

C. I.
LAND
RESOLUTION

1. Govt. Dep., Kenya — 2 of 12
Details Resolution, regarding proposed Highlands Ordinance, which was passed at East African Indian National Congress & held that it is understood that the population, which will sail for India on 27th January, will consist of No. 1 Doss & two others.

2. G. Engweli

Engweli is the author of H.M.S. report to propose to clear the Kenya Highlands to the natives.

No. 1. 2 copy to 20 of 35 on -/37.

No. 2. Reply as — 24
(cf. No. 6 on 38005/37 P.Q.)

J. J. Passin
28/1

Sir C. Bottomley
to see (i) afterwards.

A. Davis
28.1
(H.M.)

To G. Engweli (2 ansid) 1 2 34

4 to I.O. (w/c/i) B/Ma 8/2/38

C. C. BY MR CREECH JONES FOR DEPT. REPLY ON 7 2 38

(3000000000)

of such order should be reversed.

However, at this stage it is clearly impossible to go back on the decision that theaboronifams should be included in the ... or to give an assurance.

... for ...

...

99 Pease
19/3

H. J. Pease

Private Journal ... possibility that, when the ... that they themselves have a hand in the game, they the ... of the administration ... the less said about them ... the past. I think that there is much force in this, & that there is no reason to say ...

11.3.38

and
14.3.38

to 10 (5 and) - 23.3.38

No. 1000 (No. 506) A. 30 MAR 1938

8 10 P.V. 2113/38 - 175 38
To copy of a debate on a resolution moved in the Indian Council of State on question of revocation of the Highland Order for the ...

9 10 P.V. 2506/38 30 38
To copy of let from Govt of India enquiring whether the Order in Council has been ...

No. 8
Is sent for up only. It goes over old ground and ends up with a resolution by the Indian Council of State that the Viceroy take action to prevent the issue of the Highland Order in Council.

No. 9
Draft submitted.

Clotworthy

Copies (8) and (9) with encls. and of the proposed reply as in the dft. should go to the Gov. in P. L.F. Cont. ref. 17.

H. J. Pease

8th found. Resolution 2.6 means that the resolution is: I will be pleased ...

2.6.38

To L.O. (8+9 unad.) 9/6/38

11 Kenya Const. (7/8/10 unad.) 9/11-17.6.38.

11/15/38

see under draft 10

copy sent 29/1

11/15

12 L.O. P.J. 3165/38 13/7/38

To copy ltr from Govt of India dated 30/6/38 seeking authority for publication of note enclosed in No 37 on 19/5/38 file & send to the Secy.

I do not like this proposal at all, it seems certain that the publication of the two documents mentioned can have no other effect than ~~fanatic~~ the flames of political agitation in India in the matter of the exclusion of Indians from the Kenya Highlands. One can fully appreciate the advice of the Government of India to stand well with the Indian politicians on a subject such as this, on which the feelings of Indians are inclined to run so high, but it seems a pity that the Government of India cannot be induced to take a line better calculated to pour oil on these troubled waters. On re-reading the telegram at (1) it seems impossible to reach any

other

other conclusion than that it was carefully drafted with an eye to its possible future publication.

One unfortunate aspect of the publication of these particular documents is that a good deal of the 1935 memorandum is directed to the plea that the privileged position of Europeans in the Highlands should not be put on a statutory basis by an order-in-council. This point has, of course, been conceded, but far from expressing any appreciation of that fact, the telegram of the 19th of February, 1938, proceeds to argue that any order-in-council prescribing the boundaries of the Highlands and setting up an Advisory Board containing a European majority, is in itself objectionable from the Indian point of view.

The views of the Government of India on this point were fully considered by the Cabinet, when the decision was taken that it would be necessary to give effect to the recommendation of the Forster-Carter Commission that the order-in-council should, in fact, be made. It is a pity that the Government of India did not feel able to choose some other means of reconciling Indian public opinion as to the attitude of the Government of India on this matter, otherwise than by publishing the documents in such inflammatory ~~language as has been used in the documents~~ the 19th February.

A further point that arises is in the actual choice of documents which the Government of India wish to publish. There has been a good deal of intermediate correspondence as well as personal

personal

personal discussion between the various Secretaries of State for India and for the Colonies and in the Cabinet, and it seems to me that it would look a little ^{odd} ~~odd~~ to publish what are, so to speak, merely the "terminal" documents in this correspondence. The telegram of the 11th of February refers to a Colonial Office letter (No. 33 on -/37) and it seems to me that the publication of the telegram might well lead to a demand for the publication of the letter. That letter was not drafted with an eye as to its suitability for publication but, assuming the publication of the telegram, I should not see any very great objection to ~~its~~ publication ~~at all~~ except from the point of view that it contains references to the clauses in the draft Order-in-Council, and, of course, would itself be unintelligible without the telegram from the Government of India in No. 33 on /37, which again refers to previous correspondence on this subject.

On the whole I should be inclined to reply to the India Office that the Secretary of State views with concern the proposal of the Government of India to publish these two documents, the publication of which could hardly fail to have the undesirable result of fanning the flames of political controversy, and to express the hope that the Government of India may find it possible to find some other means

means of making it clear to public opinion in India that they have consistently opposed the policy of the reservation of the Kenya Highlands for European occupation, and also express the hope that, in whatever they say on this subject, the Government of India will do their best to allay rather than to ferment dissatisfaction with this policy.

J. P. Gammie
19.7.38

I agree with Mr. Paskin. We must clearly do our best to throw a jet of cold water over this idea. I suggest action as in the draft which speaks for itself.

J. P. Gammie
29.7.1938

Agree
seal
31.7.38
claim

13 J. P. G. (12 and) - 6 AUG 1938

14/30
DESTROYED UNDER STATUTE requests reply to No 12. (See No 13)

Patley. Mear.
around 9/8/38

U. na a p. 1. 6
11/15
Kenya Conf (2) (1/6.12.13) A/1-12

16. 20
25/1/38
Ref 13. No of letter addressed to Govt of India

17. Contract from the Daily Telegraph 2/1/38

16. Copy of the envelope to Kenya LF
confidential ref (15).

[The India office is being very
conciliatory over this.]

17. The Indian declaration of their readiness
to accept an amendment to the new
legislation whereby the Highlands would
be reserved for British Europeans
only was presumably pure bluff,
it being clear that it was not of
the question to exclude members of
European races other than British from
the Highlands. ? Public

Clarke White 2/1/38

Mr. Patten
to see both
on 1/1/38

Gen 9/1/38

26/1/38
at once

18. Kenya Comp (1/1/38) 2/9/38

DESTROYED UNDER STATUTE

30 P.O. 4181/38 21/9/38
enquiries as to probable date of publication
of Kenya Highlands Order in Council.

The new legislation has passed Leg
Co but has not yet been received
here. It will take some time
after its receipt before it can be

decided, that non-allowance shall
be signified, & that the Order in
Council shall be issued.

? Likely that the date is not
yet known; that it is unlikely to
be before the middle of October, &
that the 10 will be informed
when the date is fixed. And
note to B.U. This file when
the Dept arrives forwarding the
ordinances (30005/38 in the
file as subject had Dept will be
reinstated).

Clarke White 2/1/38

I submit sp. for comment. It
will be seen that I am
preparing to send to the 20.

a copy of the revised sp.
Highlands Order as sent to
the Gov. in No. 13 on 30005/38.
I think this ought to
be done in the 20. And a
copy of the earlier sp.

J.P. Patten
11/1/38

(b) 17

Clarke White 17/1/38

To Mr. Oppenheimer, 500 m/b and Co. 13 or 1800/38
17/1/38

1/1/38
1/1/38

Forward memo. on the Reservation of the Highlands of Kenya for Europeans, together with covering letter, received from the East African Indian National Congress

As the Gov. says, this memo. traverses well worn ground & (except for the protest about Jewish settlement scheme — as to wh. the Congress has submitted a longer memo., wh. is being sent separately) ~~raises~~ raises no points that have not already been covered, not only in debates in the Leg. Co. of Kenya, but also in conn. with the I.O. & the Govt. of India. I assume therefore that no detailed analysis of this protest is required.

It will I think be sufficient for the Gov. to be ~~requested~~ requested to inform the Congress that the S.G.F. has noted the views expressed in the memo.

I send copy copies to I.O. if

J.J. Cassin
4/21
A.M.
5.11

steed
5.11.38
alder

Kenya Conf. - 21 Amund 14 NOV 1938

DES. UNDER STATUTE
if required
under draft 22
action as at 21

To: I.O. (LTC 21, sec 22.) B/a. — 24/1/38
(Comm. C.)

24. 90. P 9579/38
Ref: the copy of telegram from Government of India and requests to know at early date whether S.G.F. has any objection to terms of proposed statement

The statement of 14/2/35 is flagged in 8800/35 P.G.

It would be preferable to insert the word "largely" after the first comma in the 2nd sentence of the proposed statement; to leave out the bit in brackets at the end. The I.D. has been conciliatory over this business, & I think we owe it to them not to make unnecessary but difficulties which are not absolutely necessary in the way of the Govt. of India's face-saving efforts.

* § 2 of rule to 24
see note

? Carus in Conn. of proposed statement.

Close White 2/1/38

to meet the convenience of the S.G.P.
will be bitterly resented in Kenya.

On the other hand the
postponement suggested is only for
^{three} two months (depending on the date of
a P.C. in April), & there is considerable
force in the argument that it wd.
be to the advantage of Kenya, as well
as of the S.G.P. if it was possible
for the P.C. to be issued at a time
when they wd. be less likely to
provoke violent controversy in India.

I have discussed with Mr. Denton
& we agree that we should consult
Kenya on - etc. The S.G.P. has
been deliberately made "Conf"
instead of "Secret" - order that the
Gov. may be free to consult his Ex. Co.

J.P. Parkin

17/1

2d
20 Kenya tel 18 Conf - cmo - 17.1.39

Mr. Paskin. 17/1.
Mr. Freesten 17/1.
Mr. A.J.Dave. 17.1. at once.

10 2
52
28

38005/3/38.

PARAPHRASE TELEGRAM from the Secretary of State for the Colonies to the Governor of Kenya.

(Sent 10 p.m., 17th January, 1939.)

Important.

No.18. Confidential.

Following telegram dated 11th January received from Government of India begins.

"From Government of India's point of view publication at the beginning of February of Order in Council would be most inopportune. Both Houses of the Indian Legislature will then be in session.

Considering the state of feeling on the subject in India; adjournment motions will certainly be moved and, in course of the discussion, fact of difference of opinion between the Government of India and His Majesty's Government could hardly be slurred over, without greatly weakening presentation of their case by the Government spokesman, while speeches of non-officials which are certain to be strongly worded, if past experience is any guide, will not only exacerbate Indian feeling but may not be without similar effect on European settlers in Kenya. Whenever White Paper may be issued some agitation is inevitable. The Colonial Office we feel sure would share our desire to mitigate it as much as possible. If publication were to take place when the Indian Legislature is not sitting chances of securing this object would be greater. We would therefore strongly urge postponement of publication till after the Budget Session of the Indian Legislature is over in the middle of April.

