

1938

38401

38401

KENYA

C0533 / 501

Immigration Restriction digressions

Previous

28221/34

R 98 124

~~R 98~~ Mr Parkin 12

R 100 10

R 100 15

R 89 5

Subsequent

1939

98  
PUT 88

2/1	1/12
209	14/12
Mr Parkin	24
M: Dale	28/1/38
M: Hobbert	28/1/38
M: Keenan	29
Fel Sexton	1/12
98	4/1
98	6/1
M: Parkin	9/1
M: Dale	10/1
M: [unclear]	11/1/39
M: [unclear]	11/1
M: Freeston	12
[unclear]	/

Immigration

2  
21/7/38  
has been authenticated and ten printed copies of  
Immigration Restriction Amendment Ordinance 1938.  
(Origl rego on 3509/38)

2. Extract from Kenya Gazette No 1 of 24/7/38

(2) which is a copy  
of (5) has been  
sent to the Indian  
office of (6) -  
is the only copy  
available in the  
reference  
2.17

N.B. No 1 received to "G3" on 17/6/38

No 2

As is explained in the "objects & reasons," the purpose of this Ordinance is to give the Gov. greater freedom in controlling undesirable immigrants - i.e. pauper refugees.

The new Section 11 regularises the practice already adopted by the Gov. of refusing entry to refugees unless they can show substantial financial backing. The Gov. cannot be expected to let in large numbers of refugees who are likely to become public charges, & that being so the provisions of this new amending ordinance cannot be regarded as offering any new major obstacle to the movement of refugees. On the contrary, it clarifies the position both for them & for Govt.

One small point. Clause 2  
of the Bill purports to amend  
the proviso to the para (h) of  
Section 5 of the Municipal Ordinance.  
It is clear however that the  
proviso refers to other paras as well  
as para (h). It is likely  
that the Bill is at the  
moment in its way through Leg  
Co so it is perhaps unnecessary  
to telegraph pointing out this  
apparent error. Probably it will  
be spotted before the Bill becomes  
Law.

? Await Ordinance

Charles White

16/12

Extract from Daily Telegraph and Morning Post  
12/12/38

For P.Q. by Mr. Robert Morgan see para 1  
P.Q. file of ...

In view of No 3 we may perhaps  
be time to let the Gov. have any  
... (if not preferable) before  
... - passed 3- this

see para 5  
Trust M.D.

connection I assume a copy of  
a dec. of 21/12 sent on 38087/29/38

J.J. Bassett  
24/12

(This file has escaped attention  
it was tied up with the P.Q. file)

Mr. Dale is away, and this was brought  
to me this morning.

I have no legal observations to make.

28/12/38

H. Duncan

(It takes 3-4 days)

I imagine that the dispatch of 21 Dec. has by now  
reached Kenya. The Bill was published in the Gazette  
before the Governor's order was made on 21 Dec.  
about the figures. The actual part of the Bill is  
in para 5 of the Dec. of 21 Dec.

J.P. White  
28/12

J.P. White  
29/12

Mr. Gov. Nairobi - tel 246-407 - 29.12.38

DESTROYED UNDER STATUTE





6. It appears to me that the solution to the problem is provided by the enactment of the Bill as (5) without providing any exemptions. Section 11 as it stands gives the Government power to exercise discrimination against immigrants who are able to become a charge on the Colony. For example a British immigrant from Italy could be required by the Immigration Officer to produce a bond of £500 under the proviso to Section 11 (1) of the Bill, while a British immigrant need only be called upon to deposit a sum of £50 under Section 11 (1) (c). I would therefore suggest that the Bill should be amended as it stands subject to the following amendments:

(a) by the deletion of the words "or such other sum" in order to determine the sum.

(b) by an amendment to read with the proviso made by the Colony which in "A" of the Bill made on 16/2/36.

9 July 1936 to determine by the

This is being the  
intermediate office of  
the Secretary  
J.P. Gower  
11/11

Legal Advisor, the Governor may be advised as in paras. 5, 6 and 7 above and advised to reserve his own discretion with regard to action against immigrants who are capable of becoming a charge on the Colony.

W.D. Blackburne  
6.1.39.

6. J.O. (50) 7/39  
(Trs. copy of ltr. from G. of J. raising various questions in regard to the proposed legislation).  
7. To I.O. (50) - w/c. 5 & cont. - 9/1/39

It is a pity that this matter cannot be dealt with solely in relation to the class of immigrant with whom it is intended to deal, and without dragging in these complicated extraneous considerations which, however, it will be convenient, I think, to dispose of first.

[In this connection the Gov. might have told us that the old Gov. had made a public statement (which by the Treaty provisions - especially as he does not have authority to do something which the old Gov. has said and not be punishable under the Treaty.)

J.P.G.

2. To my mind the Foreign Office letter of the 14th of September, 1936, (No. 7 on 38091/1/36) makes it quite impossible to discriminate in this matter in favour of British subjects, whether European or Indian, and I do not think that it is of the slightest use approaching the Foreign Office with a view to attempting to get them to revise their opinions.

3. As regards the Governor's alternative suggestion in paragraph 12 that he should be authorized to introduce legislation discriminating between nationals of the parties to the Convention of St. Germain and the nationals of other countries, it has to be borne in mind, as pointed out in paragraph 5 of Mr. Blackburne's minute, that Germany, though not a party to the Convention of St. Germain, was a party to the Berlin and Brussels Acts.

Acts, which remain in force as between the countries which were not parties to the Convention of St. Germain. Since, therefore, the argument in the Foreign Office letter of the 11th of September, 1936, is directed to the whole range of these three Instruments and not merely to the Convention of St. Germain, Kenya would gain nothing by the course suggested in paragraph 12 of the Governor's despatch.

4. If these views are accepted, then we can get down to considering the amending Bill on its merits (bearing in mind that it will have to apply to all alike - British subjects and aliens).

5. From the point of view of German refugees, against whom it is directed, I have suggested in my minute of the 14th of December on 38067/2A/36, that the amending Bill would <sup>probably</sup> not in fact operate more rigorously than the action which is already being taken in Kenya to exclude refugees who are liable to become a public charge. In this connection I attach (No. 8) a note of the action taken in a number of recent cases. It seems to me that, if the action taken in those cases was permissible under the Ordinance as it stands, the principal effect of the amending Ordinance will be to confer on the Immigration Officer powers which are at present exercised by the Governor, and I cannot see any great objection to this.

6. As regards British subjects, it seems to me that, since the whole object of this legislation is to <sup>strengthen the Govt. in cases where</sup> ~~strengthen the Govt. in cases where~~

~~immigrants~~ <sup>immigrants</sup> are liable to become a public charge, there is no reason why it should not apply to British subjects as well as to aliens. It seems to me that, so far as the proposal to confer on the Immigration Officer the power of requiring a deposit of "such sum as the Governor in Council may . . . . order", or to require, in lieu, security by bond not exceeding £500. is concerned, the answer to both the European and Indian unofficials is that these provisions merely confer a discretion on the Immigration Officer which will only be exercised in suitable cases and that the authorities in Kenya will have to be trusted not to apply these provisions oppressively.

