

1923

Kenya

CO

32123/23

O. A.

DATE

20 June 1923

RELATION:-

Bunche
~~Butterfield~~
Butterfield
S. of S.
S. of S. Head
2/7/23

SUBJECT

deportation evidence

submit further evidence
in connection

Previous Paper

MINUTES

1. See L.A. O.M.C. 1902-25(1) for the power of deportation where previously resided with the Government. All that was then required was evidence on oath to the satisfaction of the Governor.

2. The new Ord. goes further in safeguarding the individual.
(a) the evidence on oath was to satisfy a Judge, who makes the rec. to the Gov.
(b) the individual in question must have an opportunity of making a statement in his own defence.

Subsequent Paper

205/206/24

Copied from...
is a copy of...
Reminder to Gov 143 com. 30 JAN 1924 1/24

3. The Bill as published
in Kenya Gazette 26/July
1922 read differently -
i.e. the person in
§ 1 "shall be given
an opportunity of
showing cause why
he was not be ordered
to give security or why
he was not be
deported, as the
case may be.

4. This Section of the
OIA is said to be
repealed in Nigerian
OIA 15 of 1916,
Schedule, § 18 (2)
(a) - a bill of
1917, Schedule, § 2.

Cases below marked.

to then really any retained
rights between the
"making of a statement"
with "showing cause"
etc.

3. The Bill as published in Kenya Gazette 26/July 1966 read differently - i.e. the person in § 2 shall be given an opportunity of showing cause why he was not heard before the court or why he was not heard before the court, as the case may be.

4. This section of the O.W. is said to be not used in Nigeria. O.W. 15 of 1966, 1st Schedule, § 18 (f) (a) - a b1 of 1967, Schedule, § 2.

Copies below marked.

be then really any technical diff. between the "making of" statement with showing cause why not heard.

With case involved the right to be represented by Counsel and right to be heard in evidence against a 312 being rebutting evidence?

and if so, do you consider it ~~very~~ essential to introduce the latter in Kenya?

subject to any objection you may have to make. I would be inclined to refer the latter to O.W. for comment with the next comment.

Yours truly,

Alfred

(S. 2)

Does a Judge consider a case under § 3 J.S. not regard the matter as a matter of evidence to the satisfaction of the court and merely a matter of procedure but an evidence rendered to the court? I cannot see how a Judge can refuse to hear evidence or refuse to hear evidence. The judicial duty is always to deal with a case as presented.

Justice is that that is our view.
ask him to ask the C.J. or a J.C. whether
to discuss. 2/3
25/6

(1) ack. receipt - say that a
copy of the letter will be sent
to the Adv. Kenya for comment.

(2) ref. on 16/4/53 sent to
Adv. Comm. copy of this letter
(with copy of the reply) -

obtain generally ^{in lines of}

1, 2, 3, 4 of very minute
work for ref. as to why

the bill as passed was
altered in this section -

say that S.J.S. is advised

that a judge in deciding
whether a person was

conducting himself so as to
be dangerous

is presumably require
not only evidence supporting
the charge, but also
any evidence which would
tend to disprove it -

2:3
+ require whether
the Judiciary in Kenya
accept this view -
further ask whether they
his legal advisers
consider it desirable
to amend the Ordinance
in the lines suggested
by the I.O.A. -
in particular ask for
views on the part of
representation by
Council.

(3) sent to I.O. for info of
ref. - 16/4/53 copy
of I.O.A. letter & C.C.
reply - The Dip. to
Kenya had not go. at
this stage at any rate,
to I.O.

2
as Dip. Baillie & his legal
Panel are at home, we
sh. of course consult
them; but it is not
desirable to change
the idea that the Govt.
of Kenya are then
to be empowered temporarily to

London. We can, if thought
necessary, collect their
views, when we have
only to reply: that for
the present, I do not
go elsewhere than to
the Act.