Kenya
6 a 3 for S3.

The Government of India earnestly trust that as publication has been delayed so long further delay of about two months will not be found impracticable." Ends.

This request is wholly unexpected and compliance with it might be taken as conflicting with assurance contained in paragraph 3 of my telegram 15th December No.231 Confidential.

/38.)

I shall be grateful for your views on the suggested postponement of which you are best judge of probable reactions in Kenya. I should not wish to derogate from assurance given in my telegram 15th December, but on the other hand I need not dwell on inadvisability of any action likely to fan flames of Indian controversy.

The Under Secretary of State for India,
Public and
Judicial
Department,
India Office,
London, S.W. 1.

and the following reference quoted:-
P. & J. 150/39.

Telephone:-
Mitchell 8140. I.O. Ext. No. _____
Telegrams:-
Retaxandum, London.



INDIA OFFICE,
WHITEHALL,
LONDON S.W. 1

16 January, 1939.



Sir,

25

With reference to your letter No. 38005/3/38 dated the 31st December 1938 regarding the proposed Order in Council defining the boundaries of the Kenya Highlands, I am directed by the Secretary of State for India to forward for the

To Government of India dated 6th January, 1939.) information of the
From Government of India dated 11th January, 1939.) Secretary of State for

the Colonies, copy of telegraphic correspondence with the Government of India.

Before coming to a decision on the question whether the Government of India should be authorised to make their statement in the form in which they propose, Lord Zetland would be glad to know whether it would be possible for the publication of the Order in Council to be postponed until the middle of April as requested by the Government of India, in order to avoid the embarrassment which would ensue from its publication while the Indian Legislature was in Session. In view of the fact that the issue of an Order in Council has now been under consideration for several years, Lord Zetland ventures to hope that Mr. MacDonald will see his way to accede to this request of the Government of India.

Copy to Kenya (10 Jan 1939)

I am, Sir,

Your obedient Servant,

A. D. [Signature]
A. D. [Signature]

*Copy to Kenya
No. 38005/3*

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

Cypher telegram from the Secretary of State to Government of India, Department of Education, Health & Lands, dated 6th January, 1939.

X.

48. Your telegram to. 1859, dated 10th December, Kenya Highlands. Subject to suggestions below no objection is seen to your making a statement on lines proposed. Could you send me the text of the proposed statement as soon as possible?

2. Colonial Office suggest insertion of word "largely" ^{before} words "as a result of" in line 5 of paragraph 2 of your telegram, and urge desirability of omitting last 2 words of telegram on same considerations put forward in last sentence of paragraph 1 of their letter of 6th August forwarded to you with our letter of 25th August i.e. J. 8731/38. I hope you will see your way to adopting both suggestions.

3. Copy of Colonial Office letter follows by next mail. Matter in Council will probably be made at beginning of February.

120 of 14
15
133.
1939

Allotted to P. & J. Department.

Copies Circulated

DECYPHER OF TELEGRAM.

From Government of India, Department of Education, Health and Lands, to Secretary of State for India.

Dated New Delhi 16.30 hours, 11th January, 1939.

Received 13.30 hours, 11th January, 1939.

IMPORTANT

53. First of Two Parts.

Department of Education, Health and Lands.

(24)

Your telegram No. 48, January 6th. Government of India agree to insertion of word "largely" before the words "as a result of". As regards suggestion of Colonial Office regarding desirability of omitting last 9 words of this department's telegram 1369, December 10th, they would emphasise great difficulty of meeting criticism in this country, if reservation made by them in 1923 (vide telegram 736 August 18th, 1923) is not reaffirmed now in some form. Wording now proposed has been intentionally moderated in order to satisfy Colonial Office as far as possible. While Government of India have every sympathy with desire of Colonial Office to consider reactions in Kenya, (as they) venture to claim similar consideration for their own obligations to opinion in India. They feel that from this point of view they must press for retention in statement of words in question. Text of proposed statement will be forwarded to you by next mail.

2. From the point of view of Government of India, publication of Order in Council at the beginning of February would be most inopportune. Both Houses of the Indian Legislature will then be in session.

30
15
Allotted to P. & J. Department.
Copies Circulated, 4

135.

DE CYPHER OF TELEGRAM.

From Government of India, Department of Education, Health and Lands, to Secretary of State for India.

Dated New Delhi, 16.31 hours, 11th January, 1939.

Received 13.45 hours, 11th January, 1939.

IMPORTANT.

55. Second and Last Part.

Considering the state of feeling in India on the subject, adjournment motions will certainly be moved and, in course of the discussion, fact of difference of opinion between His Majesty's Government and the Government of India could hardly be allured over by the Government spokesman without greatly weakening presentation of their case, while speeches of non-officials which, in past experience is any guide, are certain to be strongly worded, will not only exacerbate Indian feeling but may not be without similar effect on European settlers in Kenya. Some agitation is inevitable whenever White Paper may be issued. We feel sure that the Colonial Office would share our desire to mitigate it as much as possible. Chances of securing this object would be greater if publication were to take place when the Indian Legislature is not sitting. We would therefore strongly urge postponement of publication till the middle of April after the Budget Session of the Indian Legislature is over. As publication has been delayed so long the Government of India earnestly trust that further delay of about two months will not be found impracticable.

C. O.

38005/3/38.

30/12

Mr. Paskin.

23/11

Mr. Freeman

Mr. Dawe

23.12

J

Mr. A. J. Dawe.

Sir H. Moore.

Sir G Tomlinson.

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

Downing Street.

31st December, 1938.

157

DRAFT. conson.

Sir,

THE UNDER-SECRETARY OF STATE,
INDIA OFFICE.

I am etc. to acknowledge the

receipt of your letter of the 20th
December transmitting a copy of a
telegram from the Government of India
in regard to a statement which that
Government desires to make when the
proposed Order-in-Council defining the
boundaries of the Highlands of Kenya
has been issued.

(24)

*Copy to Kenya
R. a 38005/3*

Copy to Kenya

2. Mr. MacDonald fully

appreciates the reasons why the
Government of India wishes to make ^{clear} the
position on this issue clear, and he
sees no objection to the r making a
statement on the lines indicated in

FURTHER ACTION.

*LF requires
- see mgf.*

the

C. O.

- Mr.
- Mr.
- Mr.
- Mr. A. J. Dawson.
- Sir H. Moore.
- Sir G. Tomlinson.
- Sir J. Shuckburgh.
- Permt. U.S. of S.
- Parly. U.S. of S.
- Secretary of State.

(20)

DRAFT.

In this connection I am to request you to inform Lord Zetland that the Governor's observations, to which reference was made in the letter from this Department of the 19th October, have not necessitated any further alterations in the draft Orders. ^{however} Before the Orders are submitted to His Majesty in Council, they will be further examined in this Department and copies, in the form in which they are ~~now~~ submitted, will be transmitted to your Department.

I am, etc.

Signed, L. J. FALCONER

FURTHER ACTION.

the second paragraph of the telegram. I am, however, to suggest that the position would be more correctly represented if the word "largely" were inserted in line 5 of paragraph 2 of the telegram, before the words "as a result of.....". Mr. Macdonald also trusts that Lord Zetland will be willing to suggest to the Government of India that they should delete the words "and that further efforts must await some future opportunity" which appear at the end of the telegram, since a statement on these lines would appear to be open to the objection to which attention was drawn in the last sentence of paragraph 2 of the letter from this Department of the 6th August.

(13)

3. The present position in regard to this legislation is that the two local ^{King's Bills} Ordinances, which are complementary to the two proposed

Orders-in-Council relating respectively to the Highlands and to Native Lands in the Colony, have ^{passed by the Leg. Co. & it is assumed that the Gov. has assented to them. It is now been enacted. It is accordingly proposed to} submit the draft Orders at the next meeting of

[I think that is a reasonable assumption, though we have not heard that the Gov. has assented. See necessary.]

the Privy Council which, it is understood, is likely to be held at the beginning of February.

In

Any further communication on this subject should be addressed to—
The Under Secretary of State for India,
Public and Judicial Department,
India Office, London, S.W. 1.
and the following reference quoted:—

P. & J. 5798/38

Telephone:—
Whitehall 8140. I.O. Ext. No.

Telegrams:—
Retsaxandam, London.



INDIA OFFICE,

WHITEHALL,

LONDON, S.W. 1.

20 December, 1938.

21 DEC 1938

Sir,

16
With reference to the correspondence ending with the letter from this Office No. P. & J. 5731/38 dated the 25th August 1938, regarding the issue of an Order in Council on the subject of the Kenya highlands, I am directed by the Secretary of State for India to forward copy of a telegram from the Government of India. Lord Zetland would be glad to know at an early date whether Mr. MacDonald is prepared to concur in the view that there is no occasion to object to the terms of the Government of India's proposed statement.

I am, Sir,

Your obedient servant,

A. J. [Signature]

Secretary,
Public and Judicial Department.

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

Handwritten notes:
25
copy to Kenya 26
Copy sent to Kenya 86 on 38005/38

P & J

5798

1938

4835.

Allotted to P. & J. Department.Copies Circulated.D E C Y P H E R O F T E L E G R A M .

From Government of India, Department
of Education, Health and Lands,
to Secretary of State for India.

Dated Delhi, 21.16 hours,
10th December, 1938.

Received 17.15 hours, 10th December, 1938.

X

1859. Department of Education, Health and Lands.

Reference to India Office letter No. F. & J. 3731/1938, August 25th 1938. In defence to the views expressed by Secretary of State, Government of India do not propose to press request for publication of correspondence. It will be impossible, however, to avoid ad hoc statement of the efforts made by Government of India to safeguard Indian position. We propose, therefore, on publication of Order in Council, to make a statement on the lines set out in the following paragraph

2. After recapitulating relevant recommendations of the Carter Commission, we shall refer to statement by the Secretary of State for the Colonies on February 14th 1935, regarding definition of the term "privileged position" as applied to Europeans. We shall then point out that, as a result of the representations made by us, His Majesty's Government have decided that no definition of privileged position will be included in the Order in Council, but have made it clear that no change in administrative practice can be contemplated. After acknowledging the care with which His Majesty's Government have considered our representations, we shall point out that the decision will cause profound disappointment to Indian opinion particularly on account of the preference accorded to non-British European subjects. In conclusion, while expressing

sympathy/

HANSARD

Vol 297

2061

- 2 -
sympathy with Indian opinion, we shall state that Government
of India had done all that was constitutionally possible and
that further efforts must await some future opportunity.

