

1937

33086

15

C0533/480

KENYA

38086

15

PETITIONS

BRITISH ISHAK COMMUNITY

Previous

16295/30

SEE { 2176/32
2311/34

Subsequent

1938

R. 297

27/5/37

R. 309

1/6

M. F. Flood

31/7

M. Flood

3-8

Sir C. Parkinson

6/8

M. Flood

Sir C. Parkinson

17/8

M. Flood

1/9

R. 297

9/9

297

PETITIONS.
Nominal.

1. GOV. KENYA.....244.....30.4.37. 2
Trs., with comments, petition from the British Ishak
Community protesting against their inclusion within the
definition of the term "native" in the Native Authority
Ordinance, 1937.

*Encl to
No 3 on
16295/30
Kenya*

The British Ishak community have for years past endeavoured to secure recognition of their claim to be regarded as Asiatics. In an earlier petition they stated that their forebears were emigrants of Aden and Southern Arabia who permeated through Egypt, Somaliland and the eastern countries of Africa.

The Ishak community has in fact been settled in E. Africa for generations, and in Kenya and Uganda they are recognised as Somalis. It has been agreed in the past that neither on ethnological nor any other grounds could the petitioners' claim to Asiatic status be substantiated, and on political grounds the recognition of the claim would be undesirable, resulting in considerable difficulties in the Protectorate of British Somaliland and with the Indian community in Kenya.

At their own request in 1919 the people of the Ishak community were allowed to pay non-native poll tax instead of native hut and poll tax and they still pay it, but they have continued to be subject to the "native" provisions of certain Ordinances including the Native Authority Ordinance. This is dealt with more fully in the memoranda flagged in 16295/30.

See 18010/35

In 1934, an Ordinance to amend and define in more precise terms the definition of the expression "native", was passed. This Ordinance (No. 55 of 1934) excluded Somalis from the term "native", but the Ordinance did not remove from Somalis the "native" provisions of certain legislation. See Section 8 of Ordinance No. 55 of 1934.

The Governor was asked to furnish the Secretary of State with early information of any

protests

protests that might be received on the enactment of that Ordinance. The Governor says that no protests were made.

In paragraph 2 of the present petition the petitioners say that for the last two decades they have paid non-native poll tax, and have for all intents and purposes been treated as Asiatic non-natives. This is not a true statement of the position, because notwithstanding the fact that they have paid non-native poll tax they have continued to be treated as natives for the purposes of certain Ordinances. In the current Non-Native Poll Tax Ordinance, Somalis are ~~definitely~~ excluded from the definition of "Asiatic non-native", and are classified as "other non-natives" with the result that from the 1st January 1937 they should pay a tax of Sh.20/-. If they are being asked to pay Sh.30/-, the amount due from Asiatic non-natives, it is a mistake.

The petitioners say that they are not subjected to the law of native registration and are not required to carry a kipande. This appears to be a matter of special arrangement because Section 8 of Ordinance No.55 of 1934 classifies Somalis with natives for the purpose of the Native Registration Ordinance.

The recent Native Authority Ordinance No.11 of 1937 to which the petitioners refer continued to make Somalis subject to the provisions of the Native Authority legislation.

The

The essence of the petition is the claim of the Ishak community to be treated as Asiatics for all purposes. As pointed out above, this aspect has been considered at length on earlier papers and it has been agreed that the claim cannot be recognised. The suggestion has been made here that, as a means of removing the grievances of this Somali community, they should be assessed to native instead of non-native poll tax. The suggestion was not thought to be practical politics.

In all the circumstances? reply that the Secretary of State is not prepared to intervene, at the same time inviting the Governor's observations with regard to the petitioners' statement that they are called upon to pay the non-native poll tax assessed to Asiatic non-natives.

C.A. Grommitt

11.6.37.

18/7/37

I agree that they have no case at all to be treated as "Asiatics". But ~~misses~~ the Insp. wd. have been more useful if it had attempted to rebut their claim that it is a hardship for them to be grouped with ~~Asiatics~~ or "natives" for the purposes of the ~~Ordinance~~ ^{Ordinances}. The ~~main~~ ^{principal} example that they cite in this connection is in para 10 of the memorial, in wh. they allege that they have suffered ~~from~~ ^{hardship} being made subject to the ~~provisions~~ ^{of} headmen. Now a certain number of

2/10/37

* They had of this one
around because they claim
to be Asiatics!

