



THE
OFFICIAL GAZETTE
OF THE
COLONY AND PROTECTORATE OF KENYA.
(SPECIAL ISSUE).

Published under the authority of His Excellency the Governor of the
Colony and Protectorate of Kenya.

[Vol. XXV.—No. 899] NAIROBI, August 17, 1923.

[PRICE 50 CENTS.]

Registered as a Newspaper at the G. P. O.

INDIANS IN KENYA.

Memorandum presented to Parliament by Command of His Majesty the King.

GOVERNMENT NOTICE No. 281.

NOTICE.

THE following memorandum summarises the history of the Indian question in the Kenya Colony and Protectorate and sets out the general policy which has been laid down by His Majesty's Government, together with the decisions which they have taken on the practical points at issue.

DEVONSHIRE.

COLONIAL OFFICE,
23rd July, 1923.

MEMORANDUM.

PART I.

1. THE question of the status of Indians in Kenya has come under the consideration of successive Secretaries of State for the Colonies in one form or another for many years; but with the recent change in the constitutional and political position of India, it has now become a matter of Imperial policy to which His Majesty's Government have given prolonged and anxious consideration in order to reach a settlement of the existing difficulties.

2. The history of the position of Indian in Kenya up to the end of the late war may be summarised briefly. There have been Indian merchants established along the East African Coast for a long time, and, with the opening up of Uganda and Kenya, and particularly with the development of British administration in those countries during the

last thirty-eight years, Indian traders have penetrated into the interior. Many Indian artisans and labourers employed on the construction of the Uganda Railway remained to engage in commerce, and, at the beginning of the present century, the number of Indians in Kenya was greatly increased by the arrival of artisans, clerks and small traders. There is a limited number also of professional men and traders on a large scale who have come from India to the Colony. The agricultural Indian is, however, almost unknown in Kenya.

3. It was the question of the ownership of land in the Highlands which first brought Indian and European interests into conflict. The Highlands, less the area in that region reserved for Africans, amount to about one-tenth of the total area of the Colony and Protectorate, and they are in climate unique in the great belt of Tropical African possessions of the Crown. There were a few European settlers from about 1897, but the encouragement of their immigration into the country as a matter of policy may be dated from 1902. From that time the influx of European settlers increased steadily. The policy of the reservation of the Highlands for Europeans was definitely laid down by the Earl of Elgin, when Secretary of State for the Colonies in 1908.

4. At that time the unofficial element on the Legislative Council was entirely nominated, and in 1909 the experiment was tried of adding an Indian nominated member. This experiment did not prove entirely satisfactory, and the appointment was not renewed when the term of office of the Indian concerned came to an end.

5. In 1913, a distinguished sanitation expert, Professor (now Sir William) Simpson, furnished a report on sanitary matters in Kenya, in which he advocated strongly a system of racial segregation, both in the residential and in the commercial areas of the large towns. His views were accepted, and when the time came for applying them after the war, this question of segregation formed one of the main points at issue between the European and the Indian communities.

6. At the end of the war it was decided to give effect to the longstanding desire of the European community for representation on the Legislative Council by means of elected members. The grant of elective institutions was approved by Viscount Milner in 1919 and took effect at the beginning of 1920. The number of European elected unofficial members of the Council was fixed at eleven, but provision was made for maintaining an official majority in the Council.

7. In 1918, the report of a local Economic Commission of Enquiry into post-war development was published. This contained disparaging references to the Indians then in Kenya, and advocated strict control of future immigration from India. Although the passages in question were repudiated by Lord Milner as not representing the view either of His Majesty's Government or himself, the report undoubtedly added to the feeling of bitterness among the Indians.

8. At the same time Indian sentiment, both in India and Kenya, was becoming more and more articulate, and a large number of claims was put forward by the Indian community in Kenya, including a demand for representation on the Legislative Council on an equality with Europeans. After full consideration and discussion, Lord Milner addressed a despatch on the 21st May, 1920, to the Governor of Kenya, conveying decisions on the various points at issue. That despatch has already been published locally in the "Official Gazette." The decisions may be summarised as follows:—

- (a) Arrangements to be made for the election of two Indian members of the Legislative Council on a special franchise.
- (b) Arrangements to be made for elective representation of Indians on Municipal Councils.
- (c) No restriction on Indian immigration which would place the natives of India at a disadvantage as compared with other immigrants.
- (d) Lord Elgin's decision in regard to the reservation of the Highlands for Europeans to be maintained, but reasonable opportunity to be afforded for Indian agricultural settlement in areas of adequate extent and good quality which could be set apart for that purpose without infringement of native rights.
- (e) The principle of race segregation to be adhered to in residential areas and, whenever practicable, in commercial areas also.

