

38005

1938

CO 533/487

KENYA

~~11003~~

Land Commission
(General Legislation)

Petition from chief Koinange

CLOSED
UNTIL
1970

Previous

mf.

Subsequent

1939

R 98	0/1
In Parkin	12/1
M. Deaton	13
M. Dele	16
M. Dava	30.1

SIR G. PARKINSON 31/1/39

Lord Sufferin	✓
299	3/2
R. 98.	

of hand 1. Governor 224 Urgent & Conf. 22/1/38
Petition Encls petition from Chief Commissioner on subject
Nominal of Land Legislation Requests authority to reply
that Legislation cannot be amended

This petition is expressed in moderate language which carries a good deal of persuasion. It is out of the question, however, at our stage to mention detailed discussion on the new legislation, & there is no alternative in the circumstances to telling the petitioners that we do not intend to intervene. It would seem, however, that the petition deserves more than the brief reply in fact which I would suggest that the Govt should be asked to explain to the petitioners why it is not possible to do what they ask, to point out to them (p. 2 of the Draft) that they have already been given the opportunity to discuss the details of the legislation, & appear at that time to be satisfied; to explain, if it is correct, & no doubt it is) that the penalties referred to in § 5 (c) of the petition will be made precise in regulations issued under the ordinance; & to inform them with regard to the last para of the petition that their grievances can be placed before the Trust Board. If action on these lines is taken it would

Give no reason
to support the
view is only
with intention
???

seem. Great care will be a chance
of forestalling what might otherwise
develop into an unwelcome
obstructive attitude on the part of
the Kikuyu.

Chas. White
3/2

This petition was received by the
Governor, but not transmitted to the
Secretary of State, until after the Governor
had been authorised to assent to the two
"Bills" against which the Petition was directed.
For this reason I am inclined to think that
a reply ought to issue before the two
Ordinances (as they now are) are brought into
operation.

I have carefully read through the
representations in the petition, and the
Governor's comments, in relation to the
various clauses of the two Bills which are
criticised, and I find no reason whatever to
dissent from the Governor's views on any of
the .

It may, however, not be out of place
to say a few words about the petitioner's
objections, which are raised on the new
sub-section 56(1) of the Crown Lands
Ordinance. The areas of land in question
were ~~then~~ classified as "B 1" and "B 2" in
the Report of the Land Commission. The "B 1"
areas are those which have been permanently
added to the Native Reserves, in satisfaction
of the Natives' economic needs. In the

despatch

despatch of 1938 in which the first draft of the
Bill was sent home, the Governor argued that
there was no real justification for the
differentiation between the "B 1" lands and the
"A" lands, which were to be added to the Native
lands in satisfaction of their claims of rights,
and in the draft Ordinance which was sent
home at the same time, both the "A" lands and
the "B 1" lands were lumped together as "Native
Lands" to be vested in the Native Lands Trust.
This view was accepted in this Office, and the
Governor was authorised to proceed accordingly.

When, however, the proposed Bill was
before the Executive Council, the experienced
members strongly objected to this variation of
recommendations of the Morris Carter Commission, and
the Government of Kenya thereupon, by a resolution
vote face and declared itself as convinced that
the classification of the Land Commission should
be retained for the reasons now given in
paragraph 3(a) of this despatch, and again the views
of the Government of Kenya were accepted by the
Secretary of State.

The resolution which was then adopted to be
taken by the Secretary of State in this
matter was that the Government of Kenya
should submit a report to the Secretary of State
in 1947, and that the Secretary of State should
submit a report to the House of Commons in 1948.

J. J. Pascoe
Chas. White
13

This cannot
now be before
21st Feb.
W. J. P.

referred to
as 58 M in
the letter.
(1) 2

I think the Kibuya criticism of S. 58 N of the Crown
lands office is justified. This claim has been consi-
derably asked at some time since the Bill was
first drafted and that we asked this, I am afraid
if I had, should have commented on in the draft.

W. S. P.

16.1.39

I have now made some
modifications in the draft
after discussion with M.
Pashkin.

W. S. P.

30.1

Lara Duffin

I like the Rouanga and wish we
could give him a reply which
will satisfy him: but that,
I fear, is impossible. I agree
with the 1st despatch.

W. S. P.

31.1.39

I shall like to know more about this.
Let us discuss.

W. S. P.

1/2/39

Having discussed,

draft may issue. W. S. P. 2/2/39 above.

2 To Hanga Long 2 (1 annex).

3. 2. 39.

4

C. O.

Mr. Paskin 12/1

Mr. Freeston 13.

Mr. Dale 16/1

* Mr. A. J. Dawe. 30-1

Sir H. Moore.

Sir G. Tomlinson.

