

1921

KENYA

26672

DATE

MAY 1921

30 MAY

GOVERNOR MORTHEY
SECRET & PERSONAL
UPPER ENCL. Recd 1.15 a.m. 29th MAY

CIRCULATION

SUBJECT
POSITION OF INDIANS

632

REPRESENTATION

Expresses views on communal franchise. If common franchise is decided on it should be given to all British subjects including Somalis, Arabs etc. possessing qualifications indicated. No constitutional changes necessary except increase of elected members from 12 to 14 and creation of new electoral districts which could be arranged.

Mr. Greville
Mr. H. Lathford
Mr. H. Read
Mr. G. Piddis
Mr. Amery
Mr. Churchill

Previous Paper

M. J.

25486

MINUTES

Mr. H. Read

Typled minutes written the papers are in consideration.

I suggest that Lord Lugard be informed unofficially of what the Govt is prepared to agree to, and we might explain the English education that as in any minute. It is the sort of thing which may give birth to letters if we don't begin to defend it now.

C. O. S. 24.5.21

X. A letter to the W. A. C. C. regarding the substance of the tel. of 6 June is how long referred.

W. A. C. C.

Subsequent Paper

24144

10/5/21, can secret report 11/5/21
Tel to Gov. can secret report 11/5/21
10/6/21, can secret report 11/6/21

26672

633

PARAPHRASE TELEGRAM

Recd.
Ref: 30 MAY 21

From the Governor of Kenya to the Secretary of State
for the Colonies

(Received Colonial Office 1.16.a.m. 29th May 1921)

Secret and Personal.

Indian representation your cypher telegram
of May 20th. If communal franchise must entail an equal
number of Europeans and Indians in Legislative Council
this Government could not agree to it and would prefer
common franchise with a high qualification standard.
The suggestion made by Europeans was that each qualified
voter in certain town areas should have two votes one
for European and one for Indian member but the better
method would be for new areas to be created in which the
large preponderance of voters would be Indian. I con-
sider that ~~community~~ franchise if given to Indians
should also be given to Arabs but it could not be given
to Coans except municipal franchise because they are not
British subjects. Foreign subjects do not expect to be
on the general voting roll but only on the municipal.

If you decide on common franchise it should
be given irrespective of race to all British subjects
and would include Somalis Arabs etc., who pass the
necessary standard of education and property. Education
test to be English; property qualification to be not
less than capital value £1000 or an income of £150 per
annum; lawyers doctors and other recognised professional
qualifications. If this common franchise is granted it
will be best to create three new electoral areas which

will

will be certain to return Indians viz Mombasa North, Nairobi East and West Nyansa for which I can arrange electoral boundaries. No changes necessary in constitution except alteration in numbers of elected members of Council from eleven to fourteen. In addition to the three new electorates above mentioned, Indians would probably soon oust European from coast seat.

NORTHEY.

PARAPHRASE TELEGRAM from the Secretary of State for
 the Colonies to the Governor of Kenya.
 Sent 1.20 p.m. 6th June, 1921.

Priority A.

Secret and Personal.

I much appreciate your helpful telegram on
 subject of franchise which is likely to assist me
 materially in settlement with India Office. I assume
 that you contemplate grant of franchise to all British
 subjects and British protected persons satisfying
 your suggested qualifying standard of education and
 property.

Segregation. Now that you have given up commercial
 segregation it seems very difficult to maintain
 residential segregation. Moreover the principle of
 race segregation is unnecessarily wounding to Indian
 sentiment and must be actually unjust in particular
 instances.

On the other hand Indians who choose to dwell
 in European areas can be made quite properly to conform
 to all sanitary social and building regulations which
 are appropriate to a civilized European community and
 these should be enforced strictly by penalty upon them
 and upon their white fellow citizens. There is
 nothing invidious in this and proceeding on these lines
 may lead to many Indians preferring to live in the
 Indian quarters where such a high standard will not be
 exacted.

If regulations are strictly carried out your
 conditions as to restriction of residence in commercial
 area should be unnecessary.

It will follow from the above that there can

Tomley
 2/6/21.
 Read. 2/6/21
 Piddes 2.
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 seen
 instructions
 Wood.