KENYA
No. 195



21 21
GOVERNMENT HOUSE
NAIROBI
KENYA

CONFIDENTIAL.

21 OCTOBER, 1958.

RECEIVED

Sir,

I have the honour to refer to my Confidential despatch No.182 of the 7th October, on the subject of legislation required to give effect to the recommendations of the Kenya Land Commission and to forward a memorandum on "the Reservation of the Highlands of Kenya for Europeans", together with a covering letter, received from the East African Indian National Congress.

2. I do not propose to comment in detail upon the memorandum which traverses well worn ground and contains no points which should in any way affect decisions already reached on this subject.

I have the honour to be,

Sir,

Your most obedient, humble servant,

Amund. 22
copy enclosed
H.O. 23
R Brooker Poplan

AIR CHIEF MARSHAL.
GOVERNOR.

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

THE E. A. INDIAN NATIONAL CONGRESS

32

EXECUTIVE COMMITTEE'S OFFICE

DESAI MEMORIAL

P.O. BOX 186

NAIROBI

KENYA COLONY

TELEPHONE NO.

2738

8th October 1958.

The Secretary of State for the Colonies,
Whitehall, London.

Through The Hon'able,
The Chief Secretary,
Secretariat, Nairobi.

Sir,

I have been directed by the Executive Committee of the East African Indian National Congress to submit to you the memorandum prepared by it on the problem of the "Reservation of highlands of Kenya for Europeans". I have the honour to enclose herewith the memorandum in triplicate and to request you most respectfully to bring the views of the Indian Community of Kenya to the notice of His Majesty's Government before any steps are taken in connection with the proposed Orders-in-Council relating to 'Highlands' and the 'Highlands Board'.

I have the honour

to be

Your most obedient

servant



Honorary Secretary,
EAST AFRICAN INDIAN NATIONAL CONGRESS.

Memorandum

SUBMITTED BY

THE EXECUTIVE COMMITTEE

of the East African Indian National Congress

to the Secretary of State for the Colonies

**on the "Reservation of Highlands of Kenya
for Europeans."**

Nairobi

7th October 1938.

Memorandum

SUBMITTED BY

THE EXECUTIVE COMMITTEE

of the East African Indian National Congress

to the Secretary of State for the Colonies

on the "Reservation of Highlands of Kenya
for Europeans."

Indians have been agitating against the reservation of the Highlands of Kenya for Europeans for the last thirty years and will not rest till this wrong is righted and the Highlands are declared open to all British subjects irrespective of their colour or origin. It is natural that Indians everywhere should feel strongly on the subject. It is not natural that the British Government should perpetuate this injustice which is a violation of all pledges given to Indians in the past, is contrary to the professed assurance of maintaining racial equality in the Empire, is wrong in principle and will prove disastrous if persisted in.

A SOLEMN PLEDGE

2. It is a matter of history that Indians were expressly invited by the Colonial Government to come to the Protectorate of Kenya to help in building the Kenya and Uganda Railways. With their assistance and sacrifices the Railway was built and with the building of the Railway it became

possible to increase the sphere of British Imperialistic influence in Kenya and Uganda. The services of the Indians were further required for raising towns and cities where there were swamps and forests. The Indian banker, the Indian artisan, and the Indian soldier may well take pride in the fact that his efforts have made Kenya what it is today. When selfish and aggressive White settlers attempted in 1902 to deprive him of the fruits of his labour the Indian Association protested vigorously against it. An assurance was then given by the Deputy Commissioner of the East African Protectorate in a letter to the Indian Association dated 28th February 1902 stating "You are in error in supposing that the Government has any intention of drawing any distinction between Europeans and Indians as far as right of mining, settling and acquiring lands are concerned." The Indian Community in Kenya very rightly regards this as a solemn pledge among other similar declarations which no Government with the slightest regard for honour can go back upon.

ADMINISTRATIVE CONVENIENCE

3. Hardly had a few years passed since this assurance had been given when large areas of lands were granted to European settlers to the exclusion of Indians. To avoid a literal breach of the pledge Lord Elgin, the then Secretary of State for the Colonies wrote in his Despatch in 1908 "With regard to the grant of lands to Indians it is not consonant with the views of His Majesty's Government to impose legal restrictions on any particular section of the community but as a matter of administrative convenience grants should not be made to Indians in the uplands area." The uplands area was originally confined to land between Kiu to Fort Ternan but in course of years the area has been considerably extended. In 1928, a sub-committee of the Executive Council of Kenya consisting of the Commissioner of Lands, the Chief Native Commissioner and Mr. Conway Harvey gave the following definition of the area in which the administrative practice was being followed up to 1926: "The Highlands of Kenya comprise the administrative districts of Trans-Nzoia, Uasin Gishu, Nakuru, Naivasha, Laikipia, North Nyeri, Nairobi; and those parts of the administrative district of Kericho, Kiambu and Fort Hall which are not gazetted native reserves; that part of the Machakos District which is not gazetted native reserve and which lies to the west of Sultan Hamud Station and the Eastern boundaries of farm No. L. O. 1758; the Kaimosi farms and that part of Kiambu-Londiani district which lies east of the eastern boundaries of farms Nos. L. O. 5422, 1612, 3074 and 3075 and north of the northern boundaries of farms Nos. 3075, 1521, 3076 and 1620."

The Kenya Land Commission substantially accepted this definition as

according "best with the *de facto* situation." Thus the original boundary of Lord Elgin was most generously extended in course of 25 years. It must also be noted that the fiction of administrative convenience, devised to cloak an open breach of promise, was confined by Lord Elgin solely to initial grants of land by the Government. But in 1923 the White Paper ruled that this restriction was to apply to all transfers of land from Europeans to Indians and native Africans.

ADMINISTRATIVE PRACTICE.

4. In 1915, the Crown Land's Ordinance was passed by which every sale, transfer, mortgage, assignment, lease or sub-lease by a person of one race to another of different race could be vetoed by the Governor-in-Council.

Though ostensibly this law was applicable to all races, in effect it was applied to prevent transfers of land from Europeans to Indians in the Highlands. A vicious administrative practice was thus formed by which the Highlands which comprise some of the best and most fertile lands in Kenya became vested in Europeans exclusively.

KENYA LAND COMMISSION.

5. It must be confessed that though the pledge was violated in spirit and in effect, the British Government was not utterly insensitive to honour and declined to impose legal restrictions against Indians. The European settlers feared that a more honest or honourable Government may in future reverse the unjust and dishonourable administrative practice and they agitated most violently for a statutory demarcation of the Highlands, where they should have a privileged position for ever. With the assistance of Sir Edward Grigg they succeeded in bringing pressure on the Colonial office so as to get a Land Commission appointed in 1932. Not a single Indian was appointed a member of this Commission which was presided over by Sir Morris Carter C. B. E.

PRIVILEGED POSITION DEFINED.

6. The Chairman of the Commission asked the Government of Kenya for a definition of the term "privileged position." The Governor with the authority of the Secretary of the State for the Colonies informed the Commission that the term "privileged position" meant:

1. "The right of Europeans to acquire by grant or transfer agricultural lands in such area or to occupy land therein.

62 That no person other than a European shall be entitled to acquire by grant or transfer agricultural land in such area or to occupy land therein.

The Secretary of the State for the Colonies, in answer to numerous questions in the House of Commons, stated that this definition merely embodied the past administrative practice. That is absolutely untrue. The past practice was that all transfers from Europeans to Indians could be, and in most cases were, vetoed by the Governor. But some transfers were permitted. This exposition revealed clearly that the Crown Lands Ordinance was really a racial measure and was meant to apply only to cases of transfer from Europeans to Indians. There was great indignation among Indians in Kenya as well as India at this very surreptitious and cunning way of enlarging the past practice, which is bad enough as it is. Since the Secretaries of State for the Colonies have stated again and again that there is no intention of going beyond the past practice, it is essential that there should be an unambiguous declaration that the definition given to the Land Commission was not correct. It is true that on account of the intense indignation in India this definition does not even find a place anywhere in the Land Commission Report nor has it been repeated in any official document. It may therefore be taken for granted that it is retracted. But as this definition has mischievous possibilities, it should be expressly repudiated and not merely impliedly abandoned.

ORDER-IN-COUNCIL DEFINING HIGHLANDS

7. Nothing impartial was expected of the commission in view of its composition and it gave all that the Europeans settlers asked for, by defining the boundaries of the European Highlands most magnanimously. Going beyond its terms of reference, it also recommended that their definition should be implemented in an Order-in-Council. The protest against this recommendation was so overwhelming in Kenya and India that it is presumed that the Colonial Office refrained from taking any steps on the Report for many years. But the Lands Ordinance is now amended so as to incorporate the definition recommended by the Land Commission Report and an order-in-council will shortly be passed defining the Highlands as incorporated in the seventh schedule to the Crown Lands Ordinance. These measures will give legal seal to a practice which is unjust and based on breach of pledges by the Government. Indians have been hoping that this administrative practice would gradually be abolished but the proposed Order-in-Council would cripple all such hopes and create an unrest in Kenya and India which will end when the obnoxious practice is abolished root and branch. The fear that the Crown Lands Ordinance will for ever close the question is justified by the alarming indication in the memorandum issued by the Government of Kenya that these

Order-in-Council and Bills will be introduced in order to achieve finality in regard to Kenya land question, and so far as might be feasible, to preserve against material alteration the settlement "recommended" by the Land Commission.

HIGHLANDS BOARD.

8. The Carter Land Commission recommended not only an order in Council defining the Highlands but also the appointment of a Highlands Board to administer the Highlands. The Secretary of State for the Colonies, Sir Ormsby-Gore repeatedly assured the House of Commons and the public of India that the proposed Order in Council will not in any way change the present administrative practice but will merely define the boundaries of the Highlands. Indians in India and Kenya were therefore under the impression that the Highlands Board recommended by the Commission will not be appointed. It is now announced by the Government of Kenya in a memorandum issued by them and in the Legislative Council that such a Board will be composed of 7 persons out of whom four shall be chosen by the European elected members of the Legislative Council. The appointment of such a Board is bound to be a change for the worse in the present administrative practice. In the past the Governor in Council could veto the transfer of land from Europeans to Indians. The Governor as well as the Government officials who formed the majority at the Council, however sympathetic they may be to the European Settlers were at least in theory above party politics and were not expected to be personally interested in the Highlands as the European Settlers are. The power of veto could therefore be exercised with a semblance of impartiality. But in the proposed Board there will be a majority of European elected members who are already determined to press for an absolute reservation of the Highlands to the Europeans. The appointment of the Board will therefore virtually reserve the Highlands absolutely for the Europeans and the power of veto will cease to be discretionary and will be an absolute refusal to allow a single transfer to Indians. The appointment of the Board is therefore a departure from the past practice and is a guarantee to the Europeans that the Highlands will for ever belong to them. Indians are therefore opposed to the appointment of the Highlands Board. If such a Board is appointed then the least that can be expected of any Government with the slightest regard for justice and fairplay is to provide by law for the appointment of an equal number of elected Indians and Europeans on the Highlands Board. Indians feel strongly on the question of the appointment of the Board and the Indian elected members in the Legislative Council have been unanimous in expressing their opposition to such a Board.

