38179

1936

CO533/472

KENYA

38179

Kenya & Uganda Railways

Liability of Kenya Govt. for cost of construction of Uganda Railw[ay]

Previous

SEE 4040/33

Subsequent

1938

~~R. 297~~ 6/4/36

~~R. 309~~

~~[illegible]~~ 27/6

~~[illegible]~~

297

38179

R 297

Sir C. ~~Bottomley~~

C.1. Railways

1

I have prepared the attached memo about the K.U.R. £5½ million for Sir A. Pim, and, if you agree propose to send it to him. (I should have a copy made with all the references in for us to keep)

I think it will do. It makes it clear that the liability is admitted and that the Public Accts. Committee are well aware of the fact.

J.E.W. Flood
2.5.36

I agree
C.B.
2.5.36

Copy sent to Sir A. Pim. Better keep this somewhere - give it a file number - as a clue to the old corr^ce or some of it. papers can be let loose again

J.E.W.F.
5.5

N.B.

Gov. 6438/23.

In despatch Confidential of the 20 August, 1923 the Secretary of State stated:

"If in the course of time any claim is made by H.M.G. in respect of the cost of the construction of the Railway it will not be a claim on the Railway only and the retention of the zone land by the Colonial Govt. would be one of several factors in the settlement."

See minutes on 38061/36 Kenya.

2. GOV.KENYA..............CONF.112..............13.10.36.
Trs. copy of a memorandum prepared in the Treasury on subject of the repayment of the capital cost of the Uganda (now Kenya and Uganda) Railway and comments thereon enquiring whether, in connexion with certain outstanding claims of H.M.G.agst.E.A.Dependencies which fall to be revised in 1938, it is desired that the case for a revision shd.be presented in greater detail.

3. HIGH COMMR.FOR TRANSPORT....CONF.........29.10.36.
States that he entirely concurs in the terms of the memorandum drawn up by the Treasurer of the Colony in consultation with officers of the Kenya Admn.
(Forwarded in No.2)

When we approached the Treasury at the end of last year in regard to Sir Alan Pim's recommendation that Kenya might be allowed to borrow up to £100,000 annually to balance future budgets, it was considered impracticable to raise with the Treasury the question of the liability for the original cost of the Uganda Railway. The Governor was told in the Secretary of State's despatch No.972 of the 7th of December, "You will notice that the finance of the Kenya-Uganda Railway has not been discussed. As you know, the whole question of the Railway, including the liability for its original cost, is due for discussion in the year 1938, and it seemed to me to make matters more difficult, and complicate the issue, by attempting to secure a decision now."

As it is now half way towards 1938 I must send this paper on. I have carefully read through the memorandum enclosed in No.2 and Sir Alan Pim's statement on how the Railway came to be built and the origin of and liability for the £5½ million cost (paragraphs 395-406 of the Report). I can think of no way in which to improve these memoranda.

Since it has been admitted to the Treasury that "The liability for the repayment to H.M. Government of the sum originally expended on the Uganda Railway is definitely recognised", it seems that we shall have to make the best bargain possible. At the same time we must take up with the Treasury the outstanding question of the proper contribution to be made to the Railway Renewals Fund, viz:-

(a) a contribution on a proper life basis, the cost divided by the life of the wasting assets, which according to the figure accepted by the Treasury is 3·11% of the value of the wasting assets. The High Commr. for Transport considers that the scientific computation on the life basis should be 2.81%;

or

(b) a continuation of the contribution of 2½% of the capital cost of the wasting assets.

or

(c) a contribution of 2% of the capital cost of the wasting assets.

(c), of course, is what the High Commr. for Transport wants.

When we approach the Treasury we shall have to be in possession of the latest financial figures of the Railway and be prepared with a forecast for 1938 and the High Commr.'s proposals for further rate reductions. An advance copy of the General Manager's Report for 1936 arrived yesterday. The following balances at the 1st of January, 1937, will encourage the Treasury to reach repayment of at any rate a portion of the £5½ million loan:-

Renewals Fund.

Renewals Fund.

	£.	£.
Railway	1,669,269	
Harbours	193,499	
		1,862,768

Betterment Funds.

Railway	160,443	
Harbours	50,581	
		211,024

Reserve Accounts.