Other matters were dealt with, but these were of minor importance and need not now be recapitulated.

9. The Government of India reviewed the whole position in a despatch of the 21st October, 1920, which has been published as Command Paper 1311.

This despatch reopened the whole question and led to protracted discussion between the Secretary of State for the Colonies and the Secretary of State for India, in which the points at issue were considered in relation not only to Kenya but also to the general political position in India. This discussion continued during the spring and summer of 1921, and in that period also the matter was raised by the Joint Parliamentary Committee on Indian Affairs under the chairmanship of Lord Islington. The

report of the Committee has been published as House of Commons Paper 177.

10. The more general question of the position of Indians in the Empire came under discussion at the Imperial Conference of 1921. At the final meeting, the following Resolution was adopted:—

"The Conference, while reaffirming the resolution of the Imperial War Conference of 1918, that each community of the British Commonwealth should enjoy complete control of the composition of its own population by means of restriction on immigration from any of the other communities, recognises that there is an incongruity between the position of India as an equal member of the British Empire and the existence of disabilities upon British Indians lawfully domiciled in some other parts of the Empire. The Conference accordingly is of the opinion that, in the interests of the solidarity of the British Commonwealth, it is desirable that the rights of such Indians to citizenship should be recognised."

The following observations were appended to the Resolution:—

"The representatives of South Africa regret their inability to accept this resolution in view of the exceptional circumstances of the greater part of the Union."

"The representatives of India, while expressing their appreciation of the acceptance of the resolution recorded above, feel bound to place on record their profound concern at the position of Indians in South Africa, and their hope that by negotiation between the Governments of India and of South Africa some way can be found, as soon as may be, to reach a more satisfactory position."

11. The question of the settlement of the position in Kenya was discussed between Mr. Churchill, then Secretary of State for the Colonies, and Sir Edward Northey, the Governor of Kenya, who was on leave, and when Sir Edward Northey returned to Kenya in September, 1921, he attempted to secure an agreed settlement, but without success.

12. A deputation of Europeans came to England in the following winter, and an Indian deputation, consisting of persons who were already in this country, was also received by the Secretary of State. No progress, however, was made towards a settlement on this occasion.

13. An Interdepartmental Committee, consisting of the Parliamentary Under-Secretaries of State for the Colonies and for India (The Honourable Edward Wood, M.P., and the Earl Winterton, M.P.), with representatives of the two Offices, met several times during the summer with a view to arranging terms which would meet the insistent demands received from India for a full measure of Indian representation in Kenya and at the same time secure a settlement acceptable in Kenya itself. They drew up a report, which was adopted provisionally by the Secretaries of State for reference to the Government of Kenya and the Government of India, in order to obtain a confidential expression of the opinion of both Governments on the proposals.

X 14. Meanwhile, Sir Robert Coryndon had succeeded Sir Edward Northey as Governor of Kenya, and a telegram was sent to him on the 5th September, 1922, conveying the substance of what is now known as the "Wood-Winterton Report." The terms of the proposed settlement as detailed in the telegram were as follows:—

(I) *Franchise*.—A common electoral roll for all British subjects and British protected persons (male and female), aged 21 years and upwards, possessing qualifications which were to be prescribed.

(II) *Qualifications*.—Either a complete census or a test census to be held in order to determine a method of adjusting qualifications which would approximately result in a ten per cent. Indian electorate. To obtain this percentage it might be necessary to adopt alternative property or educational qualifications instead of a combined qualification. Should the census show that in order to get the ten per cent. the qualification standard would obviously be unreasonably low, reasonable standards would be laid down irrespective of the resulting percentage. Qualifications to be settled in time to enable the new Indian electorate to vote at the general election in March, 1923. European voters already on register would be admitted to the new register whether or not in possession of the new qualifications, but all fresh applicants for registration, whether Europeans not registered under the Legislative Council Ordinance, 1919, or Indians, would be required to possess these qualifications.