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 K/21

be no restriction of ownership in town areas.

As regards highlands this is most difficult point still remaining. What do settlers mean exactly by pledge. Lord Elgin's reference in despatch of March 19th 1908, to administrative convenience while explicitly repudiating legal differentiation between races can hardly be regarded as a pledge on question of principle. India Office advised by Sir B. Robertson suggest that it is improbable that Indians will wish to settle in highlands and support their view by actual experience in Natal uplands. They suggest that the real danger to be guarded against is that of speculative buying by Indians contrary to the interests of Europeans. On this they have made alternative suggestions which I am conveying in a separate telegram. I shall be glad if you will consider these points and report as soon as possible.

Matter urgent as it is very desirable to conclude negotiations with India Office before Conference of Prime Ministers meets.

300/21649/K/21
 Paraphrase telegram from the Secretary of State for the Colonies to the Governor of Kenya.

Sept 3.50. 1921, 17th June 1921,

Secret and Personal

With reference to the Secretary of State's Office
 questions following the Secretary of State's Office
 for controlling the Secretary of State's Office
 Check all land sales and the Secretary of State's Office
 resale of land by the Secretary of State's Office
 They understand the Secretary of State's Office
 contemplated scheme of the Secretary of State's Office
 ence to last the Secretary of State's Office
 Legislate provisions of the Secretary of State's Office
 transfer of the Secretary of State's Office
 shall contain the Secretary of State's Office
 personally or the Secretary of State's Office
 or re-transfer of the Secretary of State's Office
 occupy. (3) the Secretary of State's Office
 of neighbourly the Secretary of State's Office
 persons with the Secretary of State's Office
 with similar the Secretary of State's Office
 re-transfer. the Secretary of State's Office
 from Indians and the Secretary of State's Office

or
alternative (1) ~~and~~ (2) were adopted. Ends. I
shall be glad to receive your observations on these
suggestions of the India Office at an early date.

uL

Sir H. Rad.

2 letters from Mr. Walter, A.O. of 31.5.
 attached.

A. The Governor's telegram has arrived
 and I have sent it forward with a
 suggestion for a letter to him by Thom.
 If this is approved I can reply to
 Mr. Walter referring to that letter.
 Pat

B. The High Commissioner's questions (on which I
 have sent forward a preliminary note)
 seem likely to give some trouble their
 representation, and after what
 Mr. Walter's note we shall in all
 probability have to consult the
 Governor. I must point this out
 to Mr. Walter?

C. D. S. 10/12

639A

31 May 12

Dear Botany

I hope to send you the notes
on my latest method of circumventing
the obstacle in the Kenya Highlands
to improve.

Yours sincerely

Planchon

Whitehall,

London, S.W.1. 610

31st May, 1921.

Dear Bottomley,

Lord Lytton is anxious that in good time before the Imperial Cabinet meets we should be able to clear the ground sufficiently either to propose an agreed platform for H.M.G. on the question of Indians in Kenya, or, if it becomes apparent that no agreement is possible, to define the points on which we fail to agree and which will have consequently to be referred to the Cabinet for a decision before the meeting.

The next step in the conversations will presumably turn on the reply which you may get from Kenya regarding the franchise question. If you have not yet received a reply to the telegram which Mr. Churchill sent, would it be possible to send an urgent reminder at once so that we may be ready for the next meeting as soon as possible?

Lord Lytton suggests this in view of the urgency of defining the Government's attitude before the meeting of the Imperial Cabinet.

Yours sincerely,

H. C. Bottomley, Esq., C.M.G., O.B.E.,
Colonial Office.

Lyttelton

June 1944

Dear Boston boy

I enclose two copies of
 the note which had been
 promised on suggested method of
 getting over the difficulties about
 speculation in land in the Kenya
 uplands.

Yours sincerely

Kwason

Notes on suggested methods of preventing speculation in land in the Kenya Uplands.

The policy approved by Lord Elgin in 1908 in regard to the Kenya Uplands was that as a matter of administrative convenience original grants of Crown lands should not be made to Indians in this area. At this date there was no legal bar to the transfer of lands already alienated by the Crown in the Uplands from their European owners to Indian transferees. Lord Elgin's decision regarding the limitation of original grants was in fact qualified by the statement that it was not in consonance with the views of H.M.C. to impose legal restrictions on any section of the Indian Community.

