page 3 of the Proceedings of the inquiry that such complaints as had been made of the deserters were usually in connection with the question when they would be allowed to return home. It is likewise conceivable that the question of the legality of the continued detention of these deserters might be raised at any time, and it is desirable that the Governor should be informed of the view taken by His Majesty's Government on the questions raised above.

4. It will be observed that the Governor states that

that the operation of this Ordinance is dependent upon the continuance of hostilities between Ethiopia and Italy. This statement would appear to suggest that the Government of Kenya is under the impression that there would be no legal authority for the continued detention in the internment camp of a "belligerent", as defined, after the date on which the "period of hostilities" is to be regarded as having terminated.

8. In this connection it is to be observed that section 6 of the Ordinance authorizes the detention (without any limitation of time) of a "belligerent" in an internment camp if in the opinion of the Governor such action is necessary (*inter alia*) to maintain law and order in the Colony. As Mr. Eden is aware, it is not yet possible to contemplate the repatriation of these "belligerents", and if they have not been repatriated or otherwise disposed of at the date of the cessation of the period of hostilities between Abyssinia and Italy, the consideration contemplated in Section 6 of the Ordinance will certainly continue to operate. It would appear, therefore, that under Section 6 there is statutory authority for the continued detention of the "belligerents" after the cessation of hostilities between Abyssinia:

Gyassinis and Italy.

6. In Section 3, however, there is a reference to "International Law", and while that reference occurs only in that section it was made quite clear in the objects and reasons that the whole Ordinance was intended to be as nearly in conformity with International Law as was possible in the special circumstances existing at the time when it was enacted. In this connection I am to invite reference to War Office letter No. 016/30-3 (P. 17) of the 18th of March 1936 and Foreign Office letter No. J. 2489/50/1 of the 24th of March 1936, which provided the basis on which the Ordinance was drafted. Quite apart, therefore, from the question of the interpretation of the Ordinance, the question arises whether, under International Law, the Government of Italy are under any obligation, after the cessation of hostilities, to return these deserters to the Italian authorities, or whether they have any right to continue to retain them. I am to request that Mr. [redacted] may be furnished with Mr. Don's observations on these aspects of the question.

part from the question of the position which arises, at the date of the cessation of hostilities between [redacted] Italy

Italy and Abyssinia, in relation to belligerents who have been legally detained in Kenya under the powers conferred by the Ordinance, the question also arises whether all of these Italian native deserters were in fact belligerents as defined in Section . . . It will be recalled that while the first party of these deserters entered Kenya in January 1936, further parties continued to enter the Colony throughout 1936 and 1937 up until as late as September 1937. If therefore it is necessary to consider that the period of hostilities between Italy and Abyssinia had ceased before that date, the position could be that some of the persons interned in Kenya were not belligerents, as defined, and that there was accordingly no legal authority for their detention.

In considering whether this position has in fact been reached the following considerations would be relevant:

6. It is assumed that the Italian Government could contend that the period of hostilities between Italy and Abyssinia came to an end (at the latest) on the 9th of May, 1936, the date of the decree by which the King of Italy purports to assume sovereignty over Abyssinia . . . there were before the date on which

overend

Governor of Kenya assented to the Ordinance. It is however assumed His Majesty's Government would not assent to this view.

9. On the other hand, it appears from the Foreign Office statement of the 14th of April 1937 which was made in connection with the case of the Bank of Ethiopia versus the National Bank of Egypt and another, that, by the second half of December 1935, the position had been reached that His Majesty's Government had recognized the Italian Government as the government de facto of the parts of Ethiopia of which they were in control, and that by the end of April 1937, His Majesty's Government understood the Italian Government to be in control of the whole of Ethiopia with the exception of certain areas in the south and south west of the country. It was, of course, from these parts of the country that the Italian native deserters found their way into Kenya (some of them as late as September 1937), and it is for consideration whether, in the circumstances mentioned in this paragraph, it could be considered for the purposes of the Ordinance, that, at the relevant dates, the period of hostilities between Abyssinia and Italy had not come to an end.

10. As regards the Abyssinian refugees in Kenya...

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in so far as they are regarded (as indicated in paragraph 2 of the Governor's despatch, as having been dealt with under this Ordinance, the same considerations arise. It is however proposed to draw the attention of the Governor to the fact that these refugees include a number of women, children and camp followers, who were not belligerents and could not therefore be regarded as having been dealt with under this Ordinance.

I am,

Sr,

Your most obedient servant,

(Signed) A. J. DAVE

Original 38066/44 E/37

200X

K.E.N.Y.-A

L.173.

CONFIDENTIAL.

Government House,
Nairobi,
Kenya.

23rd December 1937.

Sir,

With reference to my Confidential despatch No.165 of the 25th November last regarding the riot which took place on the 13th November at the British deserters' camp at Isiolo, I have the honour to enclose, for your information, copies of the Proceedings of the Magistrate's enquiry into the circumstances of the deaths of the internees who lost their lives in the course of the riot.

It will be seen that the Magistrate satisfied himself as the result of the enquiry that such firing as took place was justified and that no offence was committed by any individual concerned.

A copy of the inquest Proceedings has been communicated to the Commander, Northern Brigade, and I have no observations to offer on the terms of the Magistrate's finding with which I am in agreement.

2. As regards, however, the general question of the interment of the deserters, and also indeed of the Ethiopian refugees, I am in some doubt as to the present position.

You will be aware from separate correspondence that their interment in this Colony is governed by the Control of Fugitive Belligerents Ordinance, 1936. The operation of this Ordinance is dependent upon the continuance of hostilities between Ethiopia and Italy, and in this respect the present situation is far from clear particularly in view of the unusual circumstances

Copy file to be done 11/12/37

surrounding the outbreak and subsequent conduct of hostilities.

Presumably, however, this Government will be justified, especially in view of the attitude of His Majesty's Government towards the Italian occupation of Ethiopia, in regarding a state of hostilities still to exist for the purposes of the Ordinance, and I propose therefore to proceed accordingly unless instructions to the contrary are received.

In the event, however, of the "de jure" recognition by His Majesty's Government of the conquest of Ethiopia it is clear that the continued detention of these people would be difficult to justify, and I shall be glad to receive advice on this question in advance of the event. In this connection the undesirability of setting these people free in this Colony will, I am sure, be appreciated.

I have, etc.

(Sgd.) Mr. Brooke-Opham,

Air Chief Marshal,

Governor.