

1921

KENYA

CO  
31297  
FEB 23 1921

INDIA  
(MR WALTON)

22ND JUNE 1921

FOR CIRCULATION:  
Mr.  
Mr.  
Mr.  
Mr. Grindle  
Sir H. Lambert  
Sir H. Read 27/6/21  
Sir G. Fiddes 27  
Mr. Wood  
Mr. Churchill

SUBJECT  
POSITION OF INDIANS

TRANSFER OF LANDS IN HIGHLANDS

Encloses note containing suggestion for removing formal disability of Indians as a race.

Previous Paper

30806

MINUTES

*See 11/1/21*

You have discussed with Mr Wood.

If the Sops has decided that the present policy with regard to the prohibition of Indians from holding land in the Highlands is to continue, it does not seem of much use to Committee as regards the last para. The main body of policy previously has now been settled.

Subsequent Paper

35216

*Mr. Fiddes*

It shall of course have  
to be read as a separate  
document.

This paper should be brought  
up for the general discussion  
with Sir E. Northey, and  
in the meantime it will  
be sufficient to acknowledge  
it.

WMS.

25-11-21

ack.

Sir E. Northey  
20.6

31237

REC'D  
22 Jan 1900

Dear B. H. H. H.

Transfer in to Kenya Upland.

The enclosed note contains a copy of  
 the letter suggesting the transfer of  
 the present district of the Kenya Upland  
 to the district of the Kenya Upland  
 as a result of the  
 existing situation.

Mr. Montagu has asked me to  
 send it for consideration.

Yours very truly  
 G. A. S. G.

31237

REC'D

22 JUN 1944

Dear B. Hartley

Transfer to Kenya Upland.

The enclosed note contains a further  
 tentative suggestion on regarding the  
 formal discharge of students as a result  
 of their detention & results of the  
 existing practice.

Mr. Montague has asked me to  
 send it for consideration

Yours sincerely  
 "Cavalier"

Question of Transfer of Land in the Uplands

The Sections of the Crown Lands Ordinance 1915 which deal with the transfer of land are attached. They provide that when the transferer and the transferee are persons of different races the transferee has to notify the transaction within one month of its completion and the Governor may veto it within three months of the notification unless his consent to such transaction has previously been given.

In practice no doubt the would-be transferee always applies for the Governor's consent beforehand, and if it is withheld does not proceed with the transaction, so that actual cases of veto may not arise.

It will thus be seen that the Ordinance contains a general racial differentiation. It applies to transfers of Crown Land anywhere, e.g. in townships as well as in the case of agricultural land in the Uplands or elsewhere. It applies to transfers:-

- (1) From natives to Indians.
- (2) From natives to Europeans.
- (3) From Europeans to Indians.
- (4) From Europeans to natives.
- (5) From Indians to natives.
- (6) From Indians to Europeans.

The object of the Law is <sup>mainly</sup> to prevent transfers under the first three heads without the Governor's consent. The object therefore includes the prevention of transfers of agricultural land in the Uplands from Europeans to <sup>Indians</sup> natives, i.e. the Ordinance is administered in a manner which differentiates against Indians.

We contend that Indians as a matter of fact do not wish to take transfers of land in the Uplands with the object of settling there, since the conditions there are not suitable to their methods of agriculture, (and also of course that, even if they did wish to do so, they ought not to be prevented any more than Europeans). This is the advice given us by Sir B. Robertson. If it is a fact that Indians would not settle in the Uplands, then the object <sup>is</sup> the differentiation is merely to prevent their speculating <sup>which</sup> in land ~~if~~ they would not use themselves.

What is desired is that this object should be secured without an administrative differentiation against Indians.

Could not this be done by leaving in the Ordinance the Governor's power of <sup>in all cases of transfer of land</sup> veto except in cases where his previous permission has been obtained, and adding a proviso that the right of veto shall not be exercised except on the ground of the public interest and in no case solely on the ground of a transferee's race?

If this were done then the Governor, on receiving an application from an Indian to complete a transaction in land in the Uplands, would consider whether the transaction were in the public interest, e.g. whether the proposed transferee were a person likely to develop the land, or (even more closely) whether he intended to occupy the land himself so as to be able to give his personal care and attention to its development. If the Governor decided any of these points in the negative he would have good ground (other than that of race) for vetoing the transfer, and would accordingly withhold his previous permission. He might even, if it were thought necessary, require the would-be transferee to enter into an undertaking to occupy the land himself and, if the latter declined this, would naturally

naturally be considered presumptive evidence that he had no intention of doing so and therefore that the transfer was not in the public interest. In this manner the speculator might effectively be debarred from acquiring agricultural land in the Uplands.

