

1938

38005

38005

MURRAY DISTRICT COMMISSION

KENYA

C0533/488

LAND COMMISSION REPORT

Previous			
	297	23/7	S. of S.
	M. Pasikin	27/7	297
	M. Dams	26/7	R 98
1937	Sr. C. Parkinson	26/7	Mr. Pasikin (P. Dept)
	S. of S.		98
Subsequent			
	283	28/7	
1937	Mr. Pasikin	28/7	
	282 27	28/7	
	C. D.	1/8	
	R 299	2/8	
	R 291	1/4	
297	8/2/38		
M. Pasikin	8/2		
M. Dams	8.2		
Sr. C. Parkinson	8/2		
Sr. C. Parkinson	//		
S. of S.			
R. 83	10/2		
Mr. Pasikin	14/2		
297 303	17/2		
C. D.	25/2		
R 299	25/2		
R 298 297			
304	18/7		
Mr. Pasikin			
20088			
	297	23/7	S. of S.
	M. Pasikin	27/7	297
	M. Dams	26/7	R 98
	Sr. C. Parkinson	26/7	Mr. Pasikin (P. Dept)
	S. of S.		98
	283	28/7	
	Mr. Pasikin	28/7	
	282 27	28/7	
	C. D.	1/8	
	R 299	2/8	
	R 291	1/4	
	M. Pasikin	22/11	
	M. Dams	22/11	
	Sr. C. Parkinson	22/11	
	S. of S.		
	R 83	24/11	
	Mr. Pasikin	24/11	
	M. Dams	25/11	
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	M. Pasikin	19/11	
	M. Dams	19	
	M. Fueston	19	
	M. Dams	19	
	Sr. C. Parkinson	12/12	

8/2

HOUSE OF COMMONS

* 9. Mr. Creech Jones, — To ask the Secretary of State for the Colonies, whether he has considered the representations from Indians in respect to the proposed Order in Council confining the Kenya-European highlands to Europeans; and whether he still proposes to prohibit the purchase of land by Indians in this area. [Wednesday 9th February.]

Latham, Shipley

ORAL REPLY

The last P.Q. on this subject was on the 10th of Nov. (No. 6 on -/37 P.Q.), since when there have been further representations from an Indian in Kenya (No. 34 on 3800S/3/37 & No 1 on 3800S/3/36). It will therefore not be sufficient to reply by reference to the P.Q. of 10/xi.

I submit sp. reply for answer.

EXTRACT FROM OFFICIAL REPORT OF
9 FEB 1938 attached

J.P. Passini
8/2

A.J. Dave
8.2

R.S.

J.P. Passini
12/2 above

Hand in K. 209 on 17

To Kenya (w/c Q9A.No.1) - M/3-

25 FEB 1938

11/11

C. O.

38005/38 P.O.

3

Mr. Paskin. 8/2

Mr. Dawe 8.2

Mr.

Sir H. Moore.

Sir G. Tomlinson.

X Sir C. Bottomley. 8/2

Sir J. Shuckburgh.

Permu. U.S. of S.

Parly. U.S. of S.

X Secretary of State. W.P. 8.2.38

forward 8/2/38

DRAFT. Reply to

oral question by

Mr. Creech-Jones.

Wednesday, 9th of

February.

*in C. Bottomley
con
20/2/38
H. 8/2*

The views of the Indian Community in

Kenya have received ~~undue~~

consideration in connection with the

proposal to issue an Order-in-Council

defining the boundaries of the Kenya

highlands, *I have* but it has been decided

that there can be no change in the

administrative practice

policy which has been followed for the

past thirty years in regard to the

acquisition of land in that area.

*but there is nothing in
the draft order-in-council
on this point.*

FURTHER ACTION.

HOUSE OF COMMONS

*49. Mr. Creech Jones, — To ask the Secretary of State for the Colonies, whether any date has yet been fixed for the issue of the Order in Council on the highlands and reservations in Kenya; and whether it is still the policy of His Majesty's Government to extinguish Native rights in the highlands and to dispossess certain of the African people of their ancestral lands.