J

3/8/4/37

(30-730)

Somalis live in the Northern District Province & Chartered, but (v. para 3 of the memorial) some (? a majority) of the actual memorialists live in the Asiatic non-native Township of Eastleigh. Presumably, Somalis living there wd. not be subject to the authority of any native headman.

If that is the case then the only Somalis who could conceivably suffer hardship from such authority are the individuals who live in native areas, and prima facie there does seem to be some ground for further enquiry in their case. A "native", who is not wholly of native descent, can get himself exempted from the authority of a headman if he can prove

(i) ...

(ii) that he is not occupying land in accordance with native tenure or native customary law; and

(iii) that he is not living among the members of any African tribe or community in accordance with their customary mode of life.

Prima facie, these criteria wd. seem to be operative in the case of the Somalis - or at any rate they wd. & claim them to be; but in their case they cannot be invoked to exempt them from the application

§ 2(b) of

Ord. LV/34

of the Native Authority Ord. This arises from the fact that the Native Authority Ord. does not apply to Somalis because they are natives (even though they are excluded from the scope of natives in Ord. LV/34), but because it is specifically provided in the Native Authority Ord. that, in that Ord., a "native" shall include a Somali.

Surely if there is any justification for the provision of means to enable one class of "natives" to be emancipated from the operation of the Ord. on the grounds of their general manner of life, there is equally a justification in the case of other persons (the Somalis) on the same grounds.

As regards taxation, I agree with Mr. Grossmith.

The action I wd. propose therefore is as follows:-

Request the Gov. to inform the memorialists that the S. of S. has carefully considered their memorial, but that he is unable to entertain their petition to be accorded the

status of Asiatic British subjects;
 then write as proposed by the Government
 as regards taxation; when some
 attention, on the basis of this
 minute, to the apparent inequality
 whereby one class of ~~the~~ "natives"
 can obtain exemption from the
 application of the Native Authority
 Ordinance on grounds which would
 appear to apply to the "Somalis",
 whereas this is not open to the
 Somalis themselves.

J.P. Paskin
 31/7

It appears from the earlier corres-
 pondence that the Ishak community is really
 anxious to be classified as Asiatic. When
 they were talking about admission to hospitals
 in 1932, it appeared that their agitation, ^{which was} on
 purely political grounds, ^{due to the fact} was that the Asiatic
 community did not want them to be regarded as
 Asiatics, and that a separate ward in the
 hospital would be no use to them. They have
 paid poll tax as Asiatics, though it comes to
 10/- a head more, apparently in the hope that
 the fact of their doing so will give them some
 claim to be classified as Asiatics, which they
 are not.

since they wished to
 get - used "the Asiatic
 wards"

Generally

Generally speaking they have been excepted
 from the definition of 'native', except for certain
 Ordinances specified in the schedules to Ordinance
 No.55 of 1934, and they now object to the application
 to them of the Native Authority Ordinance. This, to
 my mind, has got no particular justification. As
 Somalis they cannot be placed in a privileged position
 everywhere they go, and they must obviously be subject
 to the authority of the headman, if there is one, of
 whatever place they happen to be living in. As
 regards their position in the Asiatic township, they
 would presumably be subject to the township authority,
 and there would be no native headman over it. If
 they are living among natives, then they can have no
 objection, other than political, to be under the
 authority of the properly appointed native headman
 of whatever community they are among.

Mr. Paskin's legal dilemma is, I think,
 sound so far as it goes, in that it would appear that
 a Somali cannot claim to be a non-native for the
 purposes of the Ordinance which classifies him as a
 native, and this, I think, is the deliberate intention
 since, as the Governor points out, the inclusion of
 Somalis among natives for the purposes of any particular
 Ordinance merely serves to lay down that the Ordinance
 applies to Somalis as well as to natives, and there
 would be no earthly point in making provision for them
 to obtain exemption.

As regards the poll tax, it appears that under
 the Ordinance as it stands at present, they would be
 classified as 'non-natives', not European, and not
 Asiatic, and would therefore pay a tax of 20/- as
 compared with 30/- payable by Asiatics and 40/- payable

by Europeans, but since they have deliberately chosen to pay the 30/- rate, there is no need to do more than suggest that under the law they need only pay the rate applicable to non-Asiatics and non-European non-natives. Draft herewith.

J. E. W. Flood
2.8.1937

Mr. Flood.

You and Mr. Paskin and I had some talk about this this morning. I do not feel altogether easy about it. These Ishak people have hitherto been regarded as Somalis, and it has been accepted in the past that ethnologically they cannot claim to be Asiatics. Even if we accept the view that they cannot be Asiatics, are we bound to regard them as Somalis?