In the event of residential segregation being abolished, the abolition of any restriction on the ownership of land in townships would follow, and in that case it will be desirable to amend Sections 70-74 of the Crown Lands Ordinance for no other reason than to remove any racial bar against Indians taking transfer of land in townships.

naturally be considered presumptive evidence that he had no intention of doing so and therefore that the transfer was not in the public interest. In this manner the speculator might effectively be debarred from acquiring agricultural land in the Uplands.

In the event of residential segregation being abolished, the abolition of any restriction on the ownership of land in townships would follow, and in that case it will be desirable to amend Sections 70-74 of the Crown Lands Ordinance if for no other reason than to remove any racial bar against Indians taking transfer of land in townships.



This Part shall apply to—

- (a) all lands sold or leased, or otherwise disposed of under this Ordinance, and  
 (b) all lands sold, leased, or otherwise disposed of under the Crown Lands Ordinance, 1902, or the East Africa Lands Regulations, 1897.

71. Whenever any land to which this Part applies is sold, transferred, mortgaged, assigned, leased or sub-leased, whether by or under the orders of a person or otherwise howsoever, if the person or persons or any them to whom such land is sold, transferred, mortgaged, assigned, leased or sub-leased is or are of a different race to the person by whom such land is sold, transferred, mortgaged, assigned, leased or sub-leased, then it shall be the duty of the purchaser, transferee, mortgagee, assignee, lessee or sub-lessee to notify the Land Officer in writing of the transaction within one month of the completion thereof and to furnish the Land Officer, in the form and manner prescribed, with full particulars of the nature of the transaction of the land affected and as to the parties to the transaction or interested therein.

72. Any person who being required by the provisions of the last preceding section to give the notice aforesaid and to furnish the particulars required, shall, if he fails without lawful excuse fail to give the notice and furnish the particulars within the time prescribed, be liable to a fine not exceeding 1,500 rupees, or if he in furnishing the particulars aforesaid make any statement which he knows to be false or if he wilfully withholds any information which he is required to furnish, be liable to a fine not exceeding 3,000 rupees and to imprisonment of either kind for a term not exceeding one year. Provided, however, that no proceedings shall be taken under this section except with the consent of the Governor-in-Council.

73.—(1) It shall be lawful for the Governor-in-Council to veto any sale, transfer, mortgage, assignment, lease or sub-lease to which the provisions of section 71 of this Ordinance apply.

Provided that the consent of the Governor to such sale, transfer, mortgage, assignment, lease or sub-lease has not previously been given, and provided further that whenever notice of such sale, transfer, mortgage, assignment, lease or sub-lease has been given and the required particulars furnished as in this Part provided the right of veto shall not be exercised except within three months of the receipt by the Land Officer of the notice and particulars of the transaction.

(2) Whenever the Governor-in-Council shall exercise the right of veto in respect of any sale, transfer, mortgage, assignment, lease or sub-lease, notice that such right has been exercised shall be published in the Gazette, and from the date of such publication the sale, transfer, mortgage, assignment, lease or sub-lease in respect of which such veto has been exercised shall be null and void.

(3) The Principal Registrar shall cancel or cause to be cancelled the registration of every document evidencing or purporting to evidence any transaction in respect of which the veto has been exercised under this section.

74. The Governor may make Rules exempting leases for short terms, subject to such conditions as may be prescribed, from the obligations under section 71 to notify the Land Officer of the transaction and the particulars thereof.

- ...providing for the mode by which any land for agricultural purposes and boundaries adjusted and marked and maintained.
- (iv) For prescribing the form of and the condition and mode of application for licences and leases to be issued under this Ordinance.
  - (v) For providing for all proceedings, forms of leases, licences, and instruments, and for the execution of all other matters and things arising under and not inconsistent with this Ordinance and not herein expressly provided for.
  - (vi) For the care, management and protection in every manner of all unoccupied Crown lands.
  - (vii) Prescribing the fees and charges which shall be levied in respect of any matter or thing to be done by a registrar or in the registry, and generally for the better carrying out of the purposes of Part XI.
  - (viii) For prescribing or regulating any matter or thing in relation to any lease, licence, or agreement under the Crown Lands Ordinance, 1902, the East Africa Land Regulations, 1897, or anything done or to be done under the said Ordinance or Regulations which might lawfully have been prescribed or regulated by rules under the said Ordinance or Regulations.

(2) Any rules under this Ordinance may provide for their enforcement penalties not exceeding in any case seven hundred and fifty rupees.