Sections 71-73 of the Crown Lands Ordinance 1915 do however impose a legislative differentiation by enabling the Governor to veto transfers of land between individuals of different races.

Indians in Kenya would not as a fact wish to take up land in the Uplands for agricultural purposes, so that a veto on transfers to Indians seems at first sight quite superfluous from the European point of view. It is understood that the European objection to amending the Ordinance so as to abolish the racial veto would be that the door would be thrown open to the Indian speculator. While the India Office cannot be expected to agree that the objection to land speculation has greater validity when the speculator is an Indian than when he is a European, it is appreciated that there is considerable force in the objection to land speculation generally. It is therefore suggested that this objection might be overcome in one or more of the following ways:-

(1) All speculation in land might be checked, as such, by a tax on the profit made by the resale of undeveloped land, e.g. by a percentage tax on the difference between the price paid and the price subsequently obtained by a resale of land which had not been developed in the interval. It is understood that the Kenya Director of Agriculture has been considering some such measure on its own merits with a view to checking speculation.

(2) It might be prescribed by legislation that a condition should be inserted in any covenant of lease or deed of transfer of land already alienated by the Crown in the Uplands that the transferee should at once enter into occupation of the land himself, or (if this were considered too drastic) that he should either occupy it himself or re-transfer it within a given period to a third party who would occupy it.

(3) In private townships in the Transvaal, such as Parktown (Johannesburg), the original owners of the land make it a condition in the covenant of any lease or sale that re-transfer to a coloured person shall not be allowed. In the Natal Uplands there is a movement among the European farmers in favour of an agreement to insert a similar condition in any deed of transfer of property from an existing owner. In the Kenya Uplands there is nothing to prevent the European landowners forming an association, the members of which would bind themselves either not to transfer their properties to Indians or that no property should be transferred without the consent of the other members of the association, and that in any deed of transfer there should be inserted a similar condition limiting the right of re-transfer.

Similarly if alternatives (1) or (2) were adopted there would be nothing to prevent Europeans agreeing among themselves

themselves not to take leases from Indians, if they are anxious to avoid the possibility of an Indian taking land by purchase or lease from a European with the object of leasing or sub-letting it to another European.

INDIAN AFFAIRS IN KENYA.

The further discussion between Lord Lytton and Mr. Wood on the 28th May (at which Sir Benjamin Robertson and Mr. Corbett (Government of India Secretariat) who was with Sir Benjamin in East Africa, were present) turned mainly on the question of agricultural land.

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A. On the question of acquisition of such land by Indians from the Crown, it was urged that practically all the land had already been alienated and that, in any case, no Indian wanted to buy land in the highlands. There were very few who would buy it as a speculation, and they were as much affected by the general slump as other people. In this connection it is worth noting that the two most prominent Indian agitators have applied for very large areas of land in the lowlands.

There is much in the contention that practically all land has been alienated, and therefore the danger that Indians would buy what land is offered and charge exorbitant rents to European tenants, is not very important. Similarly, we need not attach much importance to the danger lest Indian competition should force up the auction price of such land to Europeans, and in any case, now that the Government has given away on very liberal terms some 2,000,000 acres to soldier settlers, there is no special reason for wishing to keep future prices down.

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B. The question of permitting transfers of such land to Indians is more difficult.

(1) The first suggestion made was that all transfers of land should be subject to a veto by the Governor, instead of that veto being applicable, as at present, only to transfers between persons of different races. ^{To} this suggestion it was objected that, when the Crown Lands Ordinance, 1915, was under consideration, it was proposed that the Governor's veto should apply to all transfers but that there was much opposition from the settlers on the ground that the condition would materially affect the value of their title. This opposition would again be encountered.

(2) The second suggestion made was ^{that} there should be no Governor's veto at all, but that all future transfers should be subject to a condition to reside on and cultivate the land. It was pointed out that this would be ~~found~~ a still more serious reduction of the value of the title to land and would certainly be ~~utterly~~ opposed. A suggestion that occupation by European managers should be permitted was impracticable, as it would in another form introduce the racial discrimination.