Wed. 27 July

ORAL REPLY

Labour: Shipley

As regards the first part of the question, the intention is that these two Orders-in-Council (one relating to the Highlands and one relating to the Native Lands) should be issued as soon as possible after the enactment in Kenya of a new Native Lands Trust Ordinance and a Crown Lands Amendment Ordinance. These measures have been under consideration for a long time and authority was recently given for them to be introduced at the forthcoming session of the Legislative Council (which opens on the 5th August). The reason why it was ultimately decided that the enactment of the local Ordinances should precede the issue of the Orders-in-Council was that by this procedure it would be possible very much to shorten the Orders by reference to the provisions of the local enactments, and in particular to the very long descriptions of the boundaries of the Highlands and the Native Lands which are being incorporated in Schedules to the local enactments.

It is therefore hoped that we shall be in a position to issue the Orders-in-Council some time during the autumn, and it is most important that there should be no unnecessary delay in their issue when we are in a position to proceed with them.

** But it is suggested
that it wd. be
undesirable to say
so for the reasons
indicated below.*

As regards the second part of the question the natives whose rights are to be extinguished, in express terms, in the Native Lands Order-in-Council, are individual "right holders" who remained on European farms in the Highlands when the land there was alienated, and whose rights were specifically preserved in the Crown Lands Ordinances of 1902 and 1915. The reasons why the Kenya Land Commission recommended that these rights should now be extinguished were summarized in para. 1857 of their Report. This recommendation was specifically accepted by H.M.C. as mentioned in para. 13 of Cmd. 4580 of 1934.

It seems to me that this question carries in it the germs of a whole host of supplementaries.

In the first place there may well be a demand for an assurance that the Orders will not be issued until the House has had an opportunity of considering the provisions which it is proposed to include in them. This suggestion was first put forward by Mr. Lunn in a question on the 14th November, 1934 (No. 6 on 23034/34 P.Q.). In reply Lord Swinton said that it would not be in accordance with established practice for the drafts of such Orders to be laid before Parliament, and that in any case the matter had already been fully debated in the House.

In reply, however, to a Supplementary question by Sir Archibald Sinclair on the 17th March, 1936 (No. 6 on 38005/36 P.Q.), Mr. Thomas said that before any final decision was taken the House would have an opportunity of knowing what the proposals

(No 10 on 38005/36 Pa)

proposals, as regards the content of the Orders-in-Council, were. In reply, however, to a further question by Mr. de Rothschild on the 7th May, 1936, Mr. Thomas said that the debate on the occasion of the Colonial Office Vote would be a convenient opportunity for the House to discuss the matter. This discussion took place on the 9th July, 1936, and the particular question of the extinguishment of these native rights was referred to in the marked passages in columns 1472, 1478, 1531 and 1535.

If, therefore, there is a Supplementary question of the kind I have suggested, it is suggested that the Secretary of State might take the line that the matter has already been before the House on several occasions and has been fully discussed, and that there is no need for any further discussion.

If it is attempted to suggest that Mr. Thomas's supplementary reply on the 17th March, 1936, was something in the nature of a pledge to lay a summary of the proposals before the House, I suggest that the answer should be that, as indicated in Mr. Thomas's reply of the 7th May, 1936, all that he intended was that the House should have an opportunity of discussing the matter and that this discussion in fact took place on the 9th July, 1936, and that in the course of the debate this particular matter was dealt with.

As regards the merits of the decision to extinguish these rights, I assume that no comment is required, but it may be well to mention that, quite apart from the additions of land to the Native Reserves, where presumably the majority of the

* Not all. Some of them do not live on the land in which they have rights.

people affected will find new homes, they are to be compensated in cash and in any case are not to be disturbed until they have had an opportunity of reaping their crops.