According to their petition they are perfectly willing to produce the clearest evidence that they are not Somalis. In any event, I am not quite clear what would be the practical objections to according status to these people as Asiatics. I gather that the main point is, that they could not, even though they are now regarded as non-natives, be brought under the Native Authority Ordinance, and that this would mean that there would be no headman responsible for them. But does this seriously matter? So far as concerns the Ishak who live in Eastleigh presumably

presumably no question of a headman arises, and we should be left, therefore, with such Ishak as may be living in less ordered parts of Kenya. We do not seem to know how many of them there are, and generally our information is not very extensive. There is also Mr. Paskin's point as to what happens to those natives of mixed descent who obtain exemption from the Native Authority Ordinance on the ground that they are not living according to native custom: how does their position compare with that of the Ishak?

It may be desirable to begin with a despatch to Kenya in which we could ask a number of questions, but I understand that Sir A. Wade may be here soon and it might be well first to have a talk with him.

(Intld.) A.C.C.P.

7.8.37.

Sir G. Parkinson.

We discussed this memorial with Sir A. Wade, but unfortunately he was not in a position to give us any assistance. He did tell us that it would not be at all desirable to classify the Ishak as Asiatics, which they were not and which they had never been regarded as being. By classifying them as Somalis they are removed from the definition of "native" for most purposes. I think the despatch as drafted may as well go; with the para. of enquiry which I have added.

(Sd.) J.E.W. FLOOD.

24.8.37.

The Times extract on 18176/32 says there were about 3,000 of them in Kenya.

Mr. Flood.

I still think that it would be better to obtain

obtain fuller information before we reply to the petition. Sir A. Wade ~~is~~ ^{was} not very helpful or enlightening.

Perhaps the Department would put up a draft despatch in which we might take the following points:-

(1) We might ask whether, in order to satisfy the request made in paragraph 11 of the petition, there would be serious objections to a formal enquiry as there suggested: if so, what would be the objections.

(2) How many Ishak are there now in Kenya; where are they living, and how are they normally occupied.

(3) What would be the actual objections to removing them from the purview of the Native Authority Ordinance.

(4) Mr. Paskin's points referred to at X above.

oocal
25.8.37

H/S/S *stone*

2 L. Kenya 727 - *Stone. done. 6.9.37.*

III

G. O.

Mr. Flood. 26/8/37.

Mr. *weh*

Mr.

Sir H. Moore.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

X Perm. U.S. of S.

Parly. U.S. of S.

Secretary of State.

O. D.
R 27
D 18

26 f S and by (1) on 1938

Downing Street.

6. September
August, 1937.

Sir,

DRAFT.

KENYA.

NO. 424

GOVERNOR.

(1)

Copy to Kenyan 3/10/39.

I have etc., to acknowledge the receipt of your despatch No. 244 of the 30th of April in which you forwarded a petition from the Ishak community, protesting against their inclusion in the definition of the term "native" in Section 8 of the Native Authority Ordinance, 1937.

2. Before replying to the petition, I would wish to be informed whether there would be any serious objection to a formal enquiry into the status of the Ishak as suggested in paragraph 11 of the petition. If any such enquiry is conducted, the decision

FURTHER ACTION.

decision would have to be accepted as conclusive and final.

In general, I should be glad to have more information in respect of the Ishak community. The exact position of the Ishak community is not clear to me. There is no estimate of

their numbers; and it is nowhere stated what their normal occupation is or where they usually reside. In the petition they state that some of them live in the township known as 'Eastleigh' in Nairobi, but the only estimate of their numbers available is contained in a newspaper report in

(copy on 18176/32)

1932 which stated that there were about 3,000 of them in Kenya. I should be obliged if information could be supplied as to numbers, residence and normal occupation, and whether, either for those living in Eastleigh or for those living elsewhere, a headman is in fact appointed.

4. One of the most important points raised in the petition is the application of the Native Authority Ordinance to the Ishak community. I am not clear whether there would be any really serious objection to their being removed altogether from the purview of that Ordinance, and I should be glad to have

fuller

C.O.

- Mr.
- Mr.
- Mr.
- Sir H. Moore.
- Sir G. Tomlinson.
- Sir C. Bottomley.
- Sir J. Shuckburgh.
- Permi. U.S. of S.
- Parly. U.S. of S.
- Secretary of State.

DRAFT.

FURTHER ACTION.

fuller information as to this.