A further suggestion was that there should be no veto ~~of permission of~~ transfers but that landholders should contract with each other in groups not to transfer their land to Indians. The objection to this, is that settlers would say that after six Secretaries of State had maintained the principle that they were to be protected from the Indians, they were now told to fend for themselves. Further, it was pointed out that the condition in the Crown Lands Ordinance as to the Governor's approval being necessary for transfers between

persons

persons of different races was not merely directed against Indian ownership of land in the highlands but was equally intended to protect the native owners of land (principally in the coastal area) from the attentions of Europeans and Asiatic land sharks.

No conclusion was reached at the meeting, and the matter was left over for consideration. I fear that I cannot suggest any simple way out of the difficulty, and we must ~~at once~~ pass on the commandment to the Governor. But as we have told him that the segregation and highland questions are being held up for his views on the representation question we had better wait for his reply on that point before telegraphing to him as regards the highlands.

*and that in connection
645*

It seems probable that we must on this point sacrifice the feelings of the European settlers if we are to placate Indian feeling both in Kenya and in India; therefore it seems worth while raising again the question whether the concessions of ~~the~~ reform which are all that the India Office press us for (and they assure us that they mean no sacrifice of substance) will be likely to have the effects desired. At Saturday's meeting it was urged that the Indian community would be fully satisfied with theoretical equality, and that the agitation would subside, and ~~that~~ we should have no more trouble. ^{It is equally} reasonable to suppose that ~~the~~ matter which is in the hands of a few agitators will not be so lightly disposed of and that the more we give the more will be demanded.

A. J. R.

What is more important; while we are being continually told that concessions in Kenya are necessary for the solution of the problem in India, we have absolutely no reason, so far as I know, to suppose that those concessions would be sufficient for the purpose. If we are to gamble for the benefit of India, we ought at least to have some reasonable assurance that our stake will not be lost.

I think that in real better than to the time taken up in Mr. Swadlow's report. It is a pity that we are virtually sleeping on the Indian settlers. It seems to be the best of the 3 alternative schemes proposed & especially so for the more important & self-sufficient. It can be a way to maintain the status quo, the comparatively minor question might all be decided.

J.R.
20/5/51

I don't recall what the pledge is in fact very strong ground on which to stand. There has already been a kind of promise in the form of a reservation. Mr. Collett made the point as to his conf. have had Sir's 'pledge' has to depend on the principle of reservation which is a very important principle in the context of administrative commission. *

See 31st 21

I. MODE OF RESERVING SEATS.

The Governor proposes fresh constituencies arranged so that they would be certain to return Indians. The discussion at the India Office on Saturday turned rather in the direction of making Nairobi and Mombasa two-member constituencies, it being understood that the first European and the first Indian at the head of the poll should be elected.

India - 2 members
Mombasa

The Governor's suggestion for the merit of avoiding reference to race, but it is not certain of permanent application. The proposed residential suburb for better class Indians is intended to be in the South West - and these are the Indians who would have the vote. They might have a business qualification in Nairobi East - it depends on where Nairobi East will be.

Indian suggestion
has been two
members
being
made

2. EXTENSION TO ARABIC AND SOMALIS.

If they are in the Kenya Protectorate, they are Tanzanians and not British subjects. It is not easy to say that British-protected persons should be excluded but the natives of the Colony, who are British subjects, should as a rule not be included, though probably we would be obliged to do so in certain circumstances.

The rules included in the proposed British subjects and protector persons, and for the time being. The Indian will have a vote over the native unless the native is able to claim that he has been elevated.

But perhaps the risk of a preponderant native vote coming into existence is too great for this.

* I think it is true to say that...

EDUCATION TEST

It must certainly be English but what I

strongest ability is:-

- (a) ~~ability~~ to converse in English
- (b) to sign name in English
- (c) to take down (in any language) from English dictation and to read out in English what he has written.

As to (c) ability to write English should

be an essential in a teacher but need not be essential

REQUIREMENTS PROFESSIONAL QUALIFICATION

It is to be noted that, in the Government of India
and in the majority of the European now on the
list, the requirements are as follows, but
the line of satisfying the
requirements at there would be no
qualifications.