LAND TRUSTS BOARD

9. In compliance with the recommendations of the Land Commission an Order in Council defining the native reserves will also be promulgated. A Bill is already passed in the Council implementing the recommendations of the Commission. A Native Land Trusts Board will also be constituted. This Board will consist of 5 members. One European elected member will be chosen by the European elected members. There will be the two members representing the interests of the African community in the Council. These are expected to be Europeans for a long time. One member will be nominated by the Governor. The Chief Native Commissioner will preside. It is most unjust and humiliating that there is no provision for the appointment of a single Indian member though there are more than double the number of Indians than Europeans in the Colony. Indians have been given licences and leases in the native reserves and a large number of Indian traders have established themselves in those reserves for almost quarter of a century, and have invested a large amount of capital in the native reserves which will be jeopardized by reason of the insecurity of tenure. It is therefore grossly unfair that there should be no express mention of an Indian on the Trusts Board to protect the interests of the Indian Traders. This significant omission creates the impression, and is calculated to create the impression, that Indian interests do not count at all in Kenya.

MUHORONI

10. The Land Commission's recommendation with regard to Farms 1608, 1609, 1618 and 1586 and other Farms belonging to Indians in the Muhoroni area is very unjust and highly objectionable. There were some farms in this area which were alienated to Indians so far back as 1906. The Commissioners agree that this area "cannot with any certitude be called favourable for settlement for Europeans", yet they recommend that if any plot in this area has been bought by a European, "it should thereafter be included in the European Highlands." From this it is obvious that the Europeans are given a privileged position in the Highlands not because of climatic conditions nor because they have any vested interests in the Highlands. If this recommendation is carried out, lands which have been in possession of Indians for a quarter of a century will in future be exclusively appropriated, by Europeans even though it is admittedly unsuitable for them.

FAILURE OF EUROPEAN SETTLERS

11. The area of the European Highlands is at present about 16,500 square miles. Out of these about 10,350 square miles have been alienated to Europeans. There are about 2,000 European Settlers on the lands in question. Many of the owners of the land are absentee landlords. In spite of the enormous propaganda

for attracting European settlers, and the concessions given to them at the expense of the native and Indian tax-payers, the number of settlers is not increasing to any great extent. It is therefore natural that only about 10% of the alienated lands are actually under cultivation. If the lands were thrown open to the native and Indian farmers, the cultivation would increase and add to the general revenue of the country as well as promote its economic prosperity. There is no doubt that European settlement at present is economically a complete failure. Every concession by way of reduced custom duty on agricultural implements, higher duty on products in the Highlands, special reduced railway freight for transport of the products for export, regular government help through Land Banks and remission of moneys borrowed, is given to the European farmers. They are treated as the spoilt children of Kenya and the other races and communities have to suffer for the extreme indulgence granted to European Settlers. Yet the results are most discouraging.

MENACE OF ALIEN SETTLEMENT.

12. But this failure of the European settlers is not an unmixt evil for the other races. There is hope that so long as the lands are uncultivated and the number of European Settlers does not increase by leaps and bounds, the British Government may abandon its present policy of excluding natives and Indians from developing the lands that the English Settlers are unable to cultivate. The present administrative practice may therefore be abolished in the not distant future if things remain as they are. But the European settlers are aware of this threat to their present unjust usurpation and are supporting the idea of immigrating a large number of Jewish refugees and giving them concessions and grants to develop the vast and fertile lands that lie fallow at present. This policy of flooding the Highlands with aliens who have never contributed to the building up of the Colony nor faced the hardships of pioneering work done by Indians is most improper. Once the Jews acquire interests in the Highlands the natives and Indians are doomed to be left out of the rich Highlands for ever unless they resort to violence as the Arabs are forced to do in Palestine. This is therefore the opportune moment to reconsider the present administrative practice and to leave the Highlands open to all races. If any exclusion is necessary, it should be against those who are not British subjects. By refusing to abolish the present practice at this time, the British Government will be sowing seeds of disorder, unrest and unthinkable bitterness and misery in this fair country of Kenya.

PROTECTING THE STRONG.

13. It is an elementary principle of jurisprudence that in the interest of public policy there should be no fetter or restriction on the alienation of land. If the law tolerates any restriction on the right of free transfer of land, it is to protect the weak or illiterate against the strong and clever. The present administrative practice in Kenya is a negation of this principle of justice and commonsense. The Europeans are the strongest and the most

educated race in Kenya. Lands have been already granted to them for the asking. Yet the present practice is meant to give them protection against Indians and natives. If the Europeans were justified in reserving the Highlands for themselves, why should they need legal restriction on their right to transfer? All they have got to do is to refuse to transfer the land to Indians and natives. No law can compel them to do otherwise. It is precisely because their policy is unsound and they themselves distrust it, that they require a legal bar against the weaker and less literate races. On the contrary, Indians have supported the reservation of specified areas in the uplands and lowlands occupied by natives on the ground that they are weak and illiterate and need such protection.

DISCRIMINATION AGAINST BRITISH SUBJECTS.

14. The continuance of this vicious administrative practice threatens the basis of the British Empire. It discriminates against the British Indians who are British subjects in favour of aliens who owe no allegiance to the British Empire. It is an open insult to the self-respect of India and supplies a legitimate grievance against the British Empire. If preference be given to aliens as against Indians in the Empire there is no justification for retaining in the British Empire or for withholding preference to Europeans as against British people in India itself. Congress leaders in India have made it amply clear that unless the humiliating restrictions against Indians within the British Empire are removed India will not help with men or money when England fights for her life and liberty in the next European war. Indians cannot be expected to fight for an Empire in which they are treated worse than the very people who are out to destroy the British Empire.

MYTH OF CLIMATIC JUSTIFICATION.

15. The official reason offered for this extraordinary practice is that the Highlands alone being cooler are suitable for Europeans. But this is not merely selfish and aggressive but also untrue. It has already been pointed out that the Muhoroni area is admittedly unsuitable to Europeans and yet it is recommended to be exclusively for Europeans if once alienated to them. Again there are many European plantations in the lowlands, wherever the lands are fertile and convenient. Whenever it is profitable the Europeans have not scrupled to drive out the established natives from their exclusive reserves. When gold mines were discovered in Kakamega, admittedly a native reserve, the native residents were by law expelled from the place which has now innumerable European Colonists there. The Highlands have been appropriated by the Europeans because they are the richest and the most fertile lands in Kenya. To drive the natives of these lands and to bring a large number of aliens and outsiders to exploit these lands is an act of aggression more censurable than that of Japan over China or Germany over Austria. It is far more condemnable because the occupation of the Highlands will be exclusive and by aliens.

THE NEED OF HIGHLANDS FOR INDIANS.

16. Indians in Kenya demand the discontinuance of the present administrative practice not only as a matter of principle, but because as the years pass, they will require fertile lands for their very existence. A large number of Indians are at present artisans and skilled workers. But a large number of native Africans, trained by Indians as well as the Government to do skilled work are increasingly displacing these Indian artisans. This is as it should be. A great number of Indians are employed in the subordinate Government services and also as clerks by farmers and commercial firms. But there is a large number of local European youths who are fast replacing the Indians who will be gradually eliminated from the services. Educated Native Africans will also be rightly given preference over Indians. The Government of Kenya has passed and continues to pass many Ordinances like the Transport Ordinance and the Marketing Bills which are really intended to hurt the Indians from the fields of trade and commerce. The future generations of Indians who have made Kenya their home under every security of pledges given by Queen Victoria and British statesmen from time to time, will have nothing to fall back upon except lagd. That is why it is essential for Indians to have a share in the Highlands if they were not to be wiped out of Kenya.

CONCLUSION.

17. The present administrative practice is unjustifiable politically, morally and economically. It is the betrayal of a trust reposed in the Government by three million natives and thousands of Indians, a breach of repeated pledges given by and in the name of the Sovereign of England and is in defiance of every principle of honourable government. It gives a preference to non-Britishers over the British subjects of His Majesty. It gives privileges to those who have given no sacrifices for the colonization of Kenya and deprives the Indians of the just fruits of their labour. It brings humiliation and poverty on the coloured people in Kenya and is calculated to drive them to paths of disorder and misery. So long as it remains in force, India can never consent to be a partner in the British Commonwealth and unless it is discontinued there will be similar disabilities imposed on the Britishers in India as India becomes more and more the mistress of her destiny. If this ulcer of a colour bar is not plucked out in time it will endanger the very existence of the British Empire and impair the growth of its utility and power.

C. O.

38005/3/38

29

Mr. Passin 157x

Mr. Dale 17.10.

Mr. Downe 17.10

Sir H. Moore.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

DRAFT.

The U.S. of S.
Public & Judicial Dept.
- 20.

Revised Draft O.-C.
(Encl. to No. 13 on 38005/38
- (added X))

(C.D. to make a few extra copies while they are about it, & send to me to keep)

FURTHER ACTION.

Sir,

I am re. to refer to your letter No P. & J. 4461/38 of the 21st of Sept. & to inform you that in answer to the request of the Government of Zealand that the right that it is not possible to state the probable date of the proposed Order - Council relating to the Kinga Styglend.

2. Mr. MacDonald is still awaiting the obsv. of the Gov. of Kinga - certain suggested alterations in the drafts of this O.-C. & of an O.-C. relating to Native Land which is to be issued simultaneously.

3. The ^{proposed} alterations to the draft Styglend Order are of a minor character

~~and are concerned partly by~~
~~and are concerned partly by~~
~~titles of certain officers in the~~
~~Colony & partly by the~~
~~responsibility of clarifying the~~

and are designed to clarify
the intentions of certain of the
provisions of the Order. A copy
of the revised draft, as
communicated to the G.O., is
enclosed.

If the ^{proposed} alterations to the
draft Native Areas Order ~~is~~ of a
more extensive ^{character} & has no doubt
required more prolonged consideration
in the Colony

(S)

P.S. Since the date of this letter
was prepared, the Govt. observations
on some of the Orders have been
received & will now be considered.

Kenya

LAND BILLS PASS LEGISLATURE

From Our Own Correspondent

NAIROBI, Friday.

Bills, which after four years will implement the main recommendations of Sir Morris Carter's Land Commission, passed their third reading in the Kenya Legislature.

The European electors' members made an unavailing final appeal that the legal definition of the highlands should specify "European" or "white" highlands, although the Government again gave an assurance that the existing administrative practice of reserving the highlands to people of European descent would be continued.