(III) *Constituencies*.—The official majority to be retained.

Alternative proposals as follows:—

- (a) Eleven elected members representing seven constituencies, three of which to return one member and four two members. In the former, European candidates only to be qualified for election: in the latter, there would be one European seat and one Indian seat, giving a total of seven Europeans, four Indians.
- (b) The India Office suggested that there should be twelve elected members representing four constituencies, each constituency returning three members, or, alternatively, eleven elected members, representing four constituencies, of which three would return three members and one would return two members. One seat in each constituency should be Indian, the rest European, giving eight or seven Europeans according as the total were twelve or eleven elected members and four Indians. This alternative (b) would not prejudice the position of the Europeans, and might be more acceptable to the Indians. The Government of Kenya to examine and report upon the possibility of giving effect to alternative (b), but the reply to the telegram not to be delayed for that purpose.

(IV) *Municipal Franchise*.—Agreed that in municipalities Indians must be given adequate representation on an elective basis where such basis already existed for Europeans, but detailed arrangements could not be decided upon until the receipt of a despatch on the subject expected from the Governor.

(V) *Executive Council*.—Provision already existed in the Constitution for such persons to serve as unofficial members of the Executive Council as the Governor might appoint from time to time. There was now one unofficial Indian member of the Executive Council under this provision, and it should be understood that this arrangement would continue. No distinction to be made between Europeans and Indians in deciding on the fitness of individuals to be members of the Executive Council.

(VI) *Segregation*.—No segregation, either commercial or residential, on racial lines, but the Colonial Government or municipal authorities to have power to impose at their discretion sanitary, police and building regulations,

subject to these regulations containing no racial discrimination as such.

(VII) *Immigration*.—It would be announced that in present circumstances no change was contemplated in the existing regulations.

Note.—The Secretary of State added a note on this subject as follows:—

"Throughout discussions with India Office, I have made it plain that my view is unchanged as to immigration control, and that if the danger ever arises of a large influx of Indians I hold myself entirely free to take action which may be necessary. In view of the figures which you have supplied as to the influx and efflux of Indians in 1921-22, I have not felt it necessary to insist on any alteration of the law at present."

(VIII) *Highlands*.—The following to be the terms of the announcement:—

"The Colonial Office cannot contemplate any change in the existing law and practice, having regard to past policy and commitments. The India Office take note of this view, but are unable to accept it, and reserve the right to reopen the question, if need be, at some future date."

X 15. The Government of India were willing to accept the scheme, although they did not consider that it fully met the claims put forward on behalf of the Indians. The Government of Kenya rejected the scheme mainly on the ground that it gave no sufficient safeguard to the European community against Indian predominance in the future.

X 16. No immediate progress was possible for various reasons, but, with the change of Government in October, 1922, discussions were resumed between the Secretary of State for India and the new Secretary of State for the Colonies. The desirability of arriving at an agreed settlement was impressed upon the Governor, but his discussions with the leaders of the European community in Kenya led to nothing. The fears of the Europeans were rendered the more acute by demands put forward by Indian political leaders in Kenya and elsewhere, who were understood to state that they only accepted the Wood-Winterton proposals as a basis for further demands, and that nothing short of the full equality of Indians and Europeans would be satisfactory. The Europeans, seeing themselves outnumbered by Indians already by more than two to one, and fearing a further large influx of Indians, regarded such a claim as establishing Indian domination on the unofficial side of the Council and as depriving the Europeans sooner or later of all representation on the Council.

It became obvious that the policy proposed in the Wood-Winterton Report would not satisfy parties in Kenya. It was therefore arranged that a European and an Indian delegation should come to this country from Kenya, together with the Governor, for further discussion. The European delegation was accompanied by the Reverend Dr. J. W. Arthur, selected to represent the views of the Missionaries in Kenya on the native interests involved in the controversy. A delegation, consisting of three Indian political leaders, headed by the Right Honourable Srinivasa Sastri, also came from India to represent the interest felt by Indian public opinion in this question. The delegations arrived in the course of April and May 1923. Every opportunity has been taken of gathering the opinions of the several parties interested, and the question has now been reviewed in all its bearings. As a result of this re-examination of the position, His Majesty's Government have arrived at certain conclusions, which are set forth in the following part of this memorandum.