I ought perhaps also to mention that although in para. 1355 of their Report the Commission said that the numbers concerned were very small, (amounting to not more than 200 or 300, inclusive of women and children), when the matter was investigated in more detail by an official detailed for the purpose, it was in fact found that the number of principal right holders affected was 365 and it was estimated that the total number of persons involved was something over 4,000. The Commission themselves had recommended that a sum of £2,000 would be sufficient by way of cash compensation to these right holders; but as a result of the subsequent information as to the numbers involved the Governor has agreed to increase this amount and he has in fact stated that compensation will be paid "on a generous scale".

I find that I have omitted to mention that a summary of the proposed provisions of the two Orders in Council has been published in Kenya; & dated in Aug. 6. in April.

J. Paskin

25.7.38

I certainly think that we ought to be able to go forward with the issue of these Orders-in-Council without any further debate in the House of Commons. The Secretary of State will no doubt discuss the Question with Mr. Paskin tomorrow morning.

A. M.

26.7.1938

Secy of State

You will wish to read Mr Paskin's very helpful minute & answer

26.7.38

The minute is to be kept in the file

not discuss
✓ Answered 27/7/38

EXTRACT FROM OFFICIAL REPORT

27 JUL 1938 attached

To Gen. Kenya 1/3

W. H. G.

28/7/38

at once

To Kenya (Conf. Q & A No. 2) - 1/3 - 2.8.38

2

C. O.

Mr. Paskin 25.7.38

Mr. Dawe 26.7

Mr.

Sir H. Moore.

Sir G. Tomlinson.

Sir C. Biddisley.

Sir J. Shuckburgh.

X Perm. U.S. of S. 28.7.38

Parly. U.S. of S.

Secretary of State.

Point []

[I am afraid that I am not

yet in a position to say when these Orders in Council will be issued As regards the second part of the Question there has been no change in the policy of H. M. G. as indicated in Command

Paper No. 4580 of 1934.]

DRAFT. Reply to

Oral Question by

Mr. Creech Jones.

Wednesday 27th July,

FURTHER ACTION.

19/11

HOUSE OF COMMONS

- *68. Mr. Creech Jones,—To ask the Secretary of State for the Colonies, whether it is proposed to delay the operation of recent legislation in respect to Native and European land in Kenya; and whether the policy of eviction of Native people from the European highlands continues to have the support of His Majesty's Government. [Wednesday 23rd November.]

Labour shipping

ORAL REPLY

The legislation in question will consist of two local Ordinances (which have been passed by Leg. Co. but have not yet received the Governor's assent) and two Orders in Council. These Orders cannot be issued until the Bills have been assented to, and neither the Ordinances nor the Orders will come into operation until they are brought into operation by a proclamation of the Governor.

The present position is that the Governor has been informed that it will not be possible for the Secretary of State to authorize the Governor to assent to the Bills unless he is able to give satisfactory assurances as to the arrangements for dealing with the provision of alternative land elsewhere for the natives who are being removed from the Highlands, and as regards the enjoyment by those natives of the rights which they at present have in the Highlands, pending their removal. The alternative may possibly be an amendment of the Native Lands Bill.

In the draft reply submitted herewith I have, for obvious reasons, omitted any mention of this second alternative.

As the Question refers only to "recent legislation" (i.e. the two local Bills mentioned above)

I have omitted any reference, in the draft reply, to the proposed Orders in Council.

It will, however, be recalled that, in a recent letter to the Secretary of State, Mr. Creech Jones asked whether Parliament would be allowed to see the draft of the Native Lands Order in Council, and it is conceivable that he may put this as a supplementary question. At our meeting the other day the Secretary of State directed that we should discuss with Sir E. Brocklebank the question whether a memorandum containing a summary of the provisions of the two Orders should be placed in the Library of the House. There has not so far been an opportunity for this discussion, but I am hoping to be able to speak to Sir E. Brocklebank about it to-day, and I will minute separately as to this.

It has now been decided to do this (v. 38005/A/36). J.P.