7. As regards the further provision, to which objection is taken in the enclosure to No. 6, which will confer on the Immigration Officer the power to specify a period longer than 12 months within which a person admitted to Kenya has to show that he is no longer a prohibited immigrant and is not likely to become a public charge, again I can see nothing very unreasonable in this provision. A man might well have a job to go to in Kenya and yet in a little over a year's time he might well be thrown out of work and be liable to become a public charge. In the case of the refugee settlement scheme, the guarantee against this contingency is for a period of five years and, as shown in No. 7, guarantees in other cases have been given for three years, so I do not see any reason to object to the proposed amendment.

8. To my mind, the question is not whether the proposed amendments can be approved, but rather whether they go far enough. In our despatch

8  
As to this see  
paras 8-10 below  
J.P.

of the 21st of December (No. 3A), doubts were indicated whether, in the case of an immigrant who is admitted on payment of a £50 deposit, there is discretion under the Ordinance to attach other conditions, such as the possession of a passport valid for return to the country of origin. Sir G. Bushe, who discussed the matter with me, felt that it was open to serious doubt whether there was such a discretion, and in that despatch we have suggested that the Governor should take legal advice. If the answer is in the negative, then it will apply also to other conditions (e.g. those indicated in No. 3) which have been attached in various cases, and it may well be that a validating Ordinance may be required.

9. Moreover, as pointed out above, the new Bill confers discretion on the Immigration Officer, but it may well be the case that in the future there will be other instances, of the kind mentioned in No. 3, where the conditions will be attached in correspondence between this Office and charitable persons or bodies in this country, and I should have thought that in any case the new Section 11 which is to be enacted by Clause 3 of the Bill, ought to be amended to cover such contingencies in the future.

10. It seems to me that if there is a doubt about powers of discretion in the past, these doubts will be even greater in view of the latitude allowed in the future to the Immigration Officer, because that latitude will now be so wide that it might be argued that it was intended to cover all possible cases. This is, however, a matter for the Legal Advisers.

11. As regards Nos. 6 and 7, the position is that someone from the India Office rang me up the other day telling me that this telegram had been received

from

from the Government of India, and asking for a copy of the Bill. This was before I had seen the Governor's despatch. On reading the Governor's despatch it seemed to me very much better that we should have the telegram from the Government of India to consider at the same time. We shall clearly have to consult both the Foreign Office and the India Office, but the precise form of our consultation will depend on how far the views expressed in this minute are accepted here. For the present, therefore, I have not ventured to suggest what exactly should be said to those two Departments. It is for this reason that I have thought it desirable to let Mr. Silver have an advance copy of the Kenya despatch, with the Bill.

99 Paskin  
9.11.52

I agree generally with Mr. Paskin. On the discrimination point I take Kenya's proposal to be that the provisions authorising the requirement of a larger deposit than £50 or the execution of a bond for a larger amount than £50 should be limited to aliens. Apart from the objections to discrimination arising under the treaties (on which there seems no point in my adding anything to what the F.O. say) I cannot understand the principle upon which the proposed discrimination is to be based. The object of Section 11 of the Ordinance is to allow the Government to admit a person who appears to be without means of support



and at the same time to protect itself against that person later becoming a charge on the public funds of the Colony.)

There is no law, economic or otherwise, to the effect that British subjects are immune from the risk of penury, and if therefore the additional conditions are to apply to aliens only it will be manifest on the face of the Ordinance that these extra conditions are imposed on aliens from some indirect motive - and this seems to be the case.

On the matter of the objections by the European members, which appears to have been overlooked, that the conditions for deposit and bond are not required from every immigrant; they would not be required at all unless the intending immigrant is first shown to come within category <sup>(a)</sup> of Section 5 of the Ordinance, that is to say that he is a person who is without visible means of support or likely to become a pauper or a public charge, and the object of Section 11 is, of course, a relaxation of the provisions of Section 5 under which such a person is prohibited from entering the Colony. Assuming that this legislation must in terms be non-discriminatory I do not know quite how they propose to frame the requirement relating to the deposit. But it seems to me that a simple course would be for the Immigration Officer to be given discretion to increase the amount of the deposit (up to a limit, say £500) as he has a discretion to increase the amount of the bond. If this is done, it seems to me that ~~the~~ <sup>our</sup> objects will be achieved, and

*It seems the best section 11 is such a way as to give the Immigration Officer power to increase the intended immigrant to deposit with him such sum (not exceeding £500) as he (the I.O.) thinks it is necessary*

that

that there can be no ground for objection by the Indians or anyone else.

As to paragraphs 8 to 10 of Mr. Pashin's minute; - as framed the new provisions clearly do not authorise what was done in, for example, cases 3 and 4 in the note at 8 on this file, - but having regard to paragraph 5 of the despatch at 2A can we suggest anything more? That despatch ought, at any rate, to ensure that consideration will be given to the legal aspect of this. If there is any likelihood of a continued need to demand such things as securities for unlimited amounts from persons resident in this country, and the fulfilment of any condition not specified in the Ordinance, I suggest they might consider the enactment of a provision on the lines of Section 8 of Grenada Ordinance 16 of 1926.

*x we only suggested consideration in relation to the passport etc. I don't think we can assume that Krunga will link them with the £2 of deposit. If he does, unless we point it out.*

*J.P.P.  
Then let us know what Krunga to consider the points in question. H.O.*

10.1.39.

*I saw annex a cutting from E.A. Standard wh. is relevant to the £2 of policy involved in this.*

*J.P. Pashin  
10/1*

When I wrote my minute of 26/12/38 I did not attempt, of course, to deal with the question of policy. It seemed to me to be sufficient at that stage merely to draw attention to paragraph 5 of our despatch of 31/12/38 which referred to the general question of policy dealt

with

with in our circular despatch of 1/12/38 (see my marginal note to Mr. Paskin's minute of 24/12/38 above).

As regards No. 5, I agree generally with Mr. Paskin and Mr. Dale; but please pass the draft reply to Kenya through Mr. Dale and me in due course.

Difficulties of the kind referred to by the Governor in paragraph 4 of No. 5 have also arisen in Trinidad; and in the latter case we have suggested the desirability of enacting a short Ordinance providing that, notwithstanding anything contained in the Immigration (Restriction) Ordinance, 1936, the Governor may, in his absolute discretion, prohibit the entry into Trinidad of any alien. (This would be in accordance with the principle of our own Aliens Order, 1920).

I should like to see a similar provision in the Kenya Ordinance. The trouble about this, however, is that, having regard to the Congo Basin Treaties, "person" would have to be substituted for "alien", with the result that the Governor could exclude any British subject <sup>and</sup> that seems to be going a little too far.

H. Duncan.

11/1/39.

(I think that Sir G. Bushe will be interested to see this).