General	576,579	
Depreciation of Investments	15,737	
W. & O. Pensions Scheme	47,950	
		640,266

But it must be remembered that during 1937 a heavy spending programme on permanent way and rolling stock is being carried out. Something like £750,000 is being spent as follows:-

	£.
From Loan Funds	79,314
" Capital Account	225,287
" Betterment Funds	61,173
" Renewal Funds	382,441
" Revenue Account	1,257
" Net Revenue Account	4,918
	754,390

If the 1937 Estimates are realized, and there is every reason to believe that they will be, there will be a surplus on the year's working of £319,169. This the High Commr. wishes to allocate as follows:

Betterment

	£
Betterment Fund, Railway	286,582
Betterment Fund, Harbours	11,587
Pensions Reserve Account	16,000
Depreciation of Investments	5,000
	319,169

But the Treasury want to await the final outturn of the year before agreeing to this.

It occurs to me that it might be as well if we could provide statements showing, say, for each of the last 20 years,

(1) surplus or deficit;

(2) the amount provided for depreciation under

(a) Renewals

(b) Betterment.

(3) loan charges.

The General Manager's reports contain the information and the statements could, I think, be prepared here if it were thought worth while.

C.A. Grossmith
27/9/37

See on the '38 file.

A.J. Dawe
17.2.38

Air mail.

TRANSPORT.
KENYA-UGANDA.
CONFIDENTIAL.

OFFICE OF THE HIGH COMMISSIONER FOR TRANSPORT
GOVERNMENT HOUSE,
NAIROBI,
KENYA.

29th October, 1936.

Sir,

2

With reference to my Kenya despatch of the 13th October (No.112, Confidential) which enclosed a memorandum regarding the repayment of advances made for the construction of the Uganda Railway, I have the honour to assure you that in my capacity of High Commissioner for Transport I entirely concur in the terms of the memorandum, which was, in fact, drawn up by the Treasurer of the Colony in consultation with officers of this Administration.

I have the honour to be,

Sir,

Your most obedient, humble Servant,

HIGH COMMISSIONER.

THE RIGHT HONOURABLE
W. G. ORMSBY GORE, M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET, S.W.1.

6

KENYA.

No. 112

CONFIDENTIAL.

GOVERNMENT HOUSE,
NAIROBI,
KENYA

13 October, 1936.

Sir,

11 on 4040/33

With reference to a Confidential despatch of the 9th June, 1933, received from Sir Philip Cunliffe-Lister (now Viscount Swinton) regarding certain outstanding claims of His Majesty's Government against the East African Dependencies which fall due to be revised during 1938, I have the honour to forward, for your consideration, a copy of a memorandum prepared in the Treasury of this Colony on the subject of the repayment of the capital cost of the Uganda (now Kenya and Uganda) Railway.

Memorandum.

2. As you are aware, Sir Alan Pim ably sets out the historical facts of the case in paragraphs 395 to 401 of his Report, and in paragraphs 402 and 403 he recommends, for your favourable consideration, that this Colony be relieved of the liability to repay the capital cost of the Railway to His Majesty's Government and trusts that a generous policy will be adopted in regard to this liability.

3. Should you desire this Government to present its case for a remission of the claim of His Majesty's Government, in greater detail, you will no doubt address me further before the matter is reviewed in 1938. In the meantime, however, I feel that you should have before you this Government's case as represented from the point of view of the Treasurer of Kenya, and I trust that you

will/

THE RT. HON.
W. ORMSBY GORE, P.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET, LONDON, S.W.1.

will agree that in the accompanying memorandum there are set out strong arguments in favour of relinquishment of the claim.

I have the honour to be,

Sir,

Your most obedient, humble servant,

BRIGADIER-GENERAL.

GOVERNOR.

Capital Cost of the Kenya & Uganda Railway and Question of Repayment to the Imperial Treasury of the original grants of £5,502,592 made under the Uganda Railway Acts.

In the early nineties, the desirability of a railway from the Coast to Lake Victoria was urged from time to time by various individuals and bodies on diverse grounds which embraced generally:-

(a) the blow to the slave trade which would be dealt by the opening up of communications and the consequent establishment of administrative and trading posts;

(b) the desirability of securing the head waters of the Nile;

(c) the internal state of Uganda at that time;

(d) the state of affairs in the Sudan.