Sir J. Shuckburgh.

X Permt. U.S. of 24.1.29

X Parly. U.S. of S. F.S. 2/2/39.

Secretary of State.



DOWNING STREET

B. February 1939

Sir,

I have the honour to

acknowledge the receipt of your

confidential

(1) despatch No. 227 of the 22nd of

December, 1938, transmitting a petition

signed by Chief Koinange and certain

other Kikuyu on the subject of the

Land Legislation recently enacted.

2. On the points raised in paragraph 5 (a), (b), (c) and (d) and in paragraph 6 (a), (b) and (c) of the petition, I approve of a reply to the petitioners to the effect recommended in paragraph 4 of your despatch. I would request, however, that the explanation given may be as full and as precise as possible. It would seem desirable that the reply should be made before the legislation is brought into operation.

DRAFT.KENYA~~Conf.~~ Conf. (2).

GOVERNOR.

FURTHER ACTION.

C. O.

Mr.

Mr.

Mr.

Mr. A. J. Dawson

Sir H. Moore.

Sir G. Tomlinson.

Sir J. Shackburgh.

Perm. U.S. of S.

Privy U.S. of S.

Secretary of State.

DRAFT.

FURTHER ACTION

3. As regards paragraph 2 of the petition, I should have no objection to the petitioners being reminded of their meeting with the Chief Native Commissioner and the Commissioner of Lands and Settlement, and to their being informed that the object of the Government in arranging such meetings is to afford them opportunities to make their views known directly to the Government.

4. As regards paragraph 5 (e) of the petition, I am inclined to the view that the criticism of Section 58 N of the Crown Lands Ordinance is in some degree justified, as it seems to me, on reconsideration, that this provision is not only vague but too wide. For example, a lessee - even a lessee granted a lease under Section 58 D - who commits a breach of any covenant in his lease will be guilty of an offense. I would suggest, therefore, that your legal advisers should consider how far it is possible to make this section more precise and its scope more restricted, with a view to its being amended at

at the next convenient opportunity. The petitioners in the meantime should be informed that their remarks on this point are receiving sympathetic consideration.

The amendment of Section 20 of the Native Lands Trust Ordinance which is couched in similar, though narrower, terms might also be considered.

5. As regards paragraph 6 (d) of the petition, the petitioners should be informed that it is intended to provide natives whose rights are being extinguished with other land which will be a fair exchange for the land on which they have been living. In this connection, their attention should be drawn to the amendments which have been made in the Native Lands Trust Ordinance in order to ensure that right-holders will continue in the enjoyment of their rights in the lands on which they have been living, pending the provision of satisfactory

accommodation

accommodation elsewhere. They should also be informed that I have approved an arrangement whereby, if any such native has any objections to the land to which it is proposed to move him, he will have an opportunity to state his objections to the new Land Trust Board, by whom any representations that he may have to offer will be carefully considered before you come to a final decision in the matter.

I have, etc.

DONALD.



22. DECEMBER, 1938.

URGENT & CONFIDENTIAL.
 RECEIVED
 SELECTED
 COLONIAL OFFICE

Sir,

I have the honour to forward a petition received from Chief Koinange and certain other Kikuyu on behalf of the Kikuyu people on the subject of the Native Land Legislation passed during the recent Session of Legislative Council.

2. At the outset it should be observed that the Chief Native Commissioner and the Commissioner of Lands and Settlement took the opportunity, before the Bills were introduced into the Legislative Council, of meeting Chief Koinange and others in order to discuss with them the provisions of these measures. During the discussion practically all of the points raised in the present petition were brought forward and explained apparently to the satisfaction of the Kikuyu Chiefs. A memorandum summarising their objections and criticisms was also placed before the Select Committee on the Bills and was discussed in detail when the relevant clauses were under review.

3. I will now refer in detail to the points raised in the petition:-

Paragraph 5.Crown Lands Amendment Bill - Section 4.

(a) Subsection 56(1).

This part of the Bill deals with Native Reserves and Temporary Native Reserves which are being reserved for the use of the native tribes in satisfaction of their economic needs and not by reason of historical

right ...

THE RIGHT HONOURABLE
 MALCOLM MACDONALD, M.P.,
 SECRETARY OF STATE FOR THE COLONIES,
 DOWNING STREET,
 LONDON, S.W.1.

 2
 Read.

right. The granting of power to the Governor to alter the boundaries of such reserves when the economic need no longer exists is a necessary provision and is in accordance with the recommendation of the Land Commission, Sections 1452 - 1460 of the Report. As an additional safeguard the Governor is required before exercising his powers in this matter to consult the Trust Board and, if the Trust Board refuses to give its consent to the action proposed, to refer the matter to the Secretary of State.