H. D.

I feel far from satisfied that we can't do this because of the Congo Basin Treaties. We had been considered that further if it is necessary.

Clearly no reply can be sent without

To committee, and the committee's opinion is to send reply of 5/1/39 to the Govt. The 3rd order is not at all

10. India office. P.O. 57/39. 11/1/39. This copy of telegram from Indian Govt. Requests information, and copy of Ordinance.

In view of this, the Govt. must send copy of 5/1/39 for security reasons. They then letter of 11/1/39. The Govt. ack. 10/1/39. Enclose copy of the Ordinance that it is understood that the Govt. is not Committee stage, and that the Govt. is seeking P.O. opinion on the Congo Basin Treaty. Say that a copy of 10/1/39 is being sent to the Govt.

3/1/39. 5, saying that the Govt. is under reference = P.O. ~~5/1/39~~ to Govt. Say that in the case of the Congo Basin Treaty that the Govt. is not under reference. The Govt. is in the field with the Govt.

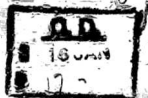
revised. first edition  
that shows with one doll  
in history with the world

Green  
13.1  
Atome  
Aps  
13.1

~~To: Fo (145 issues) Case 17.1.39~~  
DESTROYED UNDER STATUTE  
~~To: I.O. (10 issues) 14.1.39~~  
DESTROYED UNDER STATUTE  
~~To: Maya db (1/10) 5 issues 14.7.39~~

~~14.1.39~~  
Order for books to be  
destroyed in pursuance  
of the provisions of the  
Act of 1952.





C. O.

Mr. Costley-White 14/1/39

Mr. Parkin 16/1/39

Mr.

Mr. A. J. Dawe.

Sir H. Moore.

Sir G. Tomlinson.

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

DOWNING STREET.

20 January, 1939.

Sir,

(5)

3 DRAFTS

KENYA

NO. 36.

GOVERNOR

I have etc. to acknowledge the receipt of your despatch No. 731 of the 19th of December transmitting a copy of the Immigration Restriction (Amendment) Bill, and to inform you that the views of the Foreign Office are being sought on the question of the ~~wh. you have raised in regard to applicability to the provisions of the~~ Bill of the Convention of St. Germain-en-Laye of 1919. In the circumstances, it appears desirable that the deliberations of the Select Committee of Legislative Council on the Bill should not be completed until the views of the Foreign Office have been received.

*In the meantime*

2. I enclose a copy of a letter from the India Office of the 11th of

3 dfts.

FURTHER ACTION.

20. 11/1  
(10) hand

January enclosing a telegram from the  
Government of India <sup>on this subject</sup> (You will, no  
doubt, take into account) In dealing  
with the Bill in its various stages,  
the points raised in these ~~two~~ Telegram  
communications.

I have, etc.

Any further communication on this subject should be addressed to—

The Under Secretary of State for India,  
**Public and Judicial** Department,  
India Office, London, S.W. 1.  
and the following reference quoted:—

**P. & J. 57/39.**

Telephone:—  
Whitehall 8140. T.O. Ext. No. \_\_\_\_\_  
Telegrams:—  
Retaxandum, London.



INDIA OFFICE,

WHITEHALL,

LONDON, S.W. 1.

RECEIVED  
12/1/39

January, 1939.

Sir,

I am directed by the Secretary of State for India to forward for the information of the Secretary of State for the Colonies, copy of a telegram from the Government of India regarding the Kenya Immigration Restriction Amendment Ordinance. Lord Zetland has not yet had an opportunity to see the Ordinance in question but he would be grateful if the various points raised by the Government of India could be considered and if he could be supplied with the information requested by them. He would also be grateful if he could be given the assurance desired by the Government of India that they will be afforded an opportunity to make such representations as they may consider necessary to protect legitimate Indian interests, and if for this purpose he might be supplied as soon as possible with a copy of the Ordinance as reported on by Select Committee.

I am, Sir,

Your obedient Servant,

*[Signature]*

The Under Secretary of State,  
Colonial Office,  
S.W.1.

*Hand to  
copy to change* (12) (13)

Allotted to P & J. Department.

19. JAN 1939

(Copies  
Circulated).

DE C Y P H E R A OF T E L E G R A M.

From Government of India, Department of Education,  
Health and Lands, to Secretary of State for India.

Dated New Delhi, 16.30 hrs. 3rd January, 1939.

Received 13.45 hrs. 3rd January, 1939.

IMPORTANT.

6. Department of Education, Health and Lands.

Copy of Kenya Immigration Restriction (Amendment No. 2)

Ordinance, which was published in the Kenya Gazette of November 29th, 1938, was received by this week's mail. Government of India understand from Press reports that the local Indian Community is opposed to the Ordinance on the following grounds:-

- (1) The stiffened provisions generally may at any time be applied to Indians;
- (2) The period within which an intending immigrant has to prove that he is not a prohibited immigrant is sought to be changed from 12 months as provided in the existing Ordinance to any period the immigration officer may fix in his discretion.

As regards (1), in reply to the suggestion that British subjects should be excluded from the new provisions, the Attorney-General is reported to have stated that Sarg (sic) (sic) Basin Treaty stood in the way of differentiation. Government of India have seen the text of the Treaty as contained in the Berlin Act of 1885, but can trace no provision forbidding differentiation in regard to immigration of foreigners. They understand however that the 1885 Treaty has been subsequently amended several times and will be glad to be supplied with the text relevant to the clauses. Failing existence in the Treaty of any limitations of the kind implied,

Statutory exemption of British and British Protected subjects from the scope of proposed amendments would appear to be the best remedy.

As regards (2), entrustment to immigration officers of power to fix period without any limit is likely to operate harshly against intending British Indian immigrants. As, according to Section 11 A (4) of existing Ordinances, action can be taken even before expiry of 12 months, Government of India will be glad to be informed of reasons in favour of the change proposed.

2. Ordinance is now, it is understood, before Select Committee. Government of India consider it important that they should be given opportunity to make such representations as they may consider necessary to protect legitimate Indian interests before the Ordinance is passed and will be grateful if Colonial Office will agree to this. They can give assurance that there will be no avoidable delay in making such representations after receipt of copy of Ordinance as reported on by Select Committee and of information requested in preceding paragraph.

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## IMMIGRATION

### The Problem of Refugees

Kenya must not be panicked into accepting an immigration law which it might regret, simply because up to date about 200 Jewish refugees have been permitted to enter the Colony. Some sections of the Legislative Council, including the Government, showed signs of panic in the debate yesterday. Admittedly the problem is in a measure urgent, but it has been shown that the Government already has at least some power to exercise control because out of 457 applications in recent months we are told that less than a quarter have been granted. The fact that applications are being received at the rate of nearly 50 a week, and that the figure may increase for a time, indicates the need for control. But it must not be forgotten that the problem of Jewish refugees is in the end only temporary.