The Indian elected members intimated that they were prepared to accept an amendment reserving the highlands to people of British European descent, but the Government declined.

The Kenya Land Commission reported in May, 1934. It recommended large additions to the native reserves.

Cattle Destocking Protest.—The camp of between 2,000 and 3,000 natives from the Wakamba reserve, who have been squatting on the Nairobi racecourse since July 30, broke up to-day, and the men and their families are trekking homeward. The Governor, Air Chief Marshal Sir Robert Brooke-Popham, has promised to attend a big gathering on the Wakamba Reserve on Thursday and hear the grievances of the natives regarding the cattle destocking programme.

Murder Trial.—At the preliminary hearing of the charge against Mr. C. E. Ansell, a farmer, for the murder of Mr. W. J. Hanlon, a retired American naval officer. Mrs. Hanlon said her husband objected to Mr. Ansell's aspersions on Mrs. Ansell's character. Both men drew revolvers and fired. Mr. Ansell was committed for trial.

C...L 11...

Any further communication on this subject should be addressed to—

The Under Secretary of State for India,
Public & Judicial Department,
India Office,
London, S.W. 1.

and the following reference quoted—

P. & J. 3731/38.



INDIA OFFICE,

WHITEHALL,

LONDON, S.W. 1.

25th August 1938.

RE
C. O. REG.

Kenya Highlands.

Sir,

With reference to your letter No. 38005/3/38

dated 6th August, I am directed by the Secretary of State for India to forward, for information, copy

To Government of India dated 15.8.38.) of the paper noted in

the margin, on the above subject.

I am, Sir,

Your obedient Servant,

The Under Secretary of State,
Colonial Office.

Copy sent to the Secy

16
31

August 1938.

25 AUG 1938

Sir,

(13) With reference to the correspondence ending with your telegram No. 1249, dated 3rd August, regarding the publication of certain documents relating to the Kenya Highlands, I am directed to forward, for the information of the Government of India, the enclosed copy of a letter from the Colonial Office, dated 6th August. It will be observed that the Colonial Office deprecate publication of the documents in question, and hope that, if it is necessary to make a further statement on this subject, the Government of India will do so in terms calculated to produce the least possible dissension.

Lord Eglon has given this matter his careful consideration, and while he realises the strong views held by the Government of India on this question, and the political difficulties which the issue of the Order in Council may cause in India, he feels that there is much force in the views advanced by the Colonial Office. The decision to issue the Order in Council enabling the area of the Kenya Highlands to be defined, was taken by His Majesty's Government after considering the representations made by the Government of India, and His Lordship does not consider that it would be proper for the Government of India to make public the text of their telegram of the 19th February 1938, in which they dissented from the decision taken by the Cabinet. His Lordship considers also that it would be inappropriate to publish
the /

the note of 1935 inasmuch as it was drawn up at a time when it was proposed not only to define the area of the Kenya Highlands by the Order in Council, but also to define the "privileged position" enjoyed by Europeans within that area. In these circumstances the Note of 1935 does not appear to be germane to the Order in Council as proposed to be issued.

I am, therefore, to say that Lord Zetland trusts that the Government of India may be able to avoid the publication of either of these documents. If it is found necessary to make a further statement on this subject, it is suggested that the most satisfactory course would be for the Government of India to prepare something ad hoc, and the Secretary of State has no doubt that in doing so they would pay due regard to the desire of the Colonial Office to avoid further dissension on the subject.

I am, Sir,

Your obedient Servant,

(Sgd.) F. F. TURNBULL

C. O.

38005/3/38

Mr. Paskin. 28/7

Mr. Dawe. 29.7

Mr.

Sir H. Moore.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

for comm.

DRAFT.

THE UNDER SECRETARY OF STATE,
PUBLIC AND JUDICIAL DEPARTMENT,
INDIA OFFICE.

*Copy to Kenya
No 38005/3.*

FURTHER ACTION.

Copy of 12 and of this
to Gov. of Kenya. Inf.
l.f. conf.

DOWNING STREET.

4 = 6 Aug. 1938.

Sir,

I am etc. to acknowledge the

receipt of your letter No. P. & J.

(12) 3165/38 of the 12th July respecting

the desire of the Government of India

to publish in certain contingencies

the two documents relating to the

(11) Kenya Highlands referred to in their
letter of the 30th June.

2. In reply I am to request you
to inform the Marquess of Zetland
that Mr. MacDonald views this proposal
with some concern and would greatly
prefer that it should not be further
pursued. As Lord Zetland is aware,
the decision to issue an Order-in-Council
to define the boundaries of the High-
lands was taken by His Majesty's
Government with deliberation after the

most

most careful and prolonged consideration of the views of the Government of India. His Majesty's Government are now publicly committed not only to the issue of this Order, but also to the statement that there is no intention of changing the administrative practice which has been followed for many years with regard to the alienation and transfer of land in the Highlands. Mr. MacDonald fears that the publication at this juncture of documents which attest in such categorical terms to the opposition of the Government of India to the decisions taken by His Majesty's Government can hardly fail to do other than stimulate further political agitation on a matter in which it is not practical to contemplate any change in the policy of His Majesty's Government.

3. While therefore Mr. MacDonald appreciates the difficulties of the Government of India in this matter vis-à-vis public opinion in India, he trusts that if on the

publication

C. O.

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

DRAFT.

publication of the proposed Order-in-Council there is an irresistible demand in India for a statement by the Government of India on their position on this question, they will find it feasible to frame it in terms calculated to create the least possible dissension and to minimise rather than to emphasize the divergence in the stand-points taken by the two Governments.

J. J. Paskin

(Signed) J. J. PASKIN

FURTHER ACTION.

12 36

Any further communication on this subject should be addressed to—

The Under Secretary of State for India,
Public and Department,
Judicial India Office,
London, S.W. 1.

and the following reference quoted:—
P. & J. 3165/38.



INDIA OFFICE,

sc WHITEHALL,

LONDON, S.W. 1.

12th July, 1938.

Telephone:—
Whitehall 8140. I.O. Ext. No. —
Telegrams:—
Retaxandum, London.

RECEIVED
10 JUL 1938
C. O. REC'D

Y

Sir,

With reference to the correspondence ending with your letter No. 38005/3/38 dated the 9th June 1938, I am directed by the Secretary of State for India to forward for the information of the Secretary of State for the Colonies copy of a letter from the Government of India on the subject of the Kenya Highlands. Lord Zetland would be glad to know whether Mr. MacDonald would be prepared to agree to the publication of the documents to which the Government of India refer in their letter. Their telegram of 19th February, 1938 was forwarded with the letter from this Office, No. P. & J. 827/38 of the 3rd March.

I am, Sir,

Your obedient Servant,

A. D. Dill

*and (13)
copy to Kenya (10)*

*C. G. Kew
8th 3/1938*

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

GOVERNMENT OF INDIA,

CONFIDENTIAL.

EDUCATION, HEALTH & LANDS DEPARTMENT

EXPRESS LETTER (AIR MAIL).

No. F.214-2/33-L. & O. Dated Simla, the 30th June, 1938.

To
His Majesty's Secretary of State for India,
London.

Reference correspondence ending India Office letter No. P. & J. 2683/38, dated the 15th June, 1938. Publication of Order-in-Council is certain to give rise immediately to demand in India for disclosure of representations made by us against proposals. We shall be grateful therefore if concurrence of Colonial Office could be secured to publication by us, if and when considered necessary of (1) Note on Kenya Highlands, copy of which was forwarded to Colonial Office with India Office letter No. P. & J. 2327/35, dated the 1st July 1935 and (2) our telegram No. E.325, dated 19th February, 1938.

(Sd.) R.S. MANI.

for Secretary.

C. O.

38005/3/38

Mr. Gostley-White 1/6/38.

Mr. Dewe 2/6/38.

Mr.

Sir H. Moore.

Sir G. Tomlinson.

X Sir C. Bottomley. 2-6 f

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

DOWNING STREET.

9 June, 1938.

Sir,

I am etc. to

acknowledge the receipt of your

(9) letter P. & J. 2505/38 of the

30th May relative to the proposed

Kenya Highlands Order-in-Council

and to request you to inform the

Marquess of Zetland that the

Order has not yet been issued.

Mr. MacDonald expects to be in a

position to submit the draft to

His Majesty in Council in the

course of the ^{coming} summer, but

he is unable at present to

forecast precisely the date on

which the submission will be

made.

DRAFT.

THE UNDER SECRETARY OF STATE
FOR INDIA,
PUBLIC AND JUDICIAL DEPARTMENT,
INDIA OFFICE.

Copy Kenya 26 ~ 38003/39

Copy to Kenya

FURTHER ACTION.

Recirc. file to
Mr. Gostley-White.

F. required.

2. The local legislation

which it is proposed to enact to give effect to the recommendations of the Kenya Land Commission is now in an advanced stage of preparation and according to present arrangements it will be introduced into the Kenya Legislative Council at the session to be held in July next.

3. I am to take this opportunity

to acknowledge the receipt of your

letter P. & J. 2143/38 of the 17th May,

(8)

forwarding a copy of the debate on a

Resolution moved in the Indian Council

of State on the question of the

reservation of the Highlands in Kenya

for Europeans.

I am, etc.

(Signed) A. J. DAWE.

Any further communication on this subject should be addressed to—

The Under Secretary of State for India,
Public & Judicial Department,
India Office,
London, S.W. 1.

and the following reference quoted:—

P. & J. 2506/38.



INDIA OFFICE,

WHITEHALL,

LONDON, S.W. 1.

30 May, 1938.

Telephone:—
Whitehall 8140. I.O. Ext. No. _____
Telegrams:—
Retaxanjum, London.

30 MAY 1938

C.O. REQ

Sir,

With reference to the correspondence ending with the letter from this Office No. P. & J. 2143/38 dated the 17th May, 1938, I am directed by the Secretary of State for India to forward for the information of the Secretary of State for the Colonies copy of a telegram from the Government of India regarding the Kenya Highlands Order in Council and to request that Lord Zetland may be supplied with the information desired by the Government of India.

An early reply to this letter would be appreciated.

I am, Sir,

Your obedient Servant,

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

Amst (10)
Copy to Kenya (10)
in file 2506/38

P & J

250

1938

CWP/VH.

(43 words.)

2136.

DECODE OF TELEGRAM.

(COPIES
CIRCULATED)

From Government of India, Department
of Education, Health and Lands,
to Secretary of State for India.

Dated Simla, 26th May, 1938.

Received 2.45 p.m., 26th May, 1938.

F.214-2/33. L. and O. Your letter dated

1st April, 1938, Public and Judicial 1384/38.

Proposed Highlands Order in Council. Press reports
here suggest that legislation to implement Order
in Council is before the Kenya Legislative Council.
Has the Order been issued? If not when is it likely
to be published?