5. In this ~~last~~ connection I notice that, in accordance with the provisions of Ordinance No.55 of 1934, any person, partly of non-native descent, who can prove that he is so descended, that he does not occupy land in accordance with native tenure or native customary law, and that he is not living in accordance with the customary mode of life of an African tribe or community, may claim to be exempted from the definition of "native". It is not clear to me whether an Ishak could properly claim exemption on these grounds or, if so excepted, what would be his exact position.

6. I note that the memorialists state that they pay the poll tax applicable to Asiatic non-natives, and I assume that this is voluntary on their part since, under the terms of the Ordinance, they can only be required to pay the tax of 20/-

levied upon non-natives who are neither

European nor Asiatic.

I have etc.

(Signed) W. ORMSBY GORE.

KENYA.

No. 244



GOVERNMENT HOUSE,
NAIROBI,
KENYA.

30 April, 1937.

RECEIVED
MAY 1937

Sir,

With reference to Mr. Logan's despatch No. 194 of the 2nd April, forwarding authenticated copies of the Native Authority Ordinance, 1937, I have the honour to transmit, for your consideration, a petition from the Secretary of the British Ishak Community, protesting against the inclusion of the Ishak section of Somalis within the definition of the term "native" in Section 2 of the Ordinance.

2. A petition in which this Somali Community made a similar protest was forwarded by Sir Edward Grigg with his despatch No. 596 of the 15th September 1930, and in his despatch No. 1013 of the 23rd December 1930, Sir Philip Cunliffe-Lister (now Viscount Swinton), requested that the petitioners be informed that the question of the future status of the Somali communities in Kenya was at present receiving consideration; that in laying their petition before the King he was unable to advise His Majesty to take any action; and that His Majesty was not pleased to give any directions.

3. In due course the Interpretation (Definition of "Native") Ordinance, 1934, was enacted, with a view to meeting the objections of various communities, among whom were the Ishak, by making certain exclusions from the definition of "native". By Section 2 of this Ordinance, ...

THE RIGHT HONOURABLE

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

(2) on 3844/37

(3) on 16295/30

(6) on 16295/30

Refer to Kenya 3/14/37

(3) on 3844/35

Ordinance, Somalis were excluded from the definition of the term "native", but they remained subject to the provisions of certain laws, including the Native Authority Ordinance, Chapter 129, Laws of Kenya.

4. The definition of "native" contained in Section 2 of the Native Authority Ordinance, 1937, in effect reaffirms the application of the Ordinance to Somalis. It was necessary to make this provision in order to avoid an amendment to the Interpretation (Definition of "Native") Ordinance, 1934, which contains references to the Native Authority Ordinance, Chapter 129, Laws of Kenya, now repealed. The position in regard to the application of the Native Authority Ordinance to Somalis remains unchanged however, and I would observe that no protests from this community were received when the Interpretation (Definition of "Native") Ordinance, 1934, was enacted. I am unable to recommend therefore that the British Ishak Community should be excluded from the operation of the Native Authority Ordinance. In this connection I would draw your attention to the considerations set out in Sir Edward Grigg's despatch No. 596 of the 15th September 1930, to which reference is made above. Moreover, the inclusion of Somalis in the definition of "native" for the purposes of any particular Ordinance, does no more than indicate that the law contained in that particular enactment is applicable to Somalis as well as to natives.

(3) on 16295/2

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

P. Brooke-Popham

AIR CHIEF MARSHAL.

G O V E R N O R .

P.O.Box 802.
Nairobi, Kenya Colony, 13th April 1937.

To
His Majesty's Principal Secretary of State for the Colonies.
London.
through His Excellency The Governor and Commander-in-Chief,
Protectorate and Colony of Kenya,
Nairobi.

MEMORIAL

Sir,

The Memorial of the British Ishak Community domiciled in the Colony and Protectorate of Kenya, most humbly and respectfully sheweth :-

1. That since the last twenty years the Community has, consistently and persistently, but unfortunately, unsuccessfully, made representations to the Local and Imperial Governments to the effect that they are neither foreigners nor aliens, nor natives of this Colony but are either by reason of birth or domicile, British subjects of Asiatic origin.
2. They have, for the last two decades, paid Non-native Poll Tax and have for all intents and purposes been treated as Asiatic Non-Natives.
3. They have purchased land and immovable property in Nairobi and elsewhere in the Colony, and in Nairobi they live in the Asiatic Non-native township known as Eastleigh in permanent buildings belonging to themselves and built on free-hold or lease-hold plots with 99 years lease. None of them live in any locations set aside for natives in Nairobi, such as Pangani or Punwani.
4. They have in their possession authentic and historical proof of their origin as Asiatics. In fact every member of the British Ishak community usually carries on his person a table of his genealogy.
5. They are not subjected to the law of Native Registration certificate and are not required to carry such Registration certificate, popularly known as "kipande" locally,

but take out Pass-ports whenever they need to travel out of the Colony.