The worst feature of it to-day—and sympathy and sentiment must not be allowed to distort sound judgment—is that most of these unhappy and unfortunate people are 'stateless' once they leave certain European countries. If they are permitted to land in a British Colony such as Kenya, and a mistake is made in giving them permission, they cannot be sent back because their country of origin has ceased to recognise them. Experience has already shown that a deposit of £50 is not a deterrent, but neither can it be argued that a bond, even up to the maximum of £500 proposed in the new Bill, will turn an

undesirable immigrant into an acceptable settler. The Commissioner for Lands and Settlement offered the rather feeble argument during the debate that the immigrant can keep himself for ten times as long as now. But if he is undesirable, the Colony does not want him at all.

It is quite clear that there is something wrong with the whole system if it is possible for a British Consular official, say in Germany or Czechoslovakia, to give a permit to a refugee to leave for the purpose of going to Kenya if, in fact his application has not first of all been favourably considered by the Kenya authorities and his circumstances and prospects examined. One of the first things to do is to make it quite clear to the Colonial Office that it is useless to allow shiploads of refugees to come to Kenya without permission having been granted in the first place. If this has been done already, then the case for the new Bill is largely disposed of; if it has not been done, then the Government is putting the cart before the horse.

Nor is it possible for the Colony to accept the argument by the Attorney General that the Congo Basin Treaty can override the principle that the Government and people of this country have the right to determine within fairly wide limits the type of immigrants they will permit to join the community. If what the Attorney General has said is true, then the sooner the right of the people of Kenya to safeguard themselves is established the better for the future of the Colony. It is based on obvious social and economic grounds which cannot possibly be governed by an international treaty intended primarily to permit equality of opportunity in the commercial exploitation of a large area of Africa which was the subject of a territorial scramble many years before the real tasks of civilizing the African were approached. The African himself is one good reason why there must be control.

What seems to us to be necessary is a broader basis of responsibility for the immigration policy of the Colony. It is necessary, we believe, to provide for an Immigration Board with proper statutory authority and with adequate official representation. Every application for a permit could then be properly examined, and all the facts gathered if there were any

about £500 bonds would be unnecessary, though it would be clearly understood that the Board was empowered in special cases to take any financial precautions, or ask for any personal guarantees it deemed necessary from existing residents on behalf of their immigrant friends.

Finally, we cannot understand why so important a question should be the responsibility of a single country in the East African group. It is clearly desirable that this basic problem should be thoroughly examined with Uganda and Tanganyika and legislation introduced based on a common policy. It is useless to try to protect Kenya if the doors are wide open in the adjoining countries because of the Congo Basin Treaty, the Mandate or for any other reason. We hope the Select Committee will not be hurried. There should be time with the firm exercise of existing powers, to face the problem squarely and to ensure that the safeguards which these African Territories are entitled to claim begin at least at the port of embarkation and not merely at the port of entry. The whole question of immigration policy is so obviously important to everybody and to everything in the life of the community, that the public representatives must insist on it becoming also a public responsibility, properly and constitutionally shared with the Government.



a deposit of £50 is not a deterrent, but neither can it be argued that a bond, even up to the maximum of £500 proposed in the new Bill, will turn an

grounds which cannot possibly be governed by an international treaty intended primarily to permit equality of opportunity in the commercial exploitation of a large area of Africa which was the subject of a territorial scramble many years before the real tasks of civilizing the African were approached. The African himself is one good reason why there must be control.

What seems to us to be necessary is a broader basis of responsibility for the immigration policy of the Colony. It is necessary, we believe, to provide for an Immigration Board with proper statutory authority and with adequate unofficial representation. Every application for a permit could then be properly examined, and all the facts gathered if there were any doubt. Nobody can deny that the settler community in this country has at least as much right as the official Government to share in that responsibility, for their homes have been established here and it is a matter of grave concern to them whether standards which have been so far successfully set can be maintained. Such a Board, exercising on behalf of the public wide powers of discretion—discretion which can quite easily be defined by simple legislation—would be a safeguard for the whole country and all its peoples against the wrong exercise of powers which, whatever the present Government may say, might well be a threat in the future.

Wisdom dictates that the immigration policy should remain as elastic as possible and that though an Immigration Board should be empowered to ask for bonds or sureties if considered advisable in particular cases, there should be no specific provision which would give the world the impression that it is a common practice in Kenya to make such a demand. By this simple method the essential need to distinguish between the treatment of refugees and of the desirable settlers of all races, Jews included, would be met. The people of the Colony would be satisfied that when every case was properly examined by a representative Board acquainted with the fundamentals of colonisation and social welfare there would be public representatives on that Board who would neither flood the country with undesirables nor discourage a single worthy immigrant. And it would no longer be necessary to invest so much power in a police officer, whether senior or junior. Talk

8

Permission to enter Kenya has been granted  
in the case of

1. PLOUGH SETTLEMENTS LTD (38 232/5/38)

- (a) The £ 50 deposit being waived
- (b) An undertaking being given by the British Fund for German Jewry (1) That each settler would not become a public in Kenya & (2) That if any settler has to be removed the expenses of doing so, up to £ 50 per head, will be met by the Fund, (3) That these undertakings are to run for 5 years, & (4) That (1) applies in the UK if any settler has to be removed either.

2. Mr LIEBENSTEIN (3808/26/38)

- (a) The £ 50 deposit being paid
- (b) A sum of £ 150 being deposited with the CA. by a friend in England, which is to be used (a) to prevent him becoming a public charge & (b) to finance his removal if necessary. This £ 150 is returnable after 5 years.

3. Mr SERKIN and Mr & Mrs FISCHER (38087/26/38)

- (a) The £ 50 deposit being paid by all three.

(b)

16

(H) A guarantee being offered by two people, one British & one foreigner, that for the first five years (1) the three immigrants would not become public charges & (2) the expense of their removal ~~would~~ <sup>will</sup> be met. Govt was given to understand, before permission to enter a visa was given, that each of the three immigrants was in possession of about £240.

2 hrs  
4 D. HAHN (38087/25/38)

- (a) Deposit of £50 being paid by each
- (b) £1000 being introduced into Kenya on their behalf before their departure from Europe
- (c) A guarantee being furnished by the Kenya Jewish Refugee Cttee, to the effect that the Cttee would be financially responsible for them for 3 years.

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Permission to enter Kenya has been refused in cases where it has been thought to be not unlikely that the applicant would become a charge on public funds, even though they

see. re. deposit £50

Charles White 9/17

7

38401/38.

9th January, 1939.

Dear Silver,

Thank you for your letter P. & J. 57/39 of the 7th of January. enclosing an advance copy of the telegram from the Government of India about the Bill to amend the Kenya Immigration Restriction Ordinance.

I now enclose an advance copy of the Governor's despatch, together with a copy of the Bill.

As regards the reference to the Congo Basin Treaties, I enclose a copy of a letter dated the 11th of September, 1936, from the Foreign Office (which, as you will see, was written in another connection) which is referred to in paragraph 8 of the Governor's despatch. You will see that the position is that there is no specific provision in the Convention of St. Germain which provides for non-discrimination in the matter of admission to a territory

19.12.38.