(3) All rules under this Ordinance shall be signed by the Governor and when being published in the Gazette shall, subject to disallowance by His Majesty, be valid in law, as if the same were enacted in this Ordinance, and shall be judicially noticed and all such rules shall be laid before the Legislative Council within 14 days after the making thereof, if the Council be then sitting, and if the Council be not sitting, as soon as conveniently may be after the commencement of the next session of the Council.

ENCLOSURE No. 11 - Section 24 of Mining Ordinance, 1912.

PROSPECTING LICENCES.

21. A prospecting licence to be in force for one year from the date thereof shall be issued by the Commissioner of Mines or other prescribed Officer to any European of or over the age of 16, upon payment of the sum of Rs. 5 and such licence shall be in the form contained in Schedule C to this Ordinance.

A prospecting licence shall not be transferable.

ENCLOSURE No. 12 - Colonial Office to India Office.

No. 29395.

Sir,

Downing Street  
6th July 1920.

I am directed by Viscount Milner to acknowledge the receipt of your letter (J and P/2774) of the 14th June, and to transmit to you to be laid before the

Crown Lands Ordinance, 1915.  
Mining Ordinance, 1912.  
Amendment Ordinance, 1914.

Mr. Secretary Montagu, copies of the Crown Lands Ordinance, 1915, the Mining Ordinance, 1912, and the Mining Amendment Ordinance,

1915, of the East Africa Protectorate.

- and boundaries adjusted and marked and maintained.
- (ix) For prescribing the form of and the condition and mode of applying for licences and leases to be issued under this Ordinance.
  - (x) For providing for all proceedings, forms of leases, licences, and instruments, and for the execution of all other matters and things under and not inconsistent with this Ordinance and not herein provided for.
  - (xi) For the care, management and protection in every manner of all uncrowded lands.
  - (xii) Prescribing the fees and charges which shall be levied in respect of a matter or thing to be done by a registrar or in the registry, and for the better carrying out of the purposes of Part XI.
  - (xiii) For prescribing or regulating any matter or thing in relation to a lease, licence, or agreement under the Crown Lands Ordinance, the East Africa Land Regulations, 1897, or anything done or to be done under the said Ordinance or Regulations which might lawfully have been prescribed or regulated by rules under the said Ordinance or Regulations.

(2) Any rules under this Ordinance may provide for their enforcement and for penalties not exceeding in any case seven hundred and fifty rupees.

(3) All rules under this Ordinance shall be signed by the Governor and being published in the Gazette shall, subject to disallowance by His Majesty in Council, as if the same were enacted in this Ordinance, and shall be judicially enforceable and all such rules shall be laid before the Legislative Council within 14 days of the making thereof, if the Council be then sitting, and if the Council be not sitting, as soon as conveniently may be after the commencement of the next session of the Council.

ENCLOSURE No. 11 - Section 21 of Mining Ordinance, 1912.

PROSPECTING LICENCES.

21 A prospecting licence to be in force for one year from the date of issue shall be issued by the Commissioner of Mines or other prescribed Officer to any European of or over the age of 16, upon payment of the sum of Rs. 5, and the licence shall be in the form contained in Schedule C to this Ordinance.

A prospecting licence shall not be transferable.

ENCLOSURE No. 12 - Colonial Office to India Office.

No. 29395.

Downing Street  
6th July 1915

Sir,  
I am directed by Viscount Malmesbury to acknowledge the receipt of your letter (No. 2774) of the 14th June, and to transmit to you, to be laid before the Legislative Council, copies of the Mining Ordinance, 1915, the Mining Amendment Ordinance, 1915, and the Mining Ordinance, 1912, and the Mining Amendment Ordinance, 1912, of the East Africa Protectorate.

Crown Lands Ordinance, 1915  
Mining Ordinance, 1915  
Mining Amendment Ordinance, 1915

Mr. Secretary Montagu, copies of the  
Lands Ordinance, 1915, the Mining Or  
1912, and the Mining Amendment Or

20 Kaya

650

31297  
21 July

L. M. Butterby's  
Signature

Done

27 July 1921

DRAFT.

Dear Mr. Walter

Walton, Ky

L. M. Butterby's

MINUTE.

absent I write to say that

Your letter of the 22<sup>nd</sup> of June

concerning a amendment on the

question of the transfer of

land in the village of Kaya

has been rec'd.

Mr. Small 5.721

Mr. Butterby 5

Mr. Grande

Sir H. Lambert

Sir H. Reed

Sir G. Fildes

Col. Amery

Mr. Churchill

1921