2. The question of opening up and developing the country along the route of the railway was invariably alluded to as a secondary and much less important argument.

3. The question was brought to a head by the Brussels Conference of 1890. Article 1 of the General Act of this Conference reads as follows:-

"The Powers declare that the most effective means for counteracting the Slave Trade in the interior of Africa are the following:-

1. Progressive organization of the administrative, judicial, religious and military services in the African territories placed under the sovereignty or protectorate of civilized nations.

2. The gradual establishment in the interior, by the responsible power in each territory, of strongly occupied stations, in such a way as to make protective or repressive action effectively felt in the territories devastated by man hunts.

3. The construction of roads, and in particular of railways, connecting the advanced stations with the coast, and permitting easy access to the inland waters, and to the upper reaches of streams and rivers which are broken by rapids and cataracts, so as to substitute economical and speedy means of transport for the present means of portage by men."

The General Act was constituted a Slave Trade Treaty in 1892 by Order-in-Council at a time when Great Britain had placed

Uganda

Uganda and what is now Kenya within her sphere of exclusive influence and was therefore bound to give effect to the Act.

4. The question of building a railway was raised in a letter from the Foreign Office to the Treasury dated the 20th December, 1890. (Africa No.2 1892 Cd.6560). Reference was made to the General Act of the Brussels Conference and to the obligation to apply the measures described in the First Article. It was pointed out that no ships, no coast police could stop the slave traffic. The necessity for roads and especially for railways was increased by the fact that the activity of the German Government in neighbouring territory would probably, if Great Britain were inactive, have the effect of turning the slave traders into the British sphere. It was observed that this would give rise to grave scandal. The Foreign Office stated its belief that only one mode of action would have practical effect, namely, the construction of a railway from Mombasa to Lake Victoria Nyanza: "On the belief that the work would be in a great measure national, Lord Salisbury is disposed to think that a case is made out for the grant of an annual subsidy."

5. A further letter from the Foreign Office to the Treasury dated the 9th February, 1891, pointed out that the alternative of establishing military posts would cost not less than the payment for a railway.

6. In reply, the Treasury, in a letter dated the 10th February, 1891, observed that the cost of maintaining the five cruisers at that time patrolling the East African Coast was between £108,000 and £110,000 per annum and stated that Their Lordships concurred generally with the proposal to build a railway.

7.

7. In his letter of the 1st November, 1893, (Africa No.2 (1894) Comd.7303) Sir Gerald Portal, after reviewing the factors of the whole Uganda question, wrote

"The whole problem of the development of East "and Central Africa, the prospect of the creation "of a profitable British trade, the suppression "of internecine religious wars, the security of "European travellers, the control of the lake "district and of the upper waters of the Nile, and, "above all, I may confidently add, the only hope "of really and definitely killing the Slave Trade "within a reasonable time - all resolve themselves "into the all-important and overshadowing question "of transport and communication. ....I would "remark that in Uganda there does exist already a "distinct demand for European commodities, more "especially for such articles as cotton cloths of "the best qualities, boots and articles of clothing. "The presumption, under existing circumstances, is "that, if the present system of transport is "continued, these articles will be supplied from "German sources and by the German route. To put a "stop to this system, to effect any real improvement "in prosperity or commerce, to efficiently check "the Slave Trade, and for ourselves to reap the "benefit of the material progress that may be made, "there is but one course open. The system of "transport by the "English road" already the "shortest in actual distance, must be made the "safest, cheapest and quickest. It would then "drain the commerce, not only of Uganda, Usoga and "Unyoro, but of all the other countries lying "round Lake Victoria. The only means of effectively "doing this is by making a railway."

8. In his Report on the Uganda Railway, 1899, (Africa No.8 1899 Cd.9331) Sir G.Molesworth stated that

"The subsidy for the Railway is almost justified "by the saving of the annual expenditure on the "suppression of slavery, even apart from the "development of the trade and civilisation of the "country"

The Uganda Railway Act was passed in 1896 and authorised the Treasury to issue out of the consolidated funds such sums not exceeding the whole the sum of £3,000,000 as may be required for defraying the costs of the construction of the Uganda Railway whether incurred before or after the passing of the Act. The amount was increased by the Uganda Railway Acts of 1900 and 1902 to an authorised total of £5,550,000.