6. They respectfully submit that by no stretch of imagination or on actual facts of residence, domicile or otherwise can they be included in the category of "Natives" "foreigners" or "aliens"

7. They respectfully beg to submit that while the definition of a "Native" might appropriately be applied to a majority of the Somalis who have migrated into this Colony from Italian or French Somaliland or other territories, the British Ishak Community is unquestionably distinct from all such Somalis. They are no more Somalis by reason of their long residence in Aden or other parts of British Somaliland than Indians or Europeans could be called African because they have lived for generations in various parts of Africa.

Nevertheless they have all along been, for lack of careful investigations by the authorities concerned, conveniently included in the category of Somalis and treated variously as aliens, foreigner and natives of this Colony and all sorts of laws totally inapplicable to them, have been applied to them contrary to other laws of the Colony on the subject of their nationality.

8. By a recent Ordinance passed in the Legislative Council and intituled the Non Native Poll Tax Ordinance 1937, Somalis (including the British Ishak Community) have been excluded from the category ~~from~~ of Asiatic non-natives as well as the "Natives" but have been included in the category of "other non-natives" and are called upon by all administrative officers and Revenue collectors to pay a poll tax of Shillings 30/- although according to the Ordinance mentioned above they are, as "Other Non-natives" required to pay a tax of Shillings 20/- only. The British Ishak community do not object to or resent the payment of full tax of Shillings 30/- required of Asiatic Non-natives and have in fact voluntarily paid such tax in the past but they feel the gross sense of injustice under which

they are suffering by reason of being included in the definition and category of "Natives" with all the attendant restrictions under such definition in various Ordinances in force in this Colony.

9. The Native Authority Ordinance 1937 passed in the Legislative Council this year and assented to in the name of His Majesty by His Excellency The Acting Governor on the 24th March, includes a Somali in its definition (including of course the British Ishak Community) notwithstanding the definition of the "Native" to the contrary as contained in section 2 of the Interpretation (Definition of Native) Ordinance 1934.

10. The application of the Native Authority Ordinance involves several procedures such as the appointments of Headmen etc which are totally inapplicable and unsuitable to the British Ishak community and for which there is no more ~~or~~ justification for the Ishak community than there is for the European, Indian or Arab communities. The past experience of Headmen being arbitrarily inflicted on our community has led to everlasting feuds, resentment, intrigues and disturbance of the peace and many innocent citizens being involved in all sorts of troubles owing to the faked stories by such Headmen who concocted all sorts of tales to be carried to the Government Officers in order to justify their existence and to please such officers who had appointed them without in any manner consulting the community. They maintain that there is no need or justification for the appointment of such Headmen for the British Ishak community. They therefore respectfully beg to submit that the definition of the Native Authority Ordinance of 1937 be amended by the addition of the words "but shall not include members of the British Ishak Community" after the words "a Somali" in second paragraph of the said Ordinance.

11. ~~THEY~~ respectfully beg to submit, however, that the amendment of the Native Authority Ordinance as suggested above does not solve their difficulty completely. They beg to submit that they should be assigned their lawful status as British subjects,

subjects of Asiatic origin and if necessary they are prepared to submit their claim for the recognition of such status to a Board of Enquiry who might be appointed to investigate and scrutinise the whole question and to decide the matter once and for all.

12. In these days of international complications and further forthcoming confusions which are likely to ensue from an influx of foreign and alien Somalis migrating from Italian Somaliland and other territories, they (The British Ishak Community) are particularly anxious that their status should be clearly defined for all times. Should there be any doubt still left in the minds of the Government or other authorities concerned we should be directed to comply with any requirements such as certificates of Naturalisation etc although they submit that such a procedure would be totally un-necessary and unduly expensive for the community.

13. In conclusion the Community beg to submit that they are peaceful and law abiding citizens of the Colony carrying such pursuits as are calculated to be in the interests of progress and advancement of the Colony and hope that their humble submissions contained herein will be carefully considered and the wrongs which they have suffered for such long time will be redressed, and the anomalies in various ordinances as regards the definition of their nationality removed at an early date.

Ahdi Ahmed
20

Secretary.
for and on behalf of the British Ishak
Community