PART II.

1. *General Statement of Policy.*

The general policy underlying any decision that may be taken on the questions at issue must first be determined. It is a matter for satisfaction that, however irreconcilable the views of the European and Indian communities in Kenya on many points may be, there is one point on which both are agreed, namely, the importance of safeguarding the interests of the African natives. The African population of Kenya is estimated at more than 2½ millions; and according to the census of 1921, the total numbers of Europeans, Indians and Arabs in Kenya (including officials) were 9,651, 22,822 and 10,102 respectively.

Primarily, Kenya is an African territory and His Majesty's Government think it necessary definitely to record their considered opinion that the interests of the African natives must be paramount, and that if, and when, those interests and the interests of the immigrant races should conflict, the former should prevail. Obviously the interests of the other communities, European, Indian or Arab, must severally be safeguarded. Whatever the circumstances in which members of these communities have entered Kenya, there will be no drastic action or reversal of measures already introduced, such as may have been contemplated in some quarters, the result of which might be to destroy or impair the existing interests of those who have already settled in Kenya. But in the administration of Kenya His Majesty's Government regard themselves as exercising a trust on behalf of the African population, and they are unable to delegate or share this trust, the object of which may be defined as the protection and advancement of the native races. It is not necessary to attempt to elaborate this position; the lines of development are as yet in certain directions undetermined, and many difficult problems arise which require time for their solution. But there can be no room for doubt that it is the mission of Great Britain to work continuously for the training and education of the Africans towards a higher intellectual, moral and economic level than that which they had reached when the Crown assumed the responsibility for the administration of this territory. At present special consideration is being given to economic development in the native reserves, and within the limits imposed by the finances of the Colony all that is possible for the advancement and development of the Africans, both inside and outside the native reserves, will be done.

His Majesty's Government desire also to record that in their opinion the annexation of the East Africa Protectorate, which, with the exception of the mainland dominions of the Sultan of Zanzibar, has thus become a Colony, known as Kenya Colony, in no way derogates from this fundamental conception of the duty of the Government to the native races. As in the Uganda Protectorate, so in the Kenya Colony, the principle of trusteeship for the natives, no less than in the mandated territory of Tanganyika, is unassailable. This paramount duty of trusteeship will continue, as in the past, to be carried out under the Secretary of State for the Colonies by the agents of the Imperial Government, and by them alone.

2. *Future Constitutional Evolution.*

Before dealing with the practical points at issue directly connected with the claims of Indians, it is necessary, in view of the declaration of policy enunciated above, to refer to the question of the future constitutional evolution of Kenya.

It has been suggested that it might be possible for Kenya to advance in the near future on the lines of responsible self-government, subject to the reservation of native affairs. There are, however, in the opinion of His Majesty's Government,

objections to the adoption in Kenya at this stage of such an arrangement, whether it take the form of removing all matters affecting Africans from consideration in the Council, or the appointment of the Governor as High Commissioner for Native Affairs, or provision for a special veto by the Crown on local legislation which touches native interests; and they are convinced that the existing system of government is in present circumstances best calculated to achieve the aims which they have in view, namely, the unfettered exercise of their trusteeship for the native races and the satisfaction of the legitimate aspirations of other communities resident in the Colony.

His Majesty's Government cannot but regard the grant of responsible self-government as out of the question within any period of time which need now be taken into consideration. Nor, indeed, would they contemplate yet the possibility of substituting an unofficial majority in the Council for the Government official majority. Hasty action is to be strongly deprecated, and it will be necessary to see how matters develop, especially in regard to African representation, before proposals for so fundamental a change in the Constitution of the Colony can be entertained. Meanwhile, the administration of the Colony will follow the British traditions and principles which have been successful in other Colonies, and progress towards self-government must be left to take the lines which the passage of time and the growth of experience may indicate as being best for the country.

3. *Practical Points at Issue.*

Turning now to the practical points at issue arising directly out of the claims of Indians domiciled in Kenya, these may be considered under the following heads:—

- Representation on the Legislative Council.
- Representation on the Executive Council.
- Representation on Municipal Councils.
- Segregation.
- Reservation of the Highlands for Europeans.
- Immigration.