Nowhere

Nowhere in these Acts is there anything to lead to the assumption that the money was ultimately to be repaid to the Treasury by the Colony or Protectorate or the Railway.

9. In the final Report of the Uganda Railway Committee, Africa No.11 (1904) C.2164 of 1904 it is stated that:-

> "It was deemed desirable by the Lords Commissioners "of His Majesty's Treasury that some provision "calculated to insure the ultimate refund of the "cost of the railway should be made".

The method adopted was the reservation of a zone of land along the entire length of the Railway and extending one mile on each side of the railway and a stipulation that all income derived from this zone either by rent or by sale should be credited to the capital cost of the line. This zone was acquired by Proclamation in May, 1897, and the area of land concerned was estimated to be 700,000 acres of which about one half was estimated to be revenue producing and about one-seventh as fit for European occupation.

10. The administration of this zone was in the hands of the Railway until 31st March, 1902, when it was made over to Her Majesty's Commissioner for the East African Protectorate and arrangements were made by which a separate account of the revenues and out-goings of these lands was to be kept, the balance being placed to the credit of the Railway capital account.

11. In 1906 as a result of representations made by the Colonial Office, the Treasury, in a letter dated the 29th November, 1906, stated that as the Railway had become a branch of the Protectorate Administration, the retention of the zone as a separate estate was anomalous and administratively inconvenient. So long therefore as the Protectorate was not self-supporting, the appropriation by the Imperial Government of the profits on the zone did not secure any real repayment

to

to the British Exchequer. In these circumstances, Their Lordships suggested that the question of repayment on account of the capital cost of the Railway should be deferred until the Protectorate could dispense with an Imperial grant-in-aid.

12. Subsequently the Treasury stipulated that the net revenue from the Railway should be paid into the Imperial Exchequer until the advances therefrom for the construction of the Railway had been repaid in full, and thereafter until otherwise determined. The Secretary of State for the Colonies admitted in 1921 that this stipulation had not been abrogated. The Treasury, in a letter dated the 16th April, 1923, stated that the words 'net revenue' were intended to refer to the surplus revenue of the Railway after all the ordinary expenditure including any amount required for the service of any loans for Railway development approved by Their Lordships, had been met.

13. There are two essential facts which require to be emphasised; firstly that the Uganda Railway Acts did not contemplate repayment by the Colony or the Railway of the original grants and secondly that the Imperial Treasury has, nevertheless, regarded them not as grants but as advances. It is, however, a fact that these sums have never been accounted for as advances and that the Consolidated Fund was definitely reimbursed by annual instalments, borne on the Colonial Office vote, between 1896 and 1926. Consequently, any repayment now would be credited by the Imperial Government to revenue and not to repayment of advances. Conversely, abandonment of the claim by the Imperial Treasury would not involve the writing-off of an asset in the shape of advances, with a consequent expenditure charge.

14.

14. The position at present is, therefore, that the £5,502,592 has been provided by the British taxpayer and, when all the circumstances of the case are taken into consideration, there emerge some very good reasons for leaving it at that.

15. As has been shown, the primary object of building the railway was to facilitate the suppression of the slave trade traffic. This was definitely an Imperial obligation. The alternative was the maintenance of a naval squadron on the coast costing from £108,000 to £110,000 per annum together with the establishment of a chain of military posts, the upkeep of which was estimated at £25,000 per annum. If the slave trade had been confined to the area served by the railway there might be some argument in favour of demanding repayment from the people who use the railway and who would, in that case, have been the sole beneficiaries. But the slave trade extended very much further afield. The following extract from a despatch written by Sir Edward Grigg, as High Commissioner for Transport, on the subject of Closer Union Proposals, expresses this argument clearly and forcibly:-