Any further communication on this subject should be addressed to—
The Under Secretary of State for India,
Public & Judicial Department,
India Office, London, S.W. 1.
and the following reference quoted:
P. & J. 2143/38.



INDIA OFFICE,
WHITEHALL,
LONDON, S.W. 1.

84

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17 MAY, 1938.

RECEIVED
17/5/38

Telephone:—
Whitehall 6149: I.O. Ext. No. _____
Telegrams:—
Retaxandium, London.

Sir,

With reference to the correspondence ending with your letter No. 38005/3/38 dated the 23rd March, 1938, I am directed by the Secretary of State for India to forward for the information of the Secretary of State for the Colonies copy of the debate on a resolution moved in the Indian Council of State on the question of the reservation of the Highlands in Kenya for Europeans.

I am, Sir,

Your obedient servant,

A. Dittin

*Amud (10)
Copy to Kenya (11)*

*Copy to Kenya
P. & J. 3800 93*

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

20/5/1948

42

1948

The Council assembled after lunch at 4 Quarter to Three of the Clock
the Honourable the Minister in the Chair.

**RESOLUTION RE DISCRIMINATION AGAINST INDIANS SETTLING
IN THE HIGHLANDS OF KENYA.**

THE HONOURABLE MR. RAMADAS PANTULU (Madras : Non-Muham-
madan) : Sir, I wish to make a request to you, namely, to permit me to
move my Resolution in a somewhat altered form. I wish to omit a few words
and substitute a few, leaving the Resolution practically intact and making
no material alteration in its substance. If you will permit me, Sir, I would
like to do so.

[4TH APRIL 1933.]

THE HONOURABLE THE PRESIDENT : I have seen the copy that you have supplied to me just now. I do not think there is any material change. It is substantially the same, and unless the Honourable the Leader of the House objects—

THE HONOURABLE KUNWAR SIR JAGDISH PRASAD : I have no objection, Sir.

THE HONOURABLE THE PRESIDENT : Then it is all right.

THE HONOURABLE MR. RAMADAS PANTULU : Sir, I beg to move :

"That this Council recommends to the Governor General in Council to take prompt and effective action to prevent the issue of the proposed Order in Council by His Majesty's Government implementing the recommendations of the Kenya Land Commission which in effect shut out the Indian settlers from the European Highlands and discriminate against them in favour of even non-British settlers.

Sir, it will be somewhat difficult for an Indian to speak on this Resolution with moderation. But fortunately it will not be necessary for me to put any passion or sentiment into my speech, for I am convinced that a bare narration of facts will be enough to convince the Members of this House of the justice of the Resolution.

THE HONOURABLE THE PRESIDENT : Moreover, you are always moderate.

THE HONOURABLE MR. RAMADAS PANTULU : Sir, the injustice perpetrated is so gross and the discrimination against the Indian subjects of His Majesty is so barefaced that really no arguments are necessary after the facts are set out to commend this Resolution to the acceptance of the House

Before I state the position with regard to the recommendations of the Kenya Land Commission and the proposed Order in Council, I will say a few words regarding the background of the proposed legislation. Sir the Indian community in East Africa is a very important community. It had settled there for many years and it differs in many ways from the Indian settlers in South Africa and other Colonies. The East African Indians are men of independent status and position, who have an assured place in the services, in the trade and commerce of the country, and have gone there either voluntarily for settlement or in the invitation of the Government of the Colonies. East Africa, as is well known consists of four large territories, Tanganyika, Zanzibar, Uganda and Kenya. In these four colonies there are about 92,000 Indians, 11 million Africans, and 28,000 European settlers. But the European settlers in all these four colonies have been pursuing for some years past a policy of eliminating Indians from these territories, inspired by the success of the South African Government in imposing disabilities on Indians in South Africa. In fact, there is a concerted action on the part of the European settlers and the Governments of these four colonies in regard to elimination of Indians and imposing such disabilities on them as will ultimately induce the Indians to leave the Colonies. The avenues for employment are being curtailed and there is also an attempt to restrict their numbers and also to subject them to racial segregation in the spheres of business, residence and agricultural occupation. Fortunately, so far, there have not been very serious disabilities imposed in regard to business and residence. But the disabilities that are being imposed are in regard to agricultural land and its occupation.

Sir, I shall briefly trace in a few minutes the history of the proposed Order in Council. Sir, when the Indians settled in Kenya some years ago,

they were given very specific assurances that the Kenya Government did not intend to make any distinction between Indians and European settlers in the matter of grant or occupation of lands. In 1902, on the 23rd February, the Deputy Commissioner of the East Africa Protectorate sent a letter to the Indian Association at Nairobi, who petitioned him regarding the impending discrimination. There was a fear of certain discriminatory measures being passed. They then petitioned the Deputy Commissioner of the Protectorate who sent a letter saying:

You are in error in supposing that the Government has any intention of drawing a distinction between Europeans and Indians so far as the rights of mining, settling and acquiring land are concerned."

This letter of 1902 contained a very specific assurance by the Deputy Commissioner of the Protectorate that no discriminatory measures will be passed and that Indian and European settlers will be treated on an equal footing. But that assurance was soon revoked, practically four years later. In 1906, a Commission was appointed with reference to the rights of the Indians and Europeans. Lord Delamere was the Chairman of that Commission. In the Report of that Commission it was stated that it was desirable that land within certain areas should be reserved for and maintenance of a white population. That is the beginning of the trouble. That Commission definitely said that it was desirable that land should be reserved for and maintenance of a white population. This recommendation of the Commission of 1906 was accepted by the Colonial Office. I believe Lord Elgin was the Secretary of State for the Colonies in 1908, and in a Despatch by Lord Elgin, he said:

With regard to the grant of land to Indians it is not consistent with the view of His Majesty's Government to impose legal restrictions on any particular section of the community, but as a matter of administrative convenience grants should not be made to Indians in the Highland areas."

Sir, for the first time, while recognising that there was no legal restrictionⁿ and admitting that it will be inconsistent with the views of His Majesty's Government to impose any legal disabilities in future, a recommendationⁿ was made that as a matter of administrative convenience, grant of land should not be made to Indians. This expression "administrative convenience"ⁿ has between 1908 and 1938 assumed very serious proportions indeed and its implications have been developed very, very largely. That administrative convenience, I shall shew very soon, is a very thin cloak for racial discrimination against Indians in favour of not only British settlers but also European settlers of other nationalities. An Italian or a German can acquire land in the highlands but not an Indian. As Seth Govind Das said, the lift boy who refused to carry him up the lift in South Africa could acquire land in East Africa but not he or even an Indian Member of the Government of India. This administrative practice originally, as is clear from Lord Elgin's despatch, was intended to apply only to initial grants of land. There was no reference in that despatch to transfer of land from European settlers who wanted to leave the Colony to an Indian settler who was willing to purchase the land. Some of the European settlers who spent some money on their farms but found it either unprofitable or inconvenient to continue and wanted to leave the Colony were willing to part with their farms to Indians who paid a reasonable price for them, and administrative convenience did not stand in the way of European settlers being permitted to sell their farms to Indians provided the Governor gave his consent. That was the administrative practice. But later on this administrative practice has been developed into a practice not only against the initial grant of land but also against transfers, so that no European settler

[Mr. Ramadas Pantulu].

could transfer his land to an Iselian even though he was leaving the Colony and an Indian was prepared to buy it. This is the effect of a White Paper issued in 1923. That White Paper said :

" The practice must be maintained both as regards initial grants as well as transfers."

This is a distinct addition to the despatch of Lord Elgin. Lord Winterton who made a report on the subject at that time said that the

Colonial Office cannot contemplate any change in the existing law or practice, having regard to past policy and commitments "

So administrative convenience had developed into administrative practice in the White Paper of 1923 and administrative practice of 1923 had developed into administrative policy under Lord Winterton's Report. Therefore, starting with convenience we progressed towards practice, and from practice we proceeded to policy.

This did not satisfy the European settlers. There was organised agitation for putting this on a legal basis. They were not satisfied with assurances given by the Colonial Office or the assurances given by His Majesty's Government that both in regard to initial grants as well as transfers discrimination would be made against Indian settlers and that Europeans would be protected fully. They agitated once and for all to put the rights of European settlers on a legal basis. That was the origin of the appointment of the famous Kenya Land Commission of 1932. That Commission produced a very bulky Report through which I have gone with some care. We are only concerned with one of their terms of reference. The Commission was asked to define the area generally known as the Highlands in which persons of European descent are to have a privileged position. That is the term of reference. Naturally the Chairman of the Commission wanted to know what these words "privileged position" meant. He asked the Governor to enlighten him as to the exact import of the words. The Governor of Kenya referred the matter to the Secretary of State for the Colonies and the then Secretary, Sir B. Cunliffe-Lister, authorised the Governor to inform the Chairman of the exact implication of those words. The definition of the Secretary of State for the Colonies was in two parts, one positive and the other negative. He said, "Privileged position" consisted of two parts, first the right of Europeans to acquire by grant or transfer agricultural land in such area or to occupy land therein; secondly, that no person other than a European should be entitled to acquire by grant or transfer agricultural land in such area or to occupy land therein. Therefore by positive and negative definition it is reserved for Europeans only and no one who is not an European can have any land granted or transferred to him in that area. That was the explanation of the words "privileged position". It will be seen that the definition goes far beyond the despatches and pronouncements with regard to administrative convenience, practice and policy which I have cited. Also there are certain pieces of legislation in force in Kenya, such as the Crown Lands Ordinance, 1915, and some of the sections do permit some kind of transfers and grants to Indians with the consent of the Governor. The present legislation seeks to repeal those provisions of the Land Ordinances of 1915 and also to legalise what is called the administrative practice in very wide terms.

This Commission were asked to define the boundaries of the Highlands. Practically the only thing that is sought to be enacted by the Order in Council

is to define the boundaries and to set up a Board to advise the Government of Kenya in regard to disposal of the lands in the reserved area. These are the two main purposes of the Order in Council. But, Sir, the Kenya Land Commission has gone far beyond any of the despatches and pronouncements which I have already quoted. They not only reserved what were hitherto known as the Highlands for the European settlers, but they also wanted to include in future lands at present owned and in the occupation of Indians in Maharoni area which was formerly called the Lowlands, in which Indians have settled by special invitation in 1906, and these are to become part of the white Highlands once they are transferred to Europeans and cannot thereafter be transferred to Indians under any circumstances. So if any Indian allows lands in his occupation in the Maharoni area to get into the hands of an European it cannot be transferred to an Indian in the future. So they have so extended the definition of the Highlands as to include in future areas in the Maharoni area which pass into European hands.

Then, Sir, the Kenya Land Commission not content with defining the boundaries of the Highlands, which was the only business for which it was appointed they asked these who appointed the Commission that their recommendations should be implemented by an Order in Council, and that the practice should be legalised. That was not a part of their terms of reference, but they went out of their way and said that an Order in Council should be passed defining the boundaries of the Highlands.