All

30.6.23

So proposed! Not deportation
without conviction is essentially
an arbitrary matter for which
elaborate legal procedure seems
to be inappropriate so long as
care is taken to ensure that a
man is not deported on ~~faked~~^{faked}
information. Counsel on the
Council, I think the judges
would be bound to show to
that a recommendation
under 3.

G.C.S. 30.6.23.

W. Ormby - for

as proposed?

H. J. P.
2/11/23

at once

W. J. P. 2.23

London. We can, if thought
necessary, collect their
views, when we have
only to reply: that for
the present, I do not
see elsewhere than in
the day.

all!

30.6.23

Supposed! Not deportation
without conviction is essentially
an arbitrary matter for which
elaborate legal procedure seems
to be inappropriate so long as
case is taken secure that a
man is not deported on ^{faked}~~faked~~
information. Counsel as
counsel, I think the judges
would habitually be slow to
make a recommendative
order 3.

G.L.S. 30.6.23.

Mr. Ormley - for

as proposed?

H. J. D.
2/7/23

at once

W. J. 2.7.23

London. We can, if thought
necessary, collect their
views, when we have
Ady's reply; but for
the present, I wd, not
go elsewhere than to
the Ady.

Ady
30.6.23

So proposed! But deportation
without conviction is essentially
an arbitrary matter for which
elaborate legal procedure seems
to be inappropriate so long as
case is later secure that a
man is not deported on ~~faked~~^{faked}
information. Counsel on no
counsel, I think the judges
would be rapidly be able to
make a recommendation
under 3.

G.C.S. 30.6.23.

Mr. Ormley - you

as proposed?

H. J. S.
2/10/23

at once

July 2. 23

London. We can, if thought
necessary, collect their
views, when we have
Oddy's reply; but for
the present, I wd, not
go elsewhere than to
the Oddy.

all
30.6.23

So proved! But deportation
without conviction is essentially
an arbitrary matter for which
elaborate legal proceedings seem
to be inappropriate so long as
a case is later secure that a
man is not deported on ~~faked~~^{faked}
information. Counsel on no
ground, I think the judges
would invariably be slow to
hesitate recommendation
under 3.

W. G. L. 30.6.23.

Mr. Ormley-Jones

as proposed?

H. J. R.
2/7/23

at once
W. G. L. 2.7.23

Executive Committee
THE AGA KHAN.

Deputy Chairman
Sir M. M. BHOGIA

sure

314

President: Rt. Hon. Lord Sargent of Benson, I.C.,

Indians Overseas Association,

Kaloph Estrand, London
London.
Cote
283

47-48 Danes Inn Close

32123

265 Strand London W.C.2

Re
R

27.11.55

9.11.

Secretary of the
London Office, S.W.1.

I am much obliged to you for your letter of 14.11.55
 in instant with reference to the matter of the
 1953, of which you were asked to advise the
 on the other side of the position set out in
 your letter under reply, but I am unable to do so
 representation.

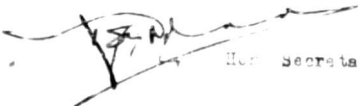
In my opinion the restriction of the liberty of the
 is not
 section.
 ordinance quoted by you. An individual who
 is not
 should not be denied the opportunity of
 7
 the right to traverse the ^{offence} ~~offence~~ and
 n, and
 ply of
 ing
 ion 2

the Ordinance requiring him to show cause why an order of report-
 should not be made against him. The proceedings, which may be
 of a summary character, may, as provided in the Ordinance, be heard
 in chambers, but if such procedure as is hereinbefore suggested be
 adopted it would help, my Committee have good reason to believe, to
 allay any suspicion that the powers under the Ordinance may be
 used for the improper removal from the Colony of a person against
 whose removal strong political or racial prejudice may exist. My Committee
 in fact, informed that at one stage in the discussion of the
 Ordinance in the Legislative Council, on section 3, important
 officials, representing the Administration, were favourably inclined
 to an amendment along the lines above recommended.