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C. H. SILVER, ESQ.

territory in the Congo Basin area, but that the Foreign Office took the view in 1936 that an international tribunal would be likely to consider such discrimination to be contrary to the spirit and general intention of these Treaties .

The consideration of these complicated issues may take some little time. but we shall be writing to you officially about it as soon as possible.

Yours sincerely,

J. J. Packer

6 19  
INDIA OFFICE,

WHITEHALL, S.W.1.

P. & J. 57/39.

7<sup>th</sup> January, 1939.

Dear Paskin,

With reference to our telephone conversation this morning, I send herewith as requested an advance copy of the telegram received from the Government of India relating to the Kenya dated 3rd January, 1939. Immigration Restriction (Amendment No. 2) Ordinance. Could you put us on to the treaty clause which is referred to:

Yours sincerely,

*Colclough*

J.J.Paskin, Esq., M.C.,  
Colonial Office, S.W.1.

WJ



57  
1939

Allotted to P & J. Department.

19.

(Copies Circulated).

DECYPHER OF TELEGRAM

From Government of India, Department of Education, Health and Lands, to Secretary of State for India.  
Dated New Delhi, 16.30 hrs. 3rd January, 1939.  
Received 13.45 hrs. 3rd January, 1939.

IMPORTANT.

6. Department of Education, Health and Lands.

Copy of Kenya Immigration Restriction (Amendment No. 2) Ordinance, which was published in the Kenya Gazette of November 29th, 1938, was received by this week's mail. Government of India understand from Press reports that the local Indian Community is opposed to the Ordinance on the following grounds:-

- (1) The stiffened provisions generally may at any time be applied to Indians;
- (2) The period within which an intending immigrant has to prove that he is not a prohibited immigrant is sought to be changed from 12 months as provided in the existing Ordinance to any period the immigration officer may fix in his discretion.

As regards (1), in reply to the suggestion that British subjects should be excluded from the new provisions, the Attorney-General is reported to have stated that cargo (sic ? Congo) Basin Treaty stood in the way of differentiation. Government of India have seen the text of the Treaty as contained in the Berlin Act of 1885, but can trace no provision forbidding differentiation in regard to immigration of foreigners. They understand however that the 1885 Treaty has been subsequently amended several times and will be glad to be supplied with the text relevant to the clauses. Failing existence in the Treaty of any limitations of the kind implied,

Statutory exemption of British and British Protected subjects from the scope of proposed amendments would appear to be the best remedy.

As regards (2), entrustment to immigration officers of power to fix period without any limit is likely to operate harshly against intending British Indian immigrants. As, according to Section 11 A (4) of existing Ordinance, action can be taken even before expiry of 12 months, Government of India will be glad to be informed of reasons in favour of the change proposed.

2. Ordinance is now, it is understood, before Select Committee. Government of India consider it important that they should be given opportunity to make such representations as they may consider necessary to protect legitimate Indian interests before the Ordinance is passed and will be grateful if Colonial Office will agree to this. They can give assurance that there will be no avoidable delay in making such representations after receipt of copy of Ordinance as reported on by Select Committee and of information requested in preceding paragraph.

---

19 December, 1938.

RECEIVED  
28 DEC 1938  
OFFICE

Sir,

I have the honour to inform you that a Bill to amend the Immigration Restriction Ordinance, a copy of which is enclosed, passed its second reading at the present session of Legislative Council and was referred to a Select Committee.

2. Under the law as it is at present any person appearing to be a prohibited immigrant, owing to lack of visible means of support, may be allowed to enter Kenya by depositing the sum of ten pounds in cash or entering into a bond in the same amount, in the case of a native of Asia or Africa, or, as regards all other persons, by depositing the sum of fifty pounds or entering into a bond in the same amount.

3. I have been advised by my Immigration Advisory Board that the provisions of the Immigration Restriction Ordinance (Chapter 62 of the Revised Edition) are inadequate to deal with the present exceptional problem of the immigration of refugees. That Board has evidence that refugees from Germany desirous of entering Kenya are granted passports validly visaed provided they sign written declarations binding them never to return to Germany. Furthermore, many applications for admission to the Colony are being received from residents in Italy and Czechoslovakia and there is every reason to believe that those of the applicants who are alleged to have a Jewish ancestry would

*Copy sent to F.O. (11)  
Amended. (13)  
Handwritten Amended. (13 Nov 1939)*

THE RIGHT HONOURABLE  
MALCOLM MACDONALD, M.P.,  
SECRETARY OF STATE FOR THE COLONIES,  
DOWNING STREET,  
LONDON, S.W. 1.

would not be permitted to return to their country of origin if repatriation should prove necessary. Such persons usually find no difficulty in making the deposit required by the Kenya Immigration Restriction Ordinance or in providing the requisite bond, and therefore it is difficult to refuse them entry into the Colony. But in cases where such persons fail to obtain employment or find employment for a few months only it is clear that they must become a charge on the revenues of the Colony because they cannot be repatriated to their country of origin and the deposit of fifty pounds or the amount recoverable under the bond is only sufficient to cover their support by Government for a very short period.

4. As I have pointed out in previous despatches on this subject the absorptive capacity of the Colony, particularly in urban occupations, is very limited and consequently the influx of a large number of refugees, most of them with little or no financial resources, is certain to have a serious effect on the welfare of the existing inhabitants.

5. In order to safeguard the interests of the Colony, I have been advised by the Immigration Advisory Board that immediate steps should be taken to permit of the amount of the deposit being increased beyond the sum of fifty pounds and alternatively of bonds being required up to a maximum sum of five hundred pounds. That is the reason for the existence, in Clause 3 of the Bill, of paragraph (b) of new sub-section 11(1) and the subsequent proviso.

6. During the second reading of the Bill strong criticisms of this proviso were made by the European Elected Members and also by the Indian Members.

The latter

The latter pointed out that it is applicable to all immigrants, whether British subjects or not, and might operate harshly against British subjects from India. They requested that the Bill should be amended so<sup>as</sup> to provide that immigrants, who are British subjects, should not come within the scope of the new provisions set out in Clause 3.

This view was supported by the European Elected Members who urged that the proviso as drafted would have a tendency to discourage intending settlers resident in Britain, the Dominions and Colonies from coming to Kenya at a time when the policy of this Government is to do all in its power to encourage the immigration of such settlers.

7. I have considerable sympathy with these views and hope that you may feel disposed to agree that the Bill should be amended to provide for discrimination in the manner suggested. If that can be done the Bill will have the unanimous support, not only of all members of Legislative Council, but of the people of this Colony.

8. I fully realise that the difficulty standing in the way of this proposal is the Convention of St. Germain-en-Laye of 1919, and in that connection I would refer to Foreign Office letter No. J.6845/192/60 of the 11th September, 1936, a copy of which was forwarded with your despatch No. 833 of the 21st October, 1936.