4. *Representation on the Legislative Council.*

(a) *Elective System.*—In no responsible quarter is it suggested that the Indians in Kenya should not have elective representation upon the Legislative Council of the Colony. The point at issue is the method whereby such elective representation should be secured. There are two alternative methods:—

- (i) A common electoral roll.
- (ii) Communal franchise.

Under the former system, Kenya would be divided up into a given number of constituencies, in each of which European and Indian voters on the roll would vote together at an election for candidates of either race, and the qualifications for admission to the voters' roll would be the same for Europeans and for Indians. Under the latter system, European and Indian constituencies would be demarcated independently, not necessarily coinciding in number or boundaries; the qualifications for admission to the voters' roll would not necessarily be the same for the two communities; and while Europeans would vote in the European constituencies for European candidates, Indians would vote in the Indian constituencies for Indian candidates.

As a variant of the former system, there is the common electoral roll with reservation of seats. This arrangement would involve the setting apart of a certain number of seats in a given constituency for candidates of a certain race; for example, in a constituency returning three members, with two seats reserved for Europeans and one for Indians,

the two European candidates and the one Indian candidate highest in the poll would be elected, irrespective of the position in the poll of other candidates of either race.

The common electoral roll for all British subjects and British protected persons, with reservation of seats, was proposed in the Wood-Winterton Report, and it was further suggested that the qualifications for voters should be such as to admit, if possible, ten per cent. of the domiciled Indians to the register.

For the common electoral roll it is claimed that it would bridge the gap between the Europeans and Indians by giving a candidate of one race an incentive to study the needs and aspirations of the other race. Further, Indian sentiment, both in India and Kenya, strongly favours the common electoral roll, even though a communal franchise exists in India itself.

A communal franchise secures that every elector shall have the opportunity of being represented by a member with sympathies similar to his own, a consideration which in other Colonies has led the domiciled Indians to press for its adoption; it is well adapted to the needs of a country such as Kenya; no justification is seen for the suggestion that it is derogatory to any of the communities so represented, and it is believed that, so far from having a disruptive tendency, it would contract rather than widen the division between races in Kenya.

So far as Africans are concerned, a communal franchise provides a framework into which native representation can be fitted in due season.

From the point of view of the Indian residents themselves, this system permits of a far wider franchise being given than would be the case if a common electoral roll were introduced, and this alone should render it acceptable to all supporters of the Indian claims who have at heart the political development of the Indian people.

Finally, it allows of the immediate grant of electoral representation with a wide franchise to the other community in Kenya which is ripe for such institutions, the Arabs of the Coast.

These considerations were weighed before the Wood-Winterton Report was drawn up; the recommendation then made turned largely on the desire to meet Indian feeling so far as conditions in Kenya would admit. The result of the reference to opinion in Kenya of the recommendation that a common electoral roll should be adopted, even combined with a reservation of seats, was to show that the advantages claimed for the common electoral roll would in practice have been illusory. In the special conditions existing in Kenya it is clear that no candidate, European or Indian, could stand as an advocate of the interests of the other race without sacrificing the support of his own. If elections were to be fought on racial lines, as they undoubtedly would have been in Kenya, the main advantage claimed for the common electoral roll, namely, the bringing of the races nearer together, would be lost.

✓ Having regard to all the circumstances, His Majesty's Government have decided that the interests of all concerned in Kenya will be best served by the adoption of a communal system of representation.

(b) *Qualifications for Voters.*—It is not intended to effect any alteration in the qualifications for admission to the register of European voters as laid down in Ordinance No. 22 of 1919; that is to say, adult suffrage, subject to certain necessary and customary reservations. Under the communal system His Majesty's Government are prepared to grant to Indians a wide franchise. It will be a

matter for the Governor of the Colony to ascertain the views of the Indian community and to submit the necessary legislation to give effect thereto. The same procedure will be followed in the case of the Arab community.