WAS 3/1/1911

India Office

Note on suggested methods of preventing speculation in land in the Kenya Uplands

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themselves not to take leases from Indians, if they are anxious to avoid the possibility of an Indian taking land by purchase or lease from a European with the object of leasing or sub-letting it to another European.

A

Nairobi

Priority A

Secret and Personal June

DRAFT.

CYPHER TELEGRAM.

GVERNOR

NAIROBI.

MINUTE.

Mr. *Bowring* 2/6/21

Mr.

Mr.

Mr. Grindle.

Sir H. Lambert.

* Sir H. Read. 2/12/21

* Sir G. Pidd. 2

* Mr. Wood
Col. Amery.

Mr. Churchill.

*Was instructed
from the Govt*

*Satisfying your suggestions
regarding retention of
a section as proposed*

*Article from
page []
in draft (marked) 75.
Intend from
reply of
draft*

I ~~shall~~ much appreciate your helpful telegram on subject of franchise which is likely to assist me materially in settlement with India Office. ~~My only doubt is whether special constituencies secure permanently object of Indian representation, for instance Nairobi East might without segregation come to contain many Indians but few Indian voters and so not return Indian, while Indian voters might be scattered among other constituencies and return no member. But this is for your judgment. I assume that you contemplate grant of franchise to all qualified British subjects and British protected persons.~~

As regards segregation I am not satisfied that residential segregation can be defended and I shall be glad to

have

have your further views. I can assure you that India Office will raise no opposition to sanitary and police regulations however stringent and it seems possible that few Indians will wish to live among Europeans.

As regards highlands this is most difficult point still remaining. What exactly do settlers mean by Pledge. Lord Elgin's reference in despatch of March 19th 1908 to administrative convenience while explicitly repudiating legal differentiation between races can hardly be regarded as a pledge on question of principle.

India Office advised by Sir B. Robertson suggest that it is improbable that Indians will wish to settle in highlands and support their view by actual experience in Natal uplands. They suggest that the real danger to be guarded against is that of speculative buying by Indians contrary to the interests of Europeans. To meet this they suggest *beginning*

(1) Check all land speculation by tax on

profit made by resale of land not developed

during vendor's tenure. They understand that

Director of Agriculture has contemplated scheme

of the kind ^{there is} possibly a reference to last year's

draft Land Tax Ordinance.

(2) Legislature providing that every covenant of future transfer of ~~102~~ Highlands land already alienated by Crown shall contain condition that transferee must occupy personally or alternatively must either occupy himself or re-transfer within given period to some one who will occupy.

(3) Voluntary arrangement ~~any among~~ associations of neighbouring settlers not to transfer to coloured persons without consent of other members of Association, with similar condition in deed of transfer limiting re-transfer. A similar agreement not to take leases from Indians could be made between Europeans if alternative (1) or (2) were adopted. *Ends*

It must be recognized that ~~any attempt~~ ^{such} in direction of preventive measures against speculation necessarily limits ~~the~~ vendor's market and it may be that settlers

would

prefer to take risk of waiving Highlands restriction
without conditions of this kind. It has to be re-
remembered that possibility of Indians exacting
high price for land which they might acquire would
be limited by fact that parts of large holdings now
held by Europeans would probably come into market at a
time of high prices.

I shall be glad if you will consider these points
and report as soon as possible. I realize that they
involve concessions of form ~~substance~~ but if you
are able to accept India Office view that no material
concession of substance is involved my position will
be greatly simplified.

Matter urgent as it is very desirable to conclude
negotiations with India Office before Imperial Conference
meets. *W. P. A.*

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2667/24 K

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Paraphrase telegram from the Secretary of State of
the Colonies to the Governor of Kenya.

(Sent 12.25.p.m. 9th June 1921)

[scribble]

Clear the Line.

Personal and Secret. 9th June. Indians. I should be
glad to receive earliest possible reply to my tele-
gram of 6th June. The Conference with India Office
has been fixed for June 14th and it is most desirable
that there should be time before then for full con-
sideration of your views.

Bottomley
C.21.f.s.

on green slip below. The meeting
has been postponed till 10.30 on
Wednesday.

not Wednesday perhaps Tuesday.
W.A.B.S.S.