(b) Subsection 58.C.(2).

This objection appears to be based on a misunderstanding. It is contemplated that grants of land in the Native Leasehold Areas will be made to individuals or groups who are outside the ordinary tribal organisation. There will, therefore, be no Local Native Council into whose funds revenue derived from rents can be paid. As the Leasehold Areas will be Crown Land Government will be responsible for any public services that may be required and revenue derived from rents will be a small off-set against such expenditure.

(c) Subsection 58D (1).

The provision for the granting of leases of land in Native Leasehold Areas is adequately safeguarded and can only be exercised if the land is not required for native use during the period of the proposed lease.

(d) Subsection 58 I (3).

It is in my opinion quite just that no provision should be made for compensation for land rights in the Native Reserves or Native Leasehold Areas when such land is excluded for public purposes. Natives occupying this land will be doing so only by the permission ...

permission of Government and not by reason of any pre-existent right. The provision of the Bill that compensation shall be payable for buildings and crops destroyed or damaged and for disturbance or other loss caused by the exclusion seems to me to be adequate. The provisions of Sections 80 - 82 of the Crown Lands Ordinance, applicable to non-native leaseholders, are somewhat parallel.

(e) Subsection 58 M (now N).

This is a usual penalty section and no reason is seen for any alteration.

Paragraph 6.
Native Lands Trust Bill.

(a) Section 44.

This section was deliberately framed to permit of the exercise of wide powers for the giving of instructions for dealing with the removal of common minerals and timber from the Native Lands. Few other tribes have such advanced ideas as the Kikuyu on the subject of individual land tenure. It is contemplated that where the minerals to be removed exist on land over which private rights exist the private rightholder would be allowed to reap the benefit. The arrangement made between him and the other party to the transaction will, however, require to be supervised in the interests of the native himself. Where the removal is to take place from land over which no private rights exist the financial benefit will go to the Local Native Council.

The question of native representation on the Land Trust Board has already been discussed and I propose to make no further reference at present.

Section 47 deals only with minor adjustments to boundary lines between one Native Land Unit and another and ...

and will invariably be the subject of agreement between the parties concerned.

Section 48 is a necessary provision to safeguard Government's rights to obtain any land that may be required for definite public purposes.

(b) Section 50(4).

This clause was framed in accordance with the recommendation in Section 1783 of the Land Commission Report and for the reasons set forth in Section 1782 should stand.

(c) Section 51(1).

The Select Committee on the Bills discussed at some length whether there should be any limitation imposed on the rank of officer to which the powers conferred by this Section should be given. It is extremely difficult to lay down any clearly defined principle but it was considered that the fact that only authorised persons may exercise the powers and then only for carrying into effect the provisions of the Ordinance would in practice be a sufficient limitation to prevent abuse.

(d) You are already aware of the steps that are being taken to provide adequate accommodation for any people whose land rights are to be extinguished.

4. I should be glad, therefore, to have your authority to inform the petitioners that, having considered their representations, your views coincide with those expressed in this despatch and that you are unable to approve of any alteration to the Ordinances on the lines suggested.

I have the honour to be,

Sir,

Your most obedient, humble servant,

R. B. Brooke-Polham

ATR CHIEF MARSHAL.
GOVERNOR.

18 NOV 1948

Kiambaa,
Kiambu,
(Nairobi Colony)
E.A.A.

27th November, 1948.

The Secretary of States for the Colonies,
through
The Chief Secretary to the Government of Kenya,
NAIROBI.

Respected Sir,

On behalf of the Kikuyu people we are here to refer to the legislation in the recent Session of the Legislative Council in regard to Land in this Colony. Our people desire to place these observations on the Bill to amend the Crown Lands Ordinance and the Ordinance relating to Native Land Rights, before you and that you will give consideration to our points of view and make an effort to meet the objections of the Kikuyu people to this legislation.

It is already known to your part of the Legislative Council there are no direct representatives of the African peoples. The result is that in these circumstances it is not possible for the local government and the other members of the Council to hear the views of the African peoples on any measures that are passed. The system of indirect representations has very serious disadvantages and is not conducive to the existence of any degree of mutuality and cordiality between the representatives and the people. We are hindered by the absence of this means of conveying our opinions and are compelled to resort to the method of representing our views in this manner through petitions.

Ever since the early days of his country the issue of land has been in the forefront, and the native peoples though restricted in the means at their disposal of expressing their opinions, and to a certain degree due to the lack of civic consciousness have been making spasmodically representations to the Government here and in England on the various allied problems with the increase of education and the beginning of political organization amongst us there has been a definite unanimity of

of/ opinion and singleness of purpose on all matters.