(c) *Qualifications for Candidates.*—His Majesty's Government are prepared to adopt a similar principle in regard to the qualifications for candidates, except that there must be a test which will ensure that candidates have such a knowledge of the English language as will enable them to take their part in the proceedings of the Legislative Council. No system which would involve the use of two or more official languages in the Council will be contemplated; but His Majesty's Government have no ground for supposing that the imposition of this necessary condition will create difficulties or limit unreasonably the choice of suitable candidates.

(d) *Numbers on Legislative Council.*—The question then remains of the number of seats on the Council to be allocated to each community. As matters stand, there are eleven elected unofficials (Europeans) on the Council, and as a provisional measure authority was given in 1921 for the substitution of four nominated Indian members for the two elected Indian members contemplated in Lord Milner's despatch of the 21st May, 1920.

✓ After full consideration, His Majesty's Government have decided that provision should be made for five elected Indian unofficial members on the Council; while for the Arabs, it has been decided that there shall be one elected member in addition to the nominated Arab official member for whom provision already exists. The Europeans will continue to return eleven elected representatives. The number of nominated official members will be fixed so as to maintain an official majority on the Council.

In the opinion of His Majesty's Government adequate representation of the interests of each community will be secured by this allocation. It is desired, however, that the views of the Indians in Kenya should be ascertained before a decision is taken upon the actual arrangement of the constituencies to be represented by the five Indian members.

No articulate expression of opinion can be yet expected from the African tribes in Kenya, and the time has not come to consider what should be their representation on the Council. The educational development of individual natives will undoubtedly precede the political education of the general body of natives; there are, indeed, signs of this already.

In present circumstances, the Governor has the advice of the Chief Native Commissioner in all matters affecting the African population and with the official majority can ensure the enactment of any measures for the betterment of the natives which may be approved by His Majesty's Government. It has, however, been suggested that a nominated unofficial member chosen from among the Christian Missionaries in Kenya specially to advise on such matters should be added to the Council until the time comes when the natives are fitted for direct representation. His Majesty's Government see no objection in principle to this arrangement, and they agree that provision should be made accordingly. It will be for the Governor to select a suitable person for nomination from time to time. It will, of course, be understood that there is no question of the representation of the Missionary Bodies as such, and that consideration of religious denomination will not affect the selection. Nor will the nomination of this one member relieve the Governor and his advisers of their full responsibility for representing the native interests.

5. *Representation on Executive Council.*

As regards the Executive Council, the present position as set forth in the Wood-Winterton Report will be maintained, except that the Governor will be given authority to nominate as an additional unofficial member a suitable person, preferably a Missionary, whose advice on matters affecting Africans will, in the opinion of the Governor, be of value.

6. *Representation on Municipal Councils.*

The only municipality which has been set up in Kenya is that of Nairobi.

The Municipal Corporations Ordinance No. 33 of 1922 provides for Municipal Councils to consist of so many Councillors as the Governor shall determine, and the appointment of these Councillors rests with the Governor.

It was not desired to suspend the enactment of various amendments to the existing law which are included in this Ordinance until the policy as to elections for Municipal Councillors had been determined; consequently, the provision for the constitution of Municipal Councils was re-enacted generally in the form in which it appeared in the Municipal Corporations Ordinance of 1909.

Lord Milner contemplated in 1920 election in lieu of nomination of Municipal Councillors, but no concrete scheme was submitted by the Colonial Government for giving effect to that policy. The matter is one requiring careful examination, but, in principle, if an elective basis is now introduced, it follows from the decision in regard to the Legislative Council that municipal representation must also be on a communal basis, due provision being made for the protection of the interests of the Africans until such time as they are fit to exercise a franchise.

It will be an instruction to the Governor to put forward proposals for consideration of the Secretary of State for the Colonies after he has been able to consult his advisers in Kenya.

✓ 7. *Segregation in Townships.*

The next matter for consideration is that of segregation of the European and non-European races. Following upon Professor Simpson's report, a policy of segregation was adopted in principle, and it was proposed by Lord Milner to retain this policy both on sanitary and social grounds. So far as commercial segregation is concerned, it has already been generally agreed that this should be discontinued. But in regard to residential segregation, matters have been in suspense for some time, and all sales of township plots have been held up pending a final decision on the question of principle involved. It is now the view of the competent medical authorities that, as a sanitation measure, segregation of Europeans and Asiatics is not absolutely essential for the preservation of the health of the community; the rigid enforcement of sanitary, police and building regulations, without any racial discrimination, by the Colonial and municipal authorities will suffice. It may well prove that in practice the different races will, by a natural affinity, keep together in separate quarters, but to effect such separation by legislative enactment except on the strongest sanitary grounds would not, in the opinion of His Majesty's Government, be justifiable. They have therefore decided that the policy of segregation as between Europeans and Asiatics in the townships must be abandoned.