J.P. Pascoe

22.11.38.

H.M.

22.11

and

22.11.38

Let me see the minutes again after the discussion with Sir E. Brocklebank.

M.M.

22.11.38

X

C. O.

Mr. Paskin. 22/X/11

Mr. Dams 22. 11

Mr.

Sir H. Moore.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Perms. U.S. of S. 22, 11 38

Parly. U.S. of S.

Secretary of State. 22. 11

DRAFT. Reply.

to Oral Question

by Mr. Creach Jones.

Wednesday 23rd November.

(2)

(I have used the word "being" as this involvement of natives has been going on for some time in advance of the legislation which will confer compulsory powers 2/18)

FURTHER ACTION.

Light House thought we might omit the word "being" - that leaves the sentence to cover our oral now or in future.

38095/5/38-P.O.

Enclined 23/11/38

The legislation to which the

Honourable member refers has not yet become

law. ^{The FWD} Two Bills dealing with Native and

other Lands have been passed by the

Legislative Council of Kenya, but they

have not yet received the Governor's

assent, and I am ^{not} yet in a position to say

when they will be brought into operation.

As regards the second part of the question,

as I informed the Honourable member on the

27th of July, there has been no change in

the policy of His Majesty's Government

in this matter.

as indicated in Command Paper No. 4500 of

1954. I am however in communication with

the Governor in regard to the arrangements

for providing the natives, who are being

removed from the Highlands, with satisfactory

alternative accommodation elsewhere.

[In case of Supplementary asking whether the text of the Order can be laid before Parliament, the answer is that "]

Date: No 33
on 38005/38

We shd. have sent out to Gov. with 86. (to issue on 38005/38) copies of these Q. & A. together with copies of Mr. Cress Jones letter on 38005/38 & 38005/11/38. (This action shd. be taken as quickly as possible, so that the files may be available when the Gov's replies to the Pals. of 21/11 are received.)

X ✓
S. J. Parker
38005/38

J. J. Parker
24/11

To change copy 2 (ref C21125 on ref. 19, 20, 21 and 11 and Q. and A. No 3) 26/11/38
(Draft on 38005/38, No 33)

~~Handwritten mark~~

HOUSE OF COMMONS

*71. Mr. Creech Jones, — To ask the Secretary of State for the Colonies, whether he is now able to make a statement regarding the removal of groups of Africans from the Highlands of Kenya; and what procedure will be followed in carrying through the policy of His Majesty's Government. *Wed. 21st December* ORAL REPLY

Labour shipping

This qⁿ was put down at the suggestion of the S. of S. in his letter to Mr. Creech Jones of the 15th Dec.

I submit for consideration a reply wh. I think adequately summarises the arrangements to wh. the Gov. has agreed.

Some copies of the recent correspondence with Mr. Gov. & with Mr. Creech Jones will be found in the journal below.

J.P. Pascoe
9/11

The phraseology at X commits the S. of S. to creating a body with authority independent of the Governor. Sir R. Brooke Popham, as in the corresp. shown, has committed himself only to consultation with ^{the} Board (para. 1 of his let. of 12th Dec.), though para 3 of S. of S.'s let. of 21st Nov appears to have contemplated that the Board shd. be satisfied in each case

42)

29)

B. P. Pascoe

P. 80

I think that we must adhere to the phraseology at 'X'. As I understand it, it has been the intention all along that it is a prior condition that the Land Trust Board should be satisfied: and the Secretary of State has definitely informed Mr. Creech Jones in a letter that this procedure will be followed.

(46)

I think also that it is a clear implication of the telegraphic correspondence and I do not see that the Governor could have any real cause to object to the phraseology of the proposed answer.

The relevant passages in the correspondence are flagged in the file below.

H.M.