> "25. I do not see that the native population of Kenya and Uganda can be asked with justice to undertake repayment of this debt. The Railway was not built for their benefit. It was built as a great measure of Imperial policy to assist in suppressing the slave trade and to secure the head waters of the Nile. It achieved both these objects, the beneficiaries of which are multitudinous, spreading from the Lake basin and the East Coast of Africa, through the countries bordering its north and eastern shores, to the crowded population of Egypt and the Sudan. If repayment by peoples were in contemplation, it should in justice be spread among all those who profited by the building of the line; but ~~and~~ the allocation would be a matter for almost indefinite argument, and as I have shown, no repayment was in fact contemplated by the original Acts.
>
> There can be no doubt, on the other hand, that the debt is a proper charge against the Railway as a business organisation. The difficulty is that, if charged against the Railway, it must be paid by the

present

present users of the Railway at a critical time. The main burden would fall upon the native population of Uganda and Kenya and of the Tanganyika littoral on Lake Victoria, who between them certainly contribute 80 per cent of the total Railway freight. The rest would be carried by the European and Indian population of Kenya and by the peoples of the Coast. Neither as a measure of justice nor as a measure of policy can such a charge against the peoples be easily upheld.

26. A just solution could, however, be found in the principle already suggested with regard to Tanganyika - namely, that the original debt should be given as an endowment to the peoples of Kenya and Uganda, who would thus become shareholders in their Railway. In this way the two Railway systems could be united on equal terms. The uncertainty attending the original debt makes Railway finance so difficult and Railway expansion so completely impracticable that I trust this suggested solution may receive favourable consideration. As in the case of Tanganyika, it would be necessary to provide that no claim for interest or repayment should be made against the Railway by the Governments until the other existing Railway and Harbour debts had been liquidated".

16. It must not be forgotten that the building of the Railway, apart from discharging an Imperial obligation, benefited the British taxpayer in that the material was provided by Great Britain, employment was given to British engineers, contractors and artizans, etc. and that a new field of trade was opened with consequent profit to British exporters.

17. As has been shown above, the original plan formulated by the Treasury was that the capital cost of the railway should be reimbursed from the net receipts derived from a zone of land, two miles in width extending the whole length of the Railway. In 1906, the Treasury admitted that this principle was laid down "in the days when the future status of the Railway was still undetermined" and that "so long as the Protectorate is not self-supporting the appropriation by this country of the profits on the zone does not secure any real repayment to the British Exchequer." This

is

5

This is a most important admission, and the argument to be adduced from it is that it is no more logical for the Imperial Government to demand repayment of the original grants for the Railway than it would be to demand repayment of the Grants-in-Aid.

18. If it is admitted that the Imperial Government was financially liable for the administration of the Protectorate until such time as it became self-supporting, no logical argument can be seen for excluding the railway transport system rather than roads, buildings, or any other form of capital development.

19. To summarise, the arguments in favour of the relinquishment of this claim by the Imperial Treasury are:-

(a) the Railway was built to discharge an Imperial obligation, as an alternative to naval and military measures for the suppression of the Slave Trade;

(b) the consequent expansion of trade was of benefit to British merchants;

(c) the inhabitants of Kenya and the actual users of the Railway are far from being the only peoples who benefitted by the building of the Railway;

(d) apportionment of the cost between the various beneficiaries is not practicable;

(e) the Uganda Railway Acts made no provision for repayment by the Protectorate or by the Railway, and the amounts were not in fact accounted for as advances;

(f) if this liability had been taken into account in 1912, the Protectorate could not have been regarded as self-supporting, and the Grants-in-Aid would have had to continue, particularly as the Protectorate was at that time very far from being properly equipped with buildings and other capital works, necessitating heavy loan commitments after the war.

16

Sir Alan Pim has asked what are the various pledges and undertakings in regard to Kenya's liability for the £5½ million spent on the original construction of the Uganda Railway.

The earliest thing I can trace in the way of an undertaking was given to the House of Commons by Mr. Churchill when he was Under Secretary of State in 1907. On August the 6th of that year he informed the House of Commons that " the Railway will belong to the Imperial Government when the debt is paid off". The debt in this case meant the terminating annuities borne on the Colonial Services Vote and repayable to Consolidated Fund which had advanced the original capital.

(Hansard)

In 1921 the question of raising money for Kenya by means of loans etc., was very much under consideration and consultation with the Treasury. The question was mixed up with the War Debt liability but in a Treasury Memorandum in that year the statement occurs -

R/49009/21 Kenya

"It is recognised that the stipulation originally made in connexion with the Uganda Railway that the net revenue from the Railway should be paid into the Imperial Exchequer until the advance therefrom for the construction of the Railway had been repaid in full and thereafter until otherwise determined has not been abrogated. The Treasury agree, however, that for the present the Railway revenue should be continued to be ~~[illegible]~~ applied towards general expenses (including development) of the Colony without prejudice to any future decision which may be arrived

at

at as to the application of such revenue towards repayment of the cost of the Railway or otherwise."