9. In paragraph 2 of that letter it is acknowledged that Article 3 of the Convention can be interpreted as applying only to the treatment of persons who have been admitted to the territory, and has nothing to do with the question of admission. But in paragraphs 5 and 6 of the same letter the view is expressed that if an attempt were to be made to prohibit immigration from

foreign

foreign territories or to favour British subjects the other parties to the Convention would claim that the spirit, if not the letter, of the Convention was being violated.

10. I wish to point out at once that there is no intention of prohibiting the immigration of aliens, but what I would like to do is to amend the law so that the new provisions of the Bill shall not apply to British subjects. I am firmly convinced that such new provisions are necessary to deal with the problem explained in paragraph 3 of this despatch but, at the same time, it is equally important that the flow of intending bona fide settlers to Kenya should not be discouraged in any way whatsoever.

11. In my view the time has now arrived when it is necessary, in the interests of this Colony, to apply the strict interpretation of Article 3 of the Convention and discriminate between the immigration of British subjects and aliens. The Foreign Office acknowledges that this can be done and I hope you will be prepared to authorise an amendment of the law on these lines.

12. If you are not prepared to agree to that course perhaps you would advise whether it would be possible and you would agree to legislation discriminating between ~~the~~ nationals of the signatories to the Convention and the nationals of the non-signatories.

13. As this is a matter of urgency and of great importance to this Colony I should be grateful if you would be good enough to reply to this despatch by telegram.

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

*D. B. Zerkow-Pekham*

AIR CHIEF MARSHAL  
GOVERNOR.



COLONY AND PROTECTORATE OF KENYA



A BILL TO AMEND THE IMMIGRATION  
RESTRICTION ORDINANCE

2028—756, C.C.—29-11-38

PRINTED BY THE GOVERNMENT PRINTER, NAIROBI

Paragraph (h) of section 5 of the Principal Ordinance which it is proposed to amend:—

Prohibited immigrant.

"5. The immigration into the Colony by land or sea of any person being or appearing to be of any of the classes defined by the following sub-sections (hereinafter called "prohibited immigrant") is prohibited, that is to say:—

(h) Any person entering or endeavouring to enter the Colony who not having received a free pardon has been convicted in the Colony of murder or of any offence for which a sentence of imprisonment has been passed for a term of not less than six months:

Provided that the Governor may permit any of the persons mentioned in paragraphs (a), (b), (c), (d), (e) and (g) of this section to enter the Colony upon bonds, with or without securities, for good behaviour being entered into by or on behalf of such persons upon such conditions and as to such amount as the Governor may determine."

Section 11 of the Principal Ordinance which it is proposed to replace:

Conditional permit

"11. (1) Any person appearing to be a prohibited immigrant under paragraph (a) of section 5, and not coming within the provisions of any of the paragraphs (b), (c), (d), (e), (f), (g), and (h) of the said section,

### A Bill to Amend the Immigration Restriction Ordinance

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

1. This Ordinance may be cited as the Immigration Restriction (Amendment No. 2) Ordinance, 1938, and shall be read as one with the Immigration Restriction Ordinance (Chapter 62 of the Revised Edition), hereinafter referred to as the Principal Ordinance.

Short title.

Cap. 62.

2. Paragraph (h) of section 5 of the Principal Ordinance is hereby amended by deleting therefrom the first line of the proviso thereto and substituting therefor the following:—

Amendment of section 5 of the Principal Ordinance.

"Provided that the Governor may, notwithstanding the provisions of section 11 of this Ordinance, permit any of the".

3. Section 11 of the Principal Ordinance is hereby repealed and the following section is substituted therefor:—

Repeal and replacement of section 11 of the Principal Ordinance.

"11. (1) Any person appearing to be a prohibited immigrant under paragraph (a) of section 5 and not coming within the provisions of any of the paragraphs

Conditional permit

may be granted a conditional permit to enter the Colony upon depositing with the immigration officer—

(a) if a native of Asia or Africa, the sum of ten pounds or such other sum as the Governor in Council may from time to time order;

(b) in the case of any other person, the sum of fifty pounds:

Provided that the immigration officer may, in lieu of requiring such deposit, require the intending immigrant to give security by bond, in the form set out in Schedule A to the amount of such deposit with one or more sureties to be approved by the immigration officer and resident in the Colony conditional on the intending immigrant satisfying the immigration officer within a period of twelve months from the date of his entering the Colony that he is no longer a prohibited immigrant and is not likely to become a pauper or a public charge.

(2) Whenever the condition of a bond taken under the preceding sub-section shall have been broken the Attorney General or the Principal Immigration Officer may sue and recover for the use of His Majesty the amount secured by such bond."

Section 11A of the Principal Ordinance which it is proposed to replace:

Conditional permit

11A. (1) Whenever the immigration officer shall, under the provisions of the last preceding section, allow a person appearing to be a prohibited immigrant to enter the Colony, he shall grant to such person a conditional permit in the form set out in Schedule B to this Ordinance.

(b), (c), (d), (e), (f), (g) and (h) of the said section, may, in the discretion of an immigration officer, be granted a conditional permit to enter the Colony upon depositing with the immigration officer—

(a) if a native of Asia or Africa, the sum of ten pounds or such other sum as the Governor in Council may from time to time by order determine;

(b) in the case of any other person, the sum of fifty pounds or such other sum as the Governor in Council may from time to time by order determine:

Provided that the immigration officer may, in lieu of requiring such deposit, require the intending immigrant to give security by bond, in such form as may be prescribed, and to such amount (not exceeding £500) as the immigration officer may consider necessary with one or more sureties resident in the Colony and who are approved of by the immigration officer, conditional on the intending immigrant satisfying the immigration officer within such period, after the date of the entry into the Colony of such immigrant, as may be specified in the bond that he is no longer a prohibited immigrant and is not likely to become a pauper or a public charge.

(2) Whenever the condition of a bond taken under the provisions of the preceding sub-section or under the provisions of the proviso to paragraph (b) of section 5 of this Ordinance has been broken the Attorney General or the Principal Immigration Officer may sue and recover for the use of His Majesty the amount secured by such bond."

4. Section 11A of the Principal Ordinance is hereby repealed and the following section is substituted therefor:—

Repeal and replacement of section 11A of the Principal Ordinance.

"11A. (1) Whenever an immigration officer under the provisions of sub-section (1) of section 11 of this Ordinance allows a person appearing to be a prohibited

Conditional permit

(2) Every person to whom such permit has been granted shall report himself personally or by letter at such times as may be specified in the permit to the officer issuing such permit or to such officer in the service of the Government as the officer issuing the permit may from time to time direct: Provided that whenever a holder of a conditional permit shall at any time during the continuance of such permit change his place of residence in the Colony he shall immediately report such change of residence in the manner hereinbefore provided.

(3) If such person shall, at any time within a period of twelve months from the date of his entering the Colony, satisfy the immigration officer that he is no longer a prohibited immigrant and is not likely to become a pauper or a public charge, the immigration officer may cancel the conditional permit granted to such person and return to him his deposit.