In the hope, therefore, that the Secretary of State will not yet
 regard his advice to His Majesty the King as to this Ordinance, I
 respectfully to request that the above representations and
 suggestions may be taken into the earnest consideration of the
 Secretary of State, with a view to the amendment of the Ordinance.
 I have the honour to be,

Sir,

Your obedient servant,



Her Secretary.

Committee
ALPHAN
ANAGREE

MSA

Hon. Secretary and Treasurer:
Hy S. L. POLAK.

Indians Overseas Association, 26

RECEIVED
14 JUL 1928
COL OFFICE

Established, London, 1828, Baner Inn, House,
Strand, London, W.C. 2.

July 13th 1928

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

*31 Parkman
attach PV
17.7.28*

I beg to acknowledge with thanks the receipt of your letter of the 12th instant with regard to the Kenya Deportation Finance No.2 of 1927 and note therefrom that a copy of the letter is being sent to the Acting Governor of Kenya for consideration.

I am, Sir,

Your obedient servant,

[Signature]
Hon. Secretary.

*17.7.28
done*

Downing Street,

sc

12 July, 1923.

DRAFT.

SECRETARY OF STATE

OFFICE.

Sir,

MINUTE.

With reference to the

letter from this Dept. (No.

16480/23) of the 14th of June,

I am etc. to transmit to you,

for the information of Viscount

Peel, the accompanying copies

of further correspondence with

the Indians Overseas Assoc.

on the subject of the Kenya

Deportation Cr. No. 12 of 1923.

- Mr. Seel *6/7.23*
- Mr. Parkinson *WJR*
- Mr. Davis.
- Mr. G. Grindle.
- Mr. H. Read.
- Mr. J. Masterton Smith.
- Mr. Ormsby-Gore.
- Mr. [unclear] of Devonshire.

IND. OVER. ASSOC. 26.6.23
12.7.23 (copy draft)

3 drafts

(Signed) M. J. READ

Downing Street,

12 July, 1923.

DRAFT.

SECRETARY

OVERSEAS ASSOC.

Sir,

MINUTE.

I am etc. to acknow-

ledge the receipt of your letter

of the 26th of June on the

subject of the Kenya Deportation

Ord. No.2 of 1923, and to

(1) A copy of the letter
~~inform you that a copy is being~~

sent to the Acting Gov. of

Kenya for consideration.

I am, etc.

(Signed) H. J. READ

*12 June 23.
15 July 23
Copy to 10.
Copy to 10*

Mr Seel

6/7.23

Mr Parkinson

[Handwritten initials]

Mr.

Mr Davis.

Sir G. Grindle.

Sir H. Read.

Sir J. Masterton Smith.

Mr. Ormsby-Gore.

Duke of Devonshire.

3 drafts

Downing Street

13 July, 1923.

C.	D.
R	11 JUL
G	V

Amnd. SK
~~6015~~
 24

DRAFT.

Sir,

MINUTE.

(16480/23)

With reference to my despatch, No. 796² of the 13th of June, ² *N 797*

I have etc. to transmit to you for your consideration the accompanying copies of correspondence with the Indians Overseas Association on the subject of the Deportation Ordinance, No. 2 of 1923.

el 6/7.23

WJS

2. With regard to the question

raised by the Association in their letter of the 26th June, as to the right of ^{a person arrested} ~~an individual~~ accused of an offence under Section 2 of the

Ordinance ~~to be represented by~~

~~Council~~ I have to observe that ^{Article} ~~Section~~ 25 (1) of

~~2.3.23 (100111)~~
~~3.23 (16400/23)~~ ✓
~~26.5.23~~
~~12.7.23 (draft herewith)~~

3 drafts

the East Africa Order in Council 1902 ✓

any person might be deported by the ^{order of} the

Gov. on evidence being given on oath

^{near} (satisfaction of the Gov. The

^{Ordinance} now enacted goes further in safe-

guarding the liberty of the individual,

as the evidence on oath has to satisfy

the Judge who makes the recommendation

to the Gov. and in addition ^{it is also provided specifically in section 3} the individual

~~no person~~ shall be recommended for deportation until he ^{has} been

given an opportunity of making a statement in his own defence.