CO/40600/24

In 1924 the Select Committee on Public Accounts, in their second report, after rehearsing the history of the original outlay, said that -

"The traffic receipts of the Railway are now more than sufficient to cover the working expenses and it appears that the surplus receipts have, to a considerable extent, to be used for the development of the Railway, the total capital cost of which, at 31st December, 1922, was estimated at some £7½ million. The Colony, so far, has made no contribution towards the original cost of construction and indeed it appears that it has not been in a position to do so .... your Committee would, however, like to be assured that it is formally recognised beyond the possibility of question, that the Colony is indebted to H.M.Government in respect of the sum originally expended on the Railway, which is obviously one of its most valuable assets."

Trea/210/25 auto.

The Treasury, in their official Minute on the report, included a letter to the Colonial Office, in which they said -

"As regards the loans made for the construction of the Uganda Railway, to

to which the Committee referred in paragraph 20 of the report, My Lords think that they need have no hesitation in giving the assurance asked for by the Committee that the indebtedness of the Colony to H.M.Government in respect of the expenditure on the Railway is fully recognised, though repayment has been deferred during further development of the Railway until 1934, and no interes[t] in respect of the expenditure will be recoverable. They would be glad of an assurance from the Secretary of State that this is the recognised position."

Trea/CO./18320/25 auto.

Eventually, in a letter dated the 30th of April, 1925, it was stated that -

"The liability for the repayment to H.M.Government of the sum originally expended on the Uganda Railway is definitely recognised."

Memo in C.O./40600/24 Kenya.

After the construction of the Railway the East African Protectorate, as it then was, existed on a grant-in-aid from H.M.Government but in 1906 it appeared clear that any idea of repayment concurrently with a grant-in-aid was out of the question. It was therefore agreed to drop the ~~matter~~ notion. In 1913 the Treasury agreed to the Protectorate being released from their financia[l] control but the question of the Railway capital cost was not taken up. It remained dormant until the discussions began with the Treasury in regard to, first of all the loan of £5 million raised in 1921, and later, the assisted loan voted by

Parliamen[t]

Parliament in 1924.

By that time it had become obvious that the system of absorbing the profits on Railway working into Kenya finances was not only unfair to Uganda, but also led to a neglect of the proper maintenance of the Line. It was therefore decided that the finances of the Railway must be separated from those of Kenya, that surplus earnings must be devoted in the first instance to debt charges on loans, then to provision of renewals and to the reduction of rates as far as possible.

In 1924 the Treasury again placed on record the fact that the net revenue of the Railway was due to the Exchequer, but they agreed, as has been stated above, that for the first ten years the net revenue might be applied to Railway purchases, and that no interest need be charged on the original advances. The whole question was to be reviewed in 1934, but in 1933 in view of the precarious financial situation of East African Territories, especially Kenya, the Treasury agreed to defer consideration till 1938.

In 1924 the Treasury's attention was drawn to the fact that, when the development schemes were completed, the whole transport system would have been constructed very largely at the expense of Kenya and Uganda. That is the case now, for out of a total capital of about £19 million only £5½ million represents the original advance. The intention of reminding the Treasury was not to repudiate the original liability, but to make certain that consideration of

(Not including £3½ million on the harbour)

of the question would not be prejudiced eventually. The concluding words of the Memorandum sent to the Treasury were -

> "........ the question..... should not be prejudiced in advance by the assumption that the entire revenue of a transport system, far more extensive than that originally supplied at Imperial cost should automatically be applied to payments of that cost, and that, as a result, further development of the system should for an indefinite time be rendered impossible."

It seems therefore abundantly clear that liability for this £5½ million has been acknowledged. Attention has been drawn to it by the Committee on Public Accounts and that body may be relied upon to raise the question again from time to time. The whole question has to be reconsidered in 1938 and it is possible that some agreement may be reached, but until then the liability must remain.

2.5.1936