(4) If such person shall, at the conclusion of the period aforesaid, fail to satisfy the immigration officer that he is no longer a prohibited immigrant and is not likely to become a pauper or a public charge, his deposit may be forfeited and he may be treated as a prohibited immigrant: Provided that if at any time during the period aforesaid it shall appear to an immigration officer that it is not likely that such a person will, at the conclusion of the period aforesaid, satisfy him that he is no longer a prohibited immigrant and that he is not likely to become a pauper or a public charge, then and in such case, the immigration officer may bring such person before a magistrate and such magistrate may declare that such person is a prohibited immigrant, and that his deposit shall be forfeited."

immigrant to enter the Colony, he shall grant to such person a conditional permit in such form as may be prescribed.

(2) Every person to whom a conditional permit has been granted shall report himself personally or by letter at such times as may be specified in such permit to the officer who issued such permit or to such officer in the public service of the Colony as the officer who issued the permit may from time to time direct:

Provided that whenever a holder of a conditional permit at any time during the continuance of such permit changes his place of residence in the Colony he shall immediately report such change of residence in the manner hereinbefore provided.

(3) If such person shall, at any time within the period specified in such permit, satisfy the immigration officer that he is no longer a prohibited immigrant and is not likely to become a pauper or a public charge, the immigration officer may, in his discretion, cancel the conditional permit granted to such person and return to him his deposit or cancel the bond, as the case may be.

(4) If such person fails, at the conclusion of the period aforesaid, to satisfy an immigration officer that he is no longer a prohibited immigrant and is not likely to become a pauper or a public charge, his deposit may be forfeited and he may be treated as a prohibited immigrant.

Provided that if at any time during the period aforesaid it appears to an immigration officer that it is not likely that such a person will, at the conclusion of the period aforesaid, satisfy him that he is no longer a prohibited immigrant and that he is not likely to become a pauper or a public charge, then and in such case, the immigration officer may, if such person refuses to leave the Colony, bring such person before a magistrate and such magistrate may declare such person to be a prohibited immigrant, and shall order his deposit to be forfeited to His Majesty."

Section 31 of the Principal Ordinance which it is proposed to replace:

Rules

"31. The Governor in Council may from time to time make rules for the better carrying out of the provisions of this Ordinance."

Schedule A of the Principal Ordinance which it is proposed to repeal:—

Ordinance

**SCHEDULE A**

**FORM OF BOND UNDER SECTION 11**

**BE IT KNOWN UNTO ALL MEN** by these presents that we<sup>1</sup> ..... are held and firmly bound unto His Majesty King George V, by the Grace of God of the United Kingdom of Great Britain and Northern Ireland, King, Defender of the Faith, in the sum of ..... of good and lawful money of the Colony and Protectorate of Kenya to be paid to His Majesty, his heirs and successors. To which payment well and truly to be made, we bind ourselves, and each and every of us, jointly and severally, for and in the whole, our heirs, executors, and administrators and every of them firmly by these presents.

Scaled with our seals.

Dated this ..... day of ..... 19.....

Now the condition of this obligation is that if the said ..... shall satisfy an immigration officer within a period of twelve months from the date of his entering the Colony that he is no longer a prohibited immigrant and is not likely to become a pauper or a public charge then this obligation to be void, otherwise to be and remain in full force and virtue.

Signed, sealed and delivered in the presence of

<sup>1</sup> Insert names and descriptions of intending immigrants and one or more sureties  
<sup>2</sup> Insert, if intending immigrant is a native of Asia or Africa, ten pounds if any other person, fifty pounds.  
<sup>3</sup> Insert name of intending immigrant

5. Section 31 of the Principal Ordinance is hereby repealed and the following section is substituted therefor:

Repeal and replacement of section 31 of the Principal Ordinance

"31. The Governor in Council may from time to time make rules prescribing anything required to be prescribed under this Ordinance and generally for the better carrying out of the provisions of this Ordinance."

6. Schedule A of the Principal Ordinance is hereby repealed.

Repeal of Schedule A to the Principal Ordinance

Schedule B of the Principal Ordinance which it is proposed to repeal:—

**SCHEDULE B**

CONDITIONAL PERMIT GRANTED UNDER SECTION 11A (1)

No. \_\_\_\_\_ Issued at \_\_\_\_\_ Date \_\_\_\_\_  
Sum deposited, Sh. \_\_\_\_\_  
Deposit made by \_\_\_\_\_  
(or if a Bond has been taken) Amount of Bond, Sh. \_\_\_\_\_  
Date of Bond \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_  
Names and addresses of Sureties \_\_\_\_\_

Permission is hereby granted to the person (or persons) named below to enter the Colony and Protectorate of Kenya and to remain therein for a period of twelve months from the date of this permit, and no longer unless the person named as the holder of the permit shall within such period of twelve months satisfy the immigration officer that he is not a prohibited immigrant and is not likely to become a pauper or a public charge.

\_\_\_\_\_  
*Immigration Officer*

Name of holder of the permit \_\_\_\_\_  
Nationality \_\_\_\_\_ Sex and age \_\_\_\_\_  
Usual place of residence \_\_\_\_\_ Occupation \_\_\_\_\_  
Height, general description, distinctive marks \_\_\_\_\_  
Postal address in the Colony \_\_\_\_\_  
Names and ages of wife and children if included \_\_\_\_\_  
\_\_\_\_\_  
Signature of permit holder \_\_\_\_\_  
\_\_\_\_\_  
Left thumb print \_\_\_\_\_ Right thumb print \_\_\_\_\_

Section 11A (2) of the Immigration Restriction Ordinance (Chapter 62 of the Laws of Kenya) as amended by the Immigration Restriction (Amendment) Ordinance, 1930:—

"Every person to whom such permit has been granted shall report himself personally or by letter at such times as may be specified in the permit to the officer issuing such permit or to such officer in the service of the Government as the officer issuing the permit may from time to time direct: Provided that whenever a conditional

7. Schedule B of the Principal Ordinance is hereby repealed.

Repeal of  
Schedule B of  
the Principal  
Ordinance

permit holder shall at any time during the continuance of such permit change his place of residence in the Colony he shall immediately report such change of residence in the manner hereinbefore provided."

ORDERED under section 11 of the Immigration Restriction Ordinance as amended by the Immigration Restriction (Amendment) Ordinance, 1930, to report\*.....

.....  
personally or by letter to  
who is requested to inform me if he does not do so and to report on his fitness for cancellation of this conditional permit eleven months from date. Any change of address to be notified to the officer, who will inform the Immigration Officer, Mombasa/Nairobi, and forward duplicate of permit to the District concerned.

Place.....  
Date.....

I.O.

\*Immigration Officer to state how often report must be made.

#### RECEIPT

This is to acknowledge the receipt of the sum of shillings

(Sh. ) being refund of deposit named above

Signature

Place

Witness

Date.....