4. In this petition we do not propose to cover the ground that has been covered by the previous memoranda and the memoranda etc nor is it our intention to refer to the findings of the Kenya Land Enquiry Commission and everything herein stated is without prejudice to our fundamental objections to the land policy of the Government. We restrict ourselves to the provisions of the proposed legislation with a fervent prayer that you will withhold the promulgation of these ordinances with a view to affording the necessary modifications to meet the objections of the Kikuyu peoples who form a very important part of the indigenous population affected by this proposed legislation.

5. We beg leave to concern ourselves firstly with the provision of the bill to Amend the Crown Lands Ordinances:

(a) Section 4 sub-section 5b/1.

We consider that the power given under this section to the Governor to vary boundaries of native reserves and temporary reserves is undesirable as this will leave the way open to the existence of apprehensions in the minds of the people as to possible incursions on native lands. This provision is against the avowed and declared policy of the Government and the spirit of the land commission, i.e. the reaching of the finality in matters relating to lands. The existence of the provision of this Section still leaves the way open to alterations to the areas and boundaries of the native reserves.

(b) Section 5B/c/2

We beg to suggest that the rentals payable in respect of leases in the native lease-hold areas should be paid into the local Native Council Funds and not into general revenues of the Colonies. This objection is supported by the fact that it is a contribution solely made by the Africans and should be used for their purpose.

(c) Section 5B/d/1

The provisions of this bill which make possible for the Government to grant leases to non-natives in native lease-hold areas is again objectionable. whereas lands secured for white settlement

are left immune from any grants in favour of non-Europeans, it is highly undesirable that a similar principle is not extended to the native lands. The possibility of creating non-native vested interests in the native areas is in absolute negation of justice to the natives. In our humble opinion there is no justification whatsoever for reservation of lands for Europeans. Indeed, if any protection is desirable it should be in favour of weak and the illiterate and not vice versa. The present clause is an absolute contradiction of such principles. Our argument is applying both to original leases to non-natives in the native lease-hold areas and to transfers.

(d) Section 58/1/3.

It is unfair in our opinion to exclude compensation in respect of an exclusion of land within this section. We urge that compensation should be paid for any portion of land excluded from a native reserve ~~as~~ temporary reserve.

(e) Section 58m.

We consider that this penal section is too general in its phraseology and should be described with greater certitude, as it is difficult for the native minds to grasp the nature of general principles of the criminal jurisprudence of the British system. The concept of crime and criminal punishment being divergent in the indigent and the British system, we humbly suggest that the nature of offences should be made clear with greater exactness.

?58N
w
Uji

6. We now come to the provisions of the Ordinance making provisions for Native Lands in the Colony. Our general objections to this Ordinance are on the lines of our objections to the above Ordinance. To quote an illustrative instance we refer to Section 44.

(a) Where the Trust Board may grant licence to remove minerals.

We think that this matter should be left as between the individual owner and the desirous of working the mine. Our arguments are further strengthened by the fact that there is no provision for direct representations on the Native Land Trust Board and even in the case of local board we are of the opinion that the

members should be chosen by the native councils and not by the Provincial Commissioner. Our fundamental grievance in relation to the Land Trust Board is the absence of direct representation. The absence of this fact makes us almost chary of any questions of "utmost security". There are present more than enough members of the Africans possessing all the necessary qualifications to represent us in all kinds of Councils and Boards. With their access to the people they are far more capable of representing our points of view. On the same ground we are opposed to making any adjustments to boundaries of Native Lands and we repeat similar objections in relation to clauses 47 and 48.

(b) (Section 50 - Sub-section 4)

Again in our view the Trust Board and the Local Board should be competent to make representations in regard to the exercise of powers under this section. This section unduly narrows the powers of these Boards.

(c) In our view in reference to Section 51(1) powers to enter native lands and premises should be confined to Government officers of and above the rank of District Officers. As the section stands at present it is too wide and powers are not clearly defined.

(d) Finally, we urge, that no native rights should be extinguished in all the native lands, native reserves and the native lease-hold areas until all the natives are adequately accommodated. We recommend that land should be found for these people. We might also herein mention that the land outside the Kikuyu Land Unit which is proposed to be granted to the Kikuyus is of poorer agricultural value as compared to the land taken from the Kikuyus. We beg that more suitable areas be found for these people adjoining Kikuyu Lands.

Thanking you in anticipation,

we beg to remain,
Your Humble and Obedient Servants,

K. Mwangi
Senior Officer.

Philip Karanja James

George D. D. D.

Harry Mwangi

Francis Mwangi

For and on behalf of Kikuyu People.

PUBLIC RECORD OFFICE

END

TOTAL EXPOSURES →