But for the present, at any rate, it is considered desirable, as in other native dependencies, to keep the residential quarters of natives, so far as may be practicable, separate from those of the immigrant races. In the case of individual natives, such as servants, strict segregation would be unworkable; but it is important that, when areas have been fixed

in townships for native residence, those areas should be regarded as definitely set aside for the use of natives, and no encroachment thereon by non-African races should be permitted.

✓ 8. *Reservation of Highlands.*

As early as 1906 the question of the grant of land in the Highlands to non-Europeans had arisen for consideration, and Lord Elgin, who was then Secretary of State for the Colonies, informed the Commissioner (now styled Governor) that it would not be in accordance with the policy of His Majesty's Government to restrict any section of His Majesty's subjects from holding any land in British Protectorates; but he thought, in view of the comparatively limited area of the East Africa Protectorate suitable for European cultivation, that a reasonable discretion should be exercised in dealing with applications for land from natives of India or other non-Europeans. The principle which had been acted upon by the previous Commissioner, namely, that agricultural land in the Highlands should be granted only to Europeans, was approved.

Lord Elgin confirmed his decision in 1908, stating that, while it was not consonant with the views of His Majesty's Government to impose any legal restrictions upon any section of the community, grants in the upland area should not, as a matter of administrative convenience, be made to Asiatics.

It has been claimed on the side of the Indians, first, that Lord Elgin's decision only related to the initial grant of Government land in the Highlands; and that it has since been stretched so as to preclude the transfer of land from Europeans to Indians in that area, and further, that Lord Elgin's statement that no legal restrictions should be imposed has been varied by the terms of the Crown Lands Ordinance of 1915.

At the time of Lord Elgin's decisions, Government land in the East Africa Protectorate was alienated by allotment by the Lands Office, and the Commissioner had the power of veto on all transfer of land between private holders. In view of this general veto, it was unnecessary for Lord Elgin to deal specifically with the question of transfer, and, although no public statement was made on the point, it is clear that the question of land in the East Africa Protectorate was considered by his successors and the local authorities on the basis that the reservations of the Highlands to Europeans must cover transfer as well as original grant from the Crown.

In the consideration of land policy which led to the enactment of the Crown Lands Ordinance of 1915, it was decided:—

(a) To substitute for the system of selling land by allotment the system of selling leases at public auction.

(b) To abolish the Governor's general power of veto on transfer, which was found to interfere unduly with the lessee's ability to deal with his land by mortgage, etc.

In order to apply these decisions in a manner consistent with the principle of the reservation of the Highlands to Europeans, it was found necessary to provide that, in announcing the conditions of the sale of particular farms, the Land Officer should state (in cases where the point arose) whether the bidding at the auction was limited to Europeans or not. To deal with the case of transfer it was necessary to retain, in a modified form, the Governor's power of veto, and this matter was very fully considered by Mr. Harcourt (the late Viscount Harcourt), who was Secretary of State at the time. He refused to agree to a veto on transfers between Europeans and Asiatics involving a definite racial discrimination; but, in order not only to deal with the particular case of the Highlands, but at the same

time to secure protection for non-European land-holders (particularly in the coast strip which now forms the Kenya Protectorate) against their being victimised by concession hunters, he approved of provision being made to retain the power of veto on transfers between persons of different races.

It will be observed that the passages in the Crown Lands Ordinance of 1915 which have been complained of raised no new principle, but merely maintained the principle of past practice. Nor can it be claimed that they amount to legal discrimination against Indians, for it would be possible for the Executive Government to grant land in the Highlands to an Asiatic, or to approve of the transfer of land from a European to an Asiatic, without any alteration in the existing law.