#### OBJECTS AND REASONS

The object of this Bill is to give the authorities wider powers with regard to the amount of deposit or the amount of security required and the length of time for which conditional permits may be granted in order that the immigration into the Colony of undesirable persons may be more effectively controlled.

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

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~~CONFIDENTIAL~~  
CONFIDENTIAL

Colonial Office,  
Downing Street,  
21 December 1950.

Sir,

I have the honour to refer to correspondence ending with my confidential despatch of the 31st October regarding the control of immigration into Kenya and to transmit copies of correspondence on the subject with the Foreign Office.

10.11.50.  
1.12.50.

2. I am causing the Foreign Office to be informed, in reply to their letter of the 1st December, that I concur in the terms of the draft circular despatch to His Majesty's Consular and Passport Control Officers.

3. I have observed from paragraph 5 of your confidential despatch of the 8th August that instructions have been issued that, for the purpose of Section 40 of the Immigration Restriction Ordinance, a valid passport is to be interpreted as meaning "a full national passport or a document carrying a 'return visa', or visa to enter another country", and that this stipulation applies to all immigrants. If by this is meant that a passport for the purposes of Section 40 must on the face of it entitle the holder to return to his country of origin, my legal advisers take the view that the provisions of Section 40 of the Ordinance would afford no authority for such an instruction. On the other hand, in the case of "prohibited immigrants" as defined in Section 6, it is arguable that there is a discretion, under Section 11, to refuse entry

although

GOA BRNOB,  
AIR CHIEF MARSHAL,  
BIRMINGHAM - POPNAB, C.C. . . . .  
etc., etc., etc.



although the immigrant lodges up or gives a satisfactory bond. If this is the case it might be possible to make it a condition for entry under section 11 that the immigrant is in a position to return to his own country if necessary. If however you have not already done so, your legal advisers should be consulted on this point, and I should be glad to be informed of their advice.

4. Whatever the legal position may be, however, the fact remains, as stated in paragraph 3 of the letter from the Foreign Office of the 1st of December that, in the case of political refugees from Germany, it is virtually impossible for them to be returned to their country of origin even though they may be in possession of green passports endorsed with a "return visa". In the very cases therefore with which this stipulation was designed to deal, the protection afforded by it in Hungary.

5. In this connection I would invite reference to the last paragraph of my circular despatch of the 1st December in which I said inter alia that I should "greatly regret the introduction of any restrictions expressly designed to render the entry of refugees from Germany more difficult".

6. In all the circumstances I trust that you will agree to withdraw the requirement that immigrants must be in possession of a passport bearing a return visa or a visa enabling them to enter another country. The withdrawal of this requirement would not, it would appear, seriously restrict your powers to control the immigration of refugees if there is a discretion under section 11, since it will remain possible to refuse permission to enter the colony except in cases where evidence is forthcoming that the intending immigrant is unlikely to become a public charge.

I have the honour to be,

Sir,

Your most obedient,  
humble servant,

Daily Telegraph 17/2/38

Kenya

### REFUGEES CAUSING PROBLEM

From Our Own Correspondent

NAIROBI, Friday.

The refugee question is putting Kenya into a dilemma. Because of the fear that the Colony may be swamped by undesirable refugees the Government has introduced a bill giving immigration authorities discretion to demand individual bonds up to £500, as compared with £50 according to the present rule.

It is stated that some 200 refugees have entered the Colony in the last year, and 50 applications are being received weekly.

Most European elected members oppose the £500 bond suggestion on the ground that it would discourage much needed new settlers. The bill has been referred to a select committee.

May, 1938.

Sir,

With reference to correspondence terminating with Mr. Pilling's despatch No. 558 of the 9th September, 1937, I have the honour to forward two authenticated and twelve printed copies of Ordinance No. 11 of 1938 entitled "An Ordinance to amend the Immigration Restriction Ordinance" together with the legal report by the Attorney General.

This Ordinance, which is in the form approved in despatch No. 289 of the 7th April, 1937, from Mr. Omsby-Gore (now Lord Harlech), passed its third reading in the Legislative Council on the 23th April, 1938, and I assented to it in His Majesty's name on the 14th May.

Since the date of Mr. Pilling's despatch a further proposal to import labour has been received which, however, on account of difficulties experienced by the employers concerned, has lapsed for the present; and in the circumstances I have concurred in the opinion of my advisers that the Ordinance should be enacted so that the necessary machinery may be available should the need for it arise.

I have the honour to be,

Sir,

Your most obedient, humble servant,

SIR CHIEF MARSH  
GOVERNOR.

THE IMMIGRATION RESTRICTION (AMENDMENT) BILL, 1938.

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The object of this Bill is to make provision for controlling the importation into the Colony of unskilled manual labourers from territories outside the Colony, the Uganda Protectorate or the Tanganyika Territory.

This Bill, prior to its introduction into Legislative Council, was submitted to the Secretary of State, and was approved by him in his Despatch Kenya No. 289 of the 7th April, 1937.

In my opinion, His Excellency the Governor may properly assent to this Bill in the name and on behalf of His Majesty.

(Sd.) W. HARRAGIN

ATTORNEY GENERAL.

Nairobi.

26th April, 1938.



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.

*Governor*

AN ORDINANCE TO AMEND THE IMMIGRATION  
RESTRICTION ORDINANCE

ORDINANCE No. XI of 1938

An Ordinance to Amend the Immigration Restriction Ordinance

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 Immigration Restriction (Amendment) Ordinance, 1938, and shall be read as one with the Immigration Restriction Ordinance (Chapter 62 of the Revised Edition), hereinafter referred to as the Principal Ordinance. Short title.  
Cap. 62.

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

"PART VI

IMMIGRANT LABOURERS

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

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

The burden of proving that any person is an immigrant labourer within the meaning of this Part shall lie upon the person alleging that fact: Provided that when such person has proved that the alleged immigrant labourer has entered the Colony subsequent to the issue

of a proclamation under section 42 of this Ordinance and has since such entry been engaged in performing unskilled manual labour of the class or type specified in such proclamation, he shall be deemed to have established a presumption that such person is an immigrant labourer and the burden of rebutting such presumption shall lie upon such alleged immigrant labourer.

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

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

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

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

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

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

- (a) for regulating the conduct and responsibility of the masters of ships carrying immigrant labourers;

Powers to restrict immigration of labourers.

Immigrant labourers to be deemed prohibited immigrants

Penalty

Power to make rules.

(b) for ensuring, so far as is possible, that no immigrant labourers shall be landed in the Colony in contravention of any proclamation issued under section 42 of this Ordinance;

(c) for laying down the reasons for which and the conditions under which a ship from which an immigrant labourer is suspected to have landed in contravention of the provisions of a proclamation issued under section 42 of this Ordinance may be detained and the conditions upon which the detention of such ship may be cancelled; and

(d) generally, for carrying out the provisions of this Part of this Ordinance.

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

Passed in the Legislative Council the twenty-sixth day of April 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.

Acting Clerk to the Legislative Council.