19.12.1938

Degee.

and
17.12.38

NOT FROM OFFICIAL REPORT OF

21 DEC 1938 *attached*

Copy to Kenya with Sp. in

3800738

J.J. Parsons
22/12/38

Kenya 784 (7/6. P.O.H.) 23. 12. 38
(No. 54 in main file)

If it is desired to give some indication of the programme envisaged for this legislation, it is suggested that the following might be added:-

It is proposed to submit the draft Orders, dealing respectively with the Native Lands and the Highlands, to His Majesty in Council at the first opportunity after the Governor has assented to the two local Bills, viz. The Native Land Trust Bill and the Crown Lands (Amendment) Bill. ^{It is proposed that} these two Orders in Council and the two local Ordinances will ~~be~~ subsequently be brought into operation simultaneously by a proclamation issued by the Governor. Copies of the two Bills and a memorandum summarising the provisions of the two proposed Orders in Council have been placed in the Library of the House.

C. O.

Mr. Paskin 19/12/38.

Mr. Frazar 19

Mr. Dale 19/12.

* Mr. A. J. Dave. 19/12.

Sir H. Moore.

Sir G. Tomlinson.

Sir J. Shuckburgh.

* Permt. U.S. of S. 19.12.38

Parly. U.S. of S.

* Secretary of State. 20.12.38

DRAFT.

DRAFT REPLY TO ORAL
 QUESTION BY
 MR. CREECH JONES.

Wednesday 21st December.

As the answer is rather long I will, with the Honorary Members permission, circulate it with the Official Report.

Following is the answer:-

With a view to ensuring that the transfer of certain natives from the Highlands of Kenya should be carried out with the minimum of hardship to the natives concerned, I have approved the adoption of the following procedure.

Before the Governor issues an order for the transfer of any group of natives from the Highlands, the natives concerned will be afforded an opportunity to state any objections that they may have to the land to which it is proposed to move them. In any case where objections are raised the matter will be referred to the Land Trust Board, of which the Chief Native Commissioner will be chairman, and which will include the two members of the Legislative Council

FURTHER ACTION.

who are nominated to represent native interests, and the
order for removal will not be issued unless the Board is
satisfied that the new land constitutes a fair exchange
for the land from which the natives are being moved. The
Board will be instructed that, in considering these cases,
they are to have regard to all the relevant considerations
such as the quality, area and situation of the two areas of
land, and the extent of the rights of the natives in the
land on which they are now living.

If it is found that the land which it has already
been decided to add to the Reserves is insufficient to
accommodate all the natives concerned on the basis
indicated above, additional good land elsewhere will be
purchased for this purpose.

As, in some cases, some considerable time may
elapse before the transfers can take place, the Native
Land Trust Bill will be amended, before it received the
Governor's assent, to ensure that all natives whose
removal is deferred will, in the meantime, continue in the
enjoyment of the rights which they possess in the land on
which they are at present living. The Bill as amended also provides
that no order for removal will be issued until the
natives concerned have had an opportunity of reaping any
growing

vide tel of 19/12 (1950)

[This will have to be
acted if we hear that
the Bill has been
amended before Wed.]
J.P.

This last paragraph
contingent on the Gov
not dissenting, in
upt. to our tel
of the 15 Dec.
See report of 20/12

C. O.

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

DRAFT.

FURTHER ACTION.

and this will be
growing annual crops, even though these
crops may have been planted after the
Ordinance has come into force. Moreover
no order will be issued at such a time or
in such circumstances as would prevent
the natives concerned from taking
advantage of the planting season either
on the land on which they are now living
or on the land to which they are moved.

[See also sheet for
possible addition]

NOV 1922

KENYA.

LAND LEGISLATION.

41. **Mr. Crech Jones** asked the Secretary of State for the Colonies whether it is proposed to delay the operation of recent legislation in respect to native and European land in Kenya; and whether the policy of eviction of native people from the European Highlands continues to have the support of His Majesty's Government?