In adhering to the position adopted by his predecessors in this matter, Lord Milner, when Secretary of State, made it clear that the reservation of a certain area for Europeans implied that a similar reservation should be available for Indians who wished to take up agricultural land, and he contemplated a reservation of such land in the Lowlands of Kenya, on the understanding that the land offered to Indian settlers would be examined as to its suitability and adequacy by a representative whom the Indian Government might send.

After reviewing the history of this question and taking into consideration the facts that during the last fifteen years European British subjects have been encouraged to develop the Highlands and that during that period settlers have taken up land in the Highlands on this understanding, His Majesty's Government have decided that the existing practice must be maintained as regards both initial grants and transfers.

An area of land in the Lowlands which can be set aside without infringing on native reserves and without conflicting with native requirements will be temporarily reserved in order that it may be ascertained by experience what demand there is for agricultural land on the part of Indians who will give suitable guarantees of their intention to develop the land themselves. After the expiration of a limited period, the reservation of this area in the Lowlands will be reconsidered in the light of the experience so gained.

✓9. Immigration.

Finally the question of immigration into Kenya has been canvassed both by the Europeans and by the Indians. It is sufficient to say that the line taken has varied with the point of view, and it is not necessary to present the arguments which have been advanced.

It may be stated definitely that only in extreme circumstances could His Majesty's Government contemplate legislation designed to exclude from a British Colony immigrants from any other part of the British Empire. Such racial discrimination in immigration regulations, whether specific or implied, would not be in accord with the general policy of His Majesty's Government, and they cannot countenance the introduction of any such legislation in Kenya.

The existing Immigration Regulations of the Colony are of quite general application. It is clearly as important in the general interests of Kenya to prohibit the entry of undesirable persons from Europe or America as from Asia. There is no reason to suppose that the Regulations in present circumstances are inadequate for this general purpose. But the consideration which must govern

immigration policy in Kenya is purely economic, and strict regard must be paid to the interests of the African. When the question is re-examined from this standpoint, it is evident to His Majesty's Government that some further control over immigration in the economic interests of the natives of Kenya is required. The primary duty of the Colonial Government is the advancement of the African, and it is incumbent upon them to protect him from an influx of immigrants from any country that might tend to retard his economic development.

In course of time, as the natives progress intellectually, they will no doubt take the place which Africans hold in other parts of British Tropical Africa in mechanical and subordinate clerical work and in small trade, and it must be the aim of the British administration to further this development by all possible means. With this object the Colonial Government must weigh, so far as may be practicable, the effect on native interests of the admission to the Colony of would-be immigrants of any race. No information is yet available to show what number of immigrants following a particular occupation the Colony can absorb. The problem is complicated by the position of the separate dependency of Uganda to which the normal access lies through Mombasa and the Kenya Colony, and this necessitates careful consideration before any scheme is definitely decided upon. Further, some arrangement must be devised for securing a strictly impartial examination of applications for entry into Kenya, possibly by a Board on which the various communities, including the natives, would be represented. It will, therefore, be an instruction to the Governor of Kenya to explore the matter further on his return to the Colony, and, in concert with the Governor of Uganda, to submit proposals to the Secretary of State for the Colonies for giving effect to that amount of control of immigration which the economic interests of the natives of both dependencies require.

10. Conclusion.

In conclusion, His Majesty's Government desire to record that the decisions embodied in this memorandum have only been taken after an exhaustive review of the several complicating factors which have led to the present unhappy controversy. Their constant endeavour throughout their deliberations has been to relate the principles which must govern the administration of a British Colony in Tropical Africa to the wider considerations of general Imperial policy as enunciated in the Resolution of the Imperial Conference of 1921. It is regretted that on certain material points it has not been possible to meet the wishes of the Government of India, whose views have received the fullest consideration from His Majesty's Government at the instance of the Secretary of State for India. It is not to be expected that issues so grave can be composed to the immediate satisfaction of the several interests concerned, but His Majesty's Government believe that the decisions now taken, resting as they do on the broad basis of the British trusteeship for the African, provide an equitable adjustment of those interests. It is the confident expectation of His Majesty's Government that, if the whole matter is viewed in its true perspective, decisions so based will be accorded general acceptance, and it is their earnest hope that a sincere effort will be made to restore in Kenya that spirit of co-operation and good-will so essential to its welfare and development.

July, 1923.