As soon as the Commission sent in its Report in July, 1933 the Colonial Office without any hesitation accepted the Report. We were told by the representatives of the East African delegation who came here that there was no debate at that stage in the Kenya Legislative Council nor was there any debate in the House of Commons. Of course we do not know whether the Government of India was consulted on that Report before it was accepted by the Colonial Secretary. That is a matter which only the Government can tell us. Without any publicity to it and without the Indians in Kenya having any opportunity to express an opinion, the Colonial Secretary announced that he accepted the recommendations of the Kenya Commission. Later in 1934, however, the Indian members of the Kenya Legislative Council brought the matter up before the Legislative Council and they had a debate at that time. All the five Indian members of the Kenya Legislative Council entered their emphatic protest and exposed the injustice of the Commission's recommendations, but nothing was heard of it for some time. In February, 1935 Lord Milner put a question to the then Colonial Secretary as to whether the Government of India would be consulted in regard to the recommendations of the Commission and whether the Government of India will be given an opportunity to put up the case of the Indians before the Colonial Office. The then Secretary of State said that he would certainly consult the Government of India and that any representations received from them would be considered but he added this:

"I think it is well to point out that the effects of the proposed Order in Council so far as the White Highlands are concerned will be merely to confirm what has been an administrative practice for the past quarter of a century."

I say that this statement is absolutely incorrect. I have traced from 1902 the history of this administrative practice. In 1902 there was a definite declaration that there should be no discrimination. In 1906 it was slightly modified; in 1908 it was further modified; in 1923 it was further modified; later on it was still further modified. Therefore the Secretary of State's statement that the proposed Order in Council merely aims at confirming an administrative

[Mr. Rama las Poethua].

practice in force for 25 years is far from being a correct description of the facts. Sir, this proposed Order in Council is nothing but perpetration of the racial discrimination of the worst kind. Sir, the position is this with regard to the reservation. The area that is now marked out as Highlands is about 16,700 square miles for a population of about the same number; roughly it gives one square mile for every European settler and only 50 per cent. of the lands have been alienated or settled on Europeans; only 10 per cent. of the lands so alienated or settled have been brought under cultivation. Therefore 1/20ths of the reserved Highlands are under cultivation and 19/20ths of them are still unoccupied. That is the position; for future development they wanted to safeguard future settlers and have demarcated for their use a very large extent of land of 16,700 square miles. Three million Africans who live in Kenya as against 16,000 Europeans, are given 48,000 square miles for their agricultural and other needs and Indians there say it is wholly inadequate to meet the needs of the African population. Sir, leaving the native reserve of 48,000 square miles and the European Highlands of 16,700 square miles, we have certain land left, which is either barren or rocky or waterless and it is here that 41,000 Indians can settle in future. I need hardly say that no Indian can settle in the rest of the land. Therefore to say that this Order in Council does nothing but legalise a practice in existence for 25 years is anything but correct. Sir, I do not think on these facts anybody can hold the view that there is no racial discrimination. I hope that every Member of this House will see that from the facts set out by me that it is a case of gross injustice and unreserved racial discrimination. I have no doubt that even my esteemed friend Sir A. P. Patro will be able to see that this amounts to discrimination. I want him to judge independently and his judgment will be valuable, because he is not guilty of any partiality to Indians and Indian sentiment or any bias against Europeans. Therefore I value his judgment; if he can support me I shall value it very much coming from him. Sir, the thing did not end in 1934. After that protest from the Indians in the debate of the Legislative Council in 1934 and Lord Milner's question and the reply of the Colonial Secretary of State, we thought that the matter would not be proceeded with further. In 1936 there was another question and Sir Ormesby Gore, the then Secretary of State "denied that there would be any legal colour bar against Indians in Kenya". This again raised hopes in the minds of Kenya Indians that the proposed Ordinance would not be issued. But the European settlers of Kenya immediately started an agitation, an agitation of a very powerful kind, and then in 1937 they tabled a Resolution in the Kenya Legislative Council asking the Kenya Government immediately to address the Home Government to issue the Order in Council as quickly as possible. It is a very long Resolution and I therefore do not like to read it, but the purport of it was that the recommendations of the Kenya Commission should be implemented by an Order in Council and that in the absence of the Order in Council their development is being hindered and the assertion of the claims of Indians is getting more and more vociferous from time to time. Therefore they said that immediate action should be taken on the recommendations of the Commission and the Order in Council should be issued. This aroused the apprehensions of the Indian settlers and the Indian settlers had a big conference at which they protested against the proposed Order in Council, made representations to both the Home Government and the Government of India and they came here and they interviewed the Member of the Government of India in charge of this subject and also cultivated public opinion in this country. Sir, so far as the Government of India is concerned, I at any rate feel no doubt that they would

have addressed His Majesty's Government protesting against the proposed Order in Council. At any rate there is no reason to think that they did not or would not do so; and Indians in Kenya must congratulate themselves that they have at the head of affairs in the Department of Indians Overseas so sympathetic an administrator as the Leader of this House, Sir Jagdish Prasad, and with him at the helm of affairs. I have no doubt that the Government of India would do what they can. Of course I know that the Government of India are as helplless as the people of India in this matter. People who have no status in their own country cannot expect to have any legal status in another country. Sir, in this connection I think Kenya Indians, while they did all they could to protect their rights, made one mistake in my opinion, a tactical blunder. Recently the Congress of Kenya Indians held in Kenya objected to the appointment of an Agent of the Government of India in Kenya. They thought that if the Government of India appointed an agent their rights of franchises or representation would be curtailed and that they will suffer in political status. It is to my mind an entire misnomer and they should have asked for the appointment of an Indian Agent. It would certainly facilitate the Government of India keeping themselves in touch with the actual condition of Indians in the Colony and an Indian Agent would have been of great help to them. Therefore for my part I deplore that Indians in Kenya should have objected to the appointment of an Agent.

THE HONOURABLE THE PRESIDENT: Your time is up now.

THE HONOURABLE MR. RAMADAS PANTULU: I hope, Sir, they will reconsider their position. In conclusion I say that the people of India have taken this subject up in all seriousness and the Congress which was held at Haripura have passed a very strong Resolution protesting against the action of the Kenya Government and the proposed Order in Council. So the problem of Indians in the Colonies and abroad is a part of the fight for the freedom of India and India will leave nothing undone to protect the interests of Indians abroad. I hope the Government of India will take a sympathetic attitude in this matter and also protect the honour and dignity of the nationals of this country. I most earnestly request the Leader of this House who is in charge of the Department to show his sympathy and the sympathy of Government towards this Resolution by accepting it if he possibly can.

THE HONOURABLE MR. P. N. SAPRU (United Provinces Southern : Non-Muhammadan): Mr. President, I desire to support the Resolution which has been moved by my friend the Honourable Mr. Ramadas Pantulu. When the Carter Commission's Report was published, I had the honour of moving a Resolution in this Council about the reservation of the Highlands in Kenya for Europeans. The protest that we made in this Council has apparently had no effect upon His Majesty's Government. I do not, Sir, wish to go at length into the history of the Kenya question. That history has been traced by the Honourable Mr. Pantulu but I would like to say this that the Kenya issue is really a test issue. The Right Honourable Srinivasa Sastri has emphasised the Kenya issue on several occasions and the question is this. Is there going to be racial equality in the directly administered territories of the British Colonies? Kenya is not a dominion, it is a colony. It is administered by the Colonial Office and the arguments that are available to the Dominions Office are not available to the Colonial Office. And really the question is this. Is there going to be for the Indian racial equality in territories which the Colonial Office administers directly? Well, if there is going

[Mr. P. N. Sapru.]

to be no racial equality, then why bother about this Commonwealth at all? If you want us to be loyal to the British Commonwealth, then you must treat us in those directly administered territories on a footing of equality. If there is to be inequality between European and Indian, then the British Commonwealth will mean nothing for the Indian and the Indian is not prepared to tolerate this inequality in directly administered territories of the Crown. I think, Sir, the Government of India owe it to the people of this country that they should make the implications of this Kenya issue quite clear to the British Government. They must make it clear that there is a very very strong feeling on this Kenya issue among the Indians, that it is regarded as a question of paramount importance, as a question of great racial importance. It is a question upon which the allegiance of the Indians to the British Commonwealth depends in a sense. I hope, Sir, that they will emphasise the strength of the feeling in regard to this Kenya issue.

The Honourable Mr. Pantulu has dealt with the other aspects of the question very thoroughly and very ably. He has pointed out that there is no force in the argument that the Order in Council does not mean any change in the present position. He has traced the entire history of Kenya from 1902 onwards. I do not wish to dilate on that history. All that I would like to say, Sir, is that we look upon it as a very very vital question and I hope, Sir, that the Government of India will take a very strong line in regard to this question.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU (United Provinces Northern Non-Muhammadan): Sir, although the House is anxious to begin the discussion of the next Resolution, I cannot allow this occasion to pass without according my strong support to the demands put forward by my Honourable friend Mr. Ramadas Pantulu. His Resolution refers to two things—the general disabilities of Indians and their grievances regarding the issue of the Order in Council which is now proposed to be promulgated by the British Government. Sir, as regards the Order in Council I may briefly point out that the Carter Commission, to which my Honourable friend the Mover of the Resolution referred a little while ago, made two important recommendations. One was that it should be declared by an Order in Council that the Highlands would be open only to European settlement, and the other was that the Highlands should be demarcated and extended so as to cover the area near Lake Victoria Nyanza where valuable mineral deposits have been discovered. Now, His Majesty's Government have made it clear that they have no intention of laying down any terms that Indians shall be debarred from purchasing land in the Highlands. But if the Highlands are demarcated and extended, this will be, not directly, I admit, but indirectly, a recognition of the principle to which the Carter Commission gave its approval. Now, this is a matter of great importance and that is why the Order in Council which is seemingly so harmless has aroused a serious apprehension in the minds of the Indian community. They are so perturbed that they have sent a deputation to represent the Indian case to the Government of India and to ask them for their full support.

As regards the general disabilities, I should like to say just one thing. Contiguous to Kenya which is directly administered, by the British Government, is the territory of Tanganyika, which is held under a mandate but while there are discriminations of various kinds against Indians in Kenya, they are practically non-existent in Tanganyika. Now, is this a wholesome state of

things is this contrast favourable to British interests? would the British Government like it to be said that the Indians enjoyed greater rights in territories which were not under the direct control of the British Government? In Tanganyika there is no area, not even the valuable coastal area, in which Indians cannot purchase land. The galling social discriminations that are practised against Indians in Kenya with regard to their residence in hotels and the use of public amenities do not exist in Tanganyika. Is it impossible that if His Majesty's Government use their power and influence in favour of Indians the distinction that now exists may soon be a thing of the past. In some respects, Sir, the position of Indians in Kenya is the same as in South Africa. Yet the Indian in East Africa comes from a far better class and is much better educated than the Indian in South Africa. We are generally told that the Indians in South Africa are discriminated against because of their low standard of living and the want of education. This complaint certainly is not true at any rate of the better class of Indians in East Africa. When I say this, I speak from personal experience, because I have had the good fortune of visiting all the British territories in East Africa. Yet, in many vital respects, I see no difference between the position of Indians in Kenya and the position of Indians in South Africa.