Mr. M. MacDonald: The two Bills dealing with native and other lands have been passed by the Legislative Council of Kenya, but they have not yet received the Governor's assent, and I am not yet in a position to say when they will be brought into operation. As regards the second part of the question, there has been no change in the policy of His Majesty's Government in this matter. I am, however, in communication with the Governor in regard to the arrangements for providing the natives who are removed from the Highlands with satisfactory alternative accommodation elsewhere.

Mr. Crech Jones: Will the right hon. Gentleman, when the legislation reaches him and the Governor has given his assent, bear in mind the very considerable native opposition that there is to it, and will he, while he is in communication with the Kenya Government, ask them to put a stop to these brutal evictions until further inquiry has been made into the matter? Further, will the right hon. Gentleman bear in mind the fact that these matters are receiving the attention of Middle Europe and are used to prejudice British Colonial administration in the eyes of other countries?

Mr. MacDonald: As regards the first part of the hon. Member's supplementary

question, I have that matter continuously in mind. With regard to the second part, I am not aware of any brutal evictions. If the hon. Member wants to put before me any information that I have not got, I will gladly consider it.

Mr. Crech Jones: Will the right hon. Gentleman give instructions that the present orders for evictions shall be stopped pending inquiry? I have already given him considerable information regarding the thousands of cases of evictions which are going on at the present time.

Mr. MacDonald: I am giving close attention to the information which the hon. Member has already given me, but, as far as I am concerned, I am satisfied that the action which is being taken at the present time is proper action. So far as future action is concerned, I am, as I have said, in communication with the Governor on the matter.

Mr. G. Griffiths: Is it not the fact that the Colonial Secretary cannot do two jobs?

Copy to Kenya (53 + 28005/38)

27 JUL 1938

HIGHLANDS (NATIVE RIGHTS).

35. **Mr. Creech Jones** asked the Secretary of State for the Colonies whether any date has yet been fixed for the issue of the Order-in-Council on the highlands and reservations in Kenya; and whether it is still the policy of His Majesty's Government to extinguish native rights in the highlands and to dispossess certain of the African people of their ancestral lands?

Mr. M. MacDonald: I am not yet in a position to say when these Orders-in-Council will be issued. As regards the second part of the question, there has been no change in the policy of His Majesty's Government as indicated in Command Paper No. 4580 of 1934.

Mr. Creech Jones: Will the Minister give special attention to the new Ordinance, and will he consider particularly Section 70 of that Ordinance, whereby it is definitely proposed to extinguish the rights of natives, particularly the rights of natives going back for many generations?

Mr. MacDonald: As far as that is concerned, there has been no change in His Majesty's Government's policy. It has been very carefully considered by the Government, and also discussed in the House.

65. **Mr. Creech Jones** asked the Secretary of State for the Colonies whether he has considered the representations from Indians in respect to the proposed Order-in-Council confining the Kenya-European Highlands to Europeans; and whether he still proposes to prohibit the purchase of land by Indians in this area?

Mr. Ormsby-Gore: The views of the Indian community in Kenya have received consideration in connection with the proposal to issue an Order-in-Council defining the boundaries of the Kenya Highlands. I have decided that there can be no change in the administrative practice which has been followed for the past 30 years in regard to the acquisition of land in that area, but there is nothing in the draft Order-in-Council on this point.

Mr. Creech Jones: Will there not be administrative discrimination against the Indians and are not Indians considerably disturbed at the present moment in regard to this matter? Is it not a fact that, as far as derelict farms are concerned, Portuguese, Germans and Italians may purchase land, but that Indian subjects of the British Empire are prohibited from doing so?

Mr. Ormsby-Gore: Not in the Order-in-Council. That has been the practice of all Governments since the Liberal Government of 1906. It has been carried out by every successive Secretary of State, and I am going to make no alteration.

Mr. Benn: Has the right hon. Gentleman consulted the Government of India in this matter, and will he give proper weight to their opinion?

Mr. Ormsby-Gore: Yes, Sir, the Government of India have been kept fully informed, and they fully understand that no change in policy is to be adopted.