^{note} I would observe, however, that the

Bill as published in the Official Gazette

of the 26th July, 1902, ^{made somewhat different} provided rather

^{provision} differently in this respect, it being required

in ^{Clause} Section 4 (2) ^{of the Bill} ~~that~~ a person charged

~~under the Bill~~ should be given an opportunity

of showing cause why he should not be ordered

to give security or why he should not be

deported as the case might be.

Section 3 of the Ord^{ce} as enacted is

stated in the ^{Comparative} Deportation Table

with Sir Robert Coryndon's despatch No. 213 of

the

(16488/23)

was conducting business to the detriment of the public order in East Africa.

the East Africa Order in Council 1902
any person might be deported by the

Gov. upon evidence being given on oath
to the satisfaction of the Gov. The

Ordinance now enacted goes further in safe-
guarding the liberty of the individual,
and the evidence on oath has to satisfy

the Judge who makes the recommendation
to the Gov. and in addition the individual
shall be given an opportunity of making a
statement in his own defence.

I would observe, however, that the

Bill as published in the Official Gazette
of the 26th July, 1922, provided rather

in this respect, it being required
in section 4 (2) that a person charged
under the bill should be given an opportunity

of showing cause why he should not be ordered
to give security or why he should not be

deported as the case may be.

Section 3 of the Ordinance
stated, in the Deportation Table

with Sir Robert Coryndon's despatch

order of
that such person was undertaking himself
to go to the dangerous
places outside the
Kenya.

made somewhat different
provided rather

Clause 4 of the Bill
in section 4 (2) that a person charged
Clause 3 (2) of the Ordinance (1)

(16400/23)

the 1st March, to be modelled on
certain Nigeria Ordinances. The

Nigeria Criminal Code Ord. 1916,
as amended by the Criminal Code

(Amendment) Ordinance 1917, provides
in Section 10 (3) a person

charged under the provisions of the
Ord. relating to deportation shall

be given an opportunity of showing
cause why he should not be ordered

to give security or why he should
not be deported as the case may be.

I shall be glad to be
informed of the reasons which led

to the amendment of Section 4 of the
Bill, as drafted, in this respect.

(3) I would observe in this connection

that I am advised that a Judge, in
considering a case under
Section 3 of the Ord.
concerning himself as to

commit or produce or excite a
breach of the peace, would presumably
require not only evidence

in support of the charge but also any evidence
which

to show that the
person in question
was and acting
himself in the
manner set forth
in Section 2,

the law, to be modelled on certain Nigeria Ordinances. *(I believe however)*

that the

Nigeria Criminal Code Ord. 1916, as amended by the Criminal Code

(Amendment) Ordinance 1917, provides

in section 18 that a person charged under the provisions of the

law relating to deportation shall

be given an opportunity of showing

cause why he should not be ordered

to give security or why he should

be deported or the case may be.

I should be glad to be

informed of the reasons which led

to the amendment of Section 4 of the

Bill, as drafted, in this respect.

(3)

~~I would observe in this connection~~

that I am advised that a Judge, in

~~considering a case under~~

~~Section 3 of the Ord.~~

~~complaints which require a~~

~~number of witnesses or exerts a~~

~~require not only evidence supporting~~

~~the charge but also any evidence which~~

*C. that the
Magis in Section
was conducting
himself in the
manner set forth
in Section 2*

the allegation

which could be tendered to disprove
I shall be glad to learn whether this
view is accepted by the Judiciary in
Kangra.

(6) I have to enquire further
whether your legal advisers
consider it desirable to send the
Deportation Bill on the lines suggested

of the Indian Overseas Association,
I have made observations in
particular to the question of the
by Counsel
of accused person

*more especially
in respect of
provision for the*

*when the case is under exam.
by a judge of the Supreme Court*

I have to c.