With these words, Sir, I accord my hearty support to the Honourable Mr Ramadas Pantulu's Resolution:

THE HONOURABLE KUNWAR SIE JAGDISH PRASAD (Education, Health and Lands Member): Sir, my Honourable friend the Leader of the Congress Party in this House, has put forward his case with his usual ability and thoroughness. He has traced the history of the problem right up to the year 1937. I do not think that the House would like me to cover this ground again. In closing his speech he appealed to me to show the sympathy of the Government of India to his Resolution by accepting it. He asked the Government of India to be the guardians of the honour of their nationals abroad. Sir, I need hardly assure him that it has always been the policy of the Government of India, that it is the policy of the Government of India at present and I hope that it will always remain the policy of the Government of India to safeguard the honour and the legitimate interests of their nationals abroad. Government accept this Resolution. (Applause). I take it that what my Honourable friend means—and this is a point which has been emphasised by the Honourable Pandit Kunzru—is that the objection to the Order in Council, even if it is confined to demarcating areas only is that it will give moral reinforcement to what is referred to as administrative practice, to which Indians both here and in East Africa take the strongest objection. I take it that that is in essence the purport of the Resolution. I need not say any more except to add that we have for a long time represented the views of Indians faithfully to the British Government and that we shall continue to do our best, situated as we are, to help them in their legitimate demands.

THE HONOURABLE THE PRESIDENT: Resolution moved:

"That this Council recommends to the Governor General in Council to take prompt and effective action to prevent the issue of the proposed Order in Council by His Majesty's Government implementing the recommendations of the Kenya Land Commission which in effect shut out the Indian settlers from the European Highlands and discriminate against them in favour of even non-British settlers."

Question put and Resolution adopted.

C. O.

38005/5/38.

Mr. Paskin. 10/3
Mr. Dawe. 11.3

21/

23 March 1938

Mr.
Sir H. Moore.
Sir G. Tomlinson.

Sir,

I am etc., to acknowledge

X Sir C. Bottomley. 11.3.

Sir J. Shuckburgh.

+ Permt. U.S. of S. (L.S. 28)

Parly. U.S. of S.

X Secretary of State. (15/3)

Cousin

DRAFT.

THE UNDER SECRETARY OF STATE,
(Public Service Dept)
INDIA OFFICE.

the receipt of your letter
No. P. and J. 827/38 of the 3rd of
March, transmitting a copy of a
telegram from the Government of
India on the subject of the proposed
Order-in-Council relating to the
Kenya Highlands.

2. Mr. Ormsby Gore fully

understands the position of the
Government of India in regard to
this matter but, as Lord Zetland is
aware, it is not possible, on the
broad question of the Highlands, to
go further towards meeting their
wishes than has been done in the
terms of the draft Order-in-Council.
In this connection, I am to observe
that, quite apart from the

treaty
international considerations

involved

*Cat 4
86 m 3 Feb 38*

copy to Kenya

FURTHER ACTION.

*Cousin & Kenya 14. Feb.
ref. 36 m -13)*

involved, it was largely in deference to the views of the Government of India that it was decided that the Order-in-Council should be so framed as not to involve any statutory discrimination ^{on a racial basis} in the matter of the acquisition of land in the Highlands.

3. As regards the farms in the Muhoroni area, Mr. Ormsby Gore notes that the assurance that has been given is not regarded as satisfactory by the Government of India. He regrets, however, that having regard to the present state of political feeling in Kenya, it would not be practicable to contemplate the giving of a further assurance that these farms should be free of all race restrictions, both now and in the future, as regards occupation and ownership.

4. On the other hand Mr. Ormsby Gore sees no reason to anticipate that, in course of time, the Highlands Board may not be prepared to concur in the re-transfer to Indians of farms in this area which may in the meantime have been transferred to Europeans, or indeed, in appropriate cases, to such transfers

(paragraph 3 of No. 35 on 38005/3/37)

(Cf. No. 3 on 38005/3B/37)

C. O.

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

DRAFT.

transfers of farms already in European occupation. It is however recognised that the concurrence of the Board in such transfers is unlikely to be forthcoming in the immediate future, and that the eventual attitude of the Board would inevitably be influenced by the continuance of agitation, on the part of the Indian community, for a general discontinuance of the administrative restriction on inter-racial transfers of lands in the Highlands, which has been in operation for over thirty years.

(Signed) A. J. DAWE.

FURTHER ACTION.

Any further communication on this subject should be addressed to—

Public & Judicial Under Secretary of State for India, Department, India Office, London, S.W.1.

and the following reference number:—
P. & J. 827/38.

Telephone:—
Whitehall 8140. I.O. Ext. No.
Telegrams:—
Retaxandum, London.



INDIA OFFICE,
WHITEHALL,
LONDON, S.W. 1

5
53

3rd
March, 1938.

Sir,

I am directed by the Secretary of State for India to acknowledge the receipt of your letter No. 38005/3/37 dated the 12th January, 1938, regarding the proposed Order in Council relating to the Kenya Highlands, and to forward, for the information of Mr. Ormsby Gore, a copy of a telegram from the Government of India.

Lord Zetland desires to draw Mr. Ormsby Gore's attention to the objection taken by the Government of India to the issue of this Order in Council. It will also be observed that the Government of India most strongly urge that in any case the Muhoroni farms should be free of all lease restrictions both now and in the future, so that even if any of them is purchased by a European it may not be debarred from passing into Indian hands again at some future time.

I am, Sir,
Your obedient Servant,

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

W. Steel

*Ans. of 6
Copy sent to
Kenya P.O.
on 3 Dec 38*

(35) on 38005/3/37

DECYHER OF TELEGRAM.(COPIES
CIRCULATED)

From Government of India, Department of
Education, Health and Lands, to
Secretary of State for India.

Dated New Delhi, 19th February, 1938.

Received 19th February, 1938, 3-15 p.m.

IMPORTANT.385. First of Three Parts.Department of Education, Health and Lands.

Kenya highlands Order in Council. Correspondence ending with your letter No. P. and J. 240738, January 20th, 1938. Government of India have given most careful consideration to the views of the Colonial Office stated in their letter No. 38,005/5/37, January 12th, 1938. They have also had the advantage of informal conversation with the deputation of East African India Congress, which includes two Indian members of Kenya Legislative Council, and also now in India. They think, to avoid misunderstanding, their position should again be made clear.

Government of India have always strongly objected to administrative practices in Kenya by which Indians are excluded from ownership of lands in highlands. This objection has not diminished with lapse of time; on the contrary, it has acquired strength with growth of national consciousness in India and political development of the country. Knowledge that non-British and even ex-enemy subjects may acquire land in areas which Indians, with British allegiance, may not, has intensified Indian resentment at practice still further.

DECRYPTER OF TELEGRAM

(COPIES
CIRCULATED)

From Government of India, Department of
Education, Health and Lands, to
Secretary of State for India.

Date: New Delhi, 19th February, 1938

Received: 19th February, 1938 5.15 p.m.

IMPORTANT

221 North and East

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C. O.

Mr. Parnell 28/1.

Mr. Dawn 28/1

Mr.

Sir H. Moore.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Permt. U.S. of S.

Partly. U.S. of S.

Secretary of State.

Sir,

1. Feb. 1938

In reply to your letter of the 24th of Jan. I am glad to inform you that, in accordance with the recommendations in Part III, Chapter IX of the Report of the Kenya Land Commission (Cmd. 4558)

it is proposed that an Order in Council should be issued to define the boundaries of the Highlands in Kenya. It is not proposed that the Order in Council should include

any provision restricting the acquisition of land by the Highlands to persons of European

DRAFT.

G. Engvall Esq.

FURTHER ACTION.

Reason for concern of outstanding & unreturned - (137)

however

rare. In this respect it is not
proposed that there should be any
change in the administrative
practice, which has been followed
for many years, as explained in
para 8 of the memo. "Indians
in charge" which was presented to
Parliament in 1923 (Cmd. 1922).

Copies of the Parliamentary
Papers mentioned above can be
obtained from the Stationery Office,
or consulted in the Library at the
Col. Office on any weekday between
the hours of 10.30 a.m. and 5 p.m.
on Saturdays between 10.30 a.m.
and 1 p.m.

Alfred J. DAVE

January, 1938

PC
P.S. 2/1/38

RECEIVED
26 JAN 1938
O. O. REGY

The Colonial Office,
London, W.C.2

Dear Sir,

I believe that the Government of the Colony is anxious to give the land and occupation of the Colony to the natives. I believe that the total population is 1,000,000 and that the total area is 10,000,000 acres. I believe that the total population is 1,000,000 and that the total area is 10,000,000 acres. I believe that the total population is 1,000,000 and that the total area is 10,000,000 acres.

Good

the order in Council giving the land to the natives. I believe that the total population is 1,000,000 and that the total area is 10,000,000 acres. I believe that the total population is 1,000,000 and that the total area is 10,000,000 acres.

I believe that the total population is 1,000,000 and that the total area is 10,000,000 acres. I believe that the total population is 1,000,000 and that the total area is 10,000,000 acres.

Thanking you,

Yours faithfully,

[Signature]

RECEIVED



59
END

CONFIDENTIAL

15 January, 1938.

Sir,

I have the honour to inform you that the East African Indian National Congress at its session held in Nairobi on the 1st and 2nd January last passed, inter alia, the following Resolution on the subject of the proposed Highlands Order in Council :-

"This Session of the E.A. Indian National Congress decides to send a deputation to India to agitate and create public opinion against the promulgation of the proposed Order-in-Council in relation to White Highlands and to move the Government of India to forestall the measure and authorises the Executive Committee to decide the personnel of the deputation including those that are elected by this session who should sail by the steamer on the 27th January, 1938, paying their own passage and personal expenses. This Congress further authorises the Executive to raise a fund to be spent for propaganda purposes both here and in India."

Copy to I.O. (K)

A copy of the Resolutions passed at this Session accompanied my despatch No. 20 of the 14th January.

2. It is understood that the deputation, which will sail for India on the 27th January, will consist of Mr Isher Dass, who proposed the Resolution, and two others whose names have not yet been ascertained.

I have the honour to be,

Sir,

Your most obedient humble servant,

[Signature]
GOVERNOR'S DEPUTY.

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

on 38045/38