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PETITIONS CONCERNING TANGANYIKA

Observations of the United Kingdom Government
as Administering Authority

Note by the Secretariat: These observations refer to the following petitions:

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1. Petition from the President of the Isihakia Association (T/PET.2/174)

The Ishakia Association is composed of members who may, for the purpose of the land laws of the territory, be regarded either as Arabs or Somalis - which of the two is immaterial.

2. The only legislative enactments in the territory which in any way limit the right of individuals claiming to be Ishakia to dispose of their land to anyone of their choice, and on such terms and conditions as may be mutually agreed upon between the contracting parties, are section 11 of the Land (Law of Property and Conveyancing) Ordinance - Cap. 114 of the Laws of Tanganyika - and the Regulation 3 of the Land Regulations, 1948 - Laws of Tanganyika, 1947-1950, Subsidiary Legislation.

3. Section 11 of the Land (Law of Property and Conveyancing) Ordinance provides in sub-section (1) that "a disposition of land belonging to a native in favour of a non-native or conferring on a non-native any rights over the land of a native shall not be operative unless it is in writing and unless it is approved by the Governor". Sub-section (8) of section 11 of that Ordinance defines "native" to

mean "a member of an African race, and includes an Arab, Swahili and Somali".

4. Regulation 3 of the Land Regulations, 1948, reads -

"No transfer, mortgage, under-lease or bequest of a right of occupancy or of any interest therein nor any dealing therewith in any way whatsoever (other than by way of equitable mortgage by deposit of title deeds) shall be operative unless and until it is approved by the Governor:

Provided that this regulation shall not apply to transfers or other dealings with a right of occupancy as between natives, or to under-leases (including renewals of under-leases) of rights of occupancy granted by the Custodian of Enemy Property".

It will be seen that this affects only land granted by the Governor under Rights of Occupancy, and goes no further than to preserve the normal rights of a landlord to exercise some measure of control with regard to dealings with his land. The Governor's approval of dispositions of Rights of Occupancy is rarely withheld, and then only for good and sufficient cause, such as failure to carry out the development conditions.

5. It will be observed that whether an Ishakia be an Arab or a Somali, he may dispose of his lawful interests in land to a non-native, provided the disposition is in writing, and has the Governor's approval. One of the objects of the Section quoted in paragraph 3 is to protect natives in their proposed land dealings against unscrupulous non-natives.

6. The petitioners are correct in saying that Tabora Township has suffered periodic shortages of water, but the reason is the lack not of financial provision but of a satisfactory source of supply. A firm of consultants is at present engaged on advising on this difficult problem, to which the Tanganyika Government attaches great importance. But its solution depends on finding a source of supply which can be developed so as to allow water to be delivered to Tabora at a reasonable price.

2. Petition from Mr. D. M. Anjaria (T/PET.2/187)

The petitioner's complaint is that under Section 8 of the Immigration (Control) Ordinance (Chapter 251 of the Laws of Tanganyika), whereas the male holder of an entry permit is entitled to have the names of his wife and children under 18 years of age endorsed on his own entry permit, the same privilege is no longer extended to the female holder of an entry permit in respect of her husband, who is required to obtain an entry permit in his own right.

2. The petitioner's history of the legislation is substantially correct. Paragraph (f) of sub-section (1) of regulation 3 of the Immigration (Control) (Exemption) (Amendment) (No.2) Regulations 1950, under which the husband of a permanent resident was exempted from the necessity of obtaining an entry permit to enter Tanganyika, was cancelled by the Immigration (Control) (Exemption) (Amendment) Regulations, 1954, so that the husband of a permanent resident must now obtain an entry permit in his own right.

3. The reason for the cancellation of this unusual privilege was that it came to the notice of the Government that it was being seriously abused and used by persons who were either about to be deported from the territory for breach of immigration legislation or had been refused permission to enter, as a means of gaining entrance to the territory without being subject to the Immigration Control legislation. There were several cases of such persons marrying girls of 12 and 13 or 16 years of age; in one case a marriage took place in Zanzibar the day before the man in question was due to be deported from the territory; in another case there are good grounds for believing that the man paid the girl's parents £1,000 for permission to marry the girl. Further, there were other cases in which young men in their teens or early twenties sought out and found old women to marry in order thus to gain entry into the territory in cases where there is no doubt they would not otherwise have been eligible. This privilege could not be permitted to continue when it was being so abused.

4. It is not the case, as suggested by the petitioner, that a female resident has to enter the territory without her husband; the only stipulation made in regard to his entry is that it should first be possible to ascertain his value to Tanganyika as an immigrant. Apart from the general rule recognized in international law that a wife is identified with her husband for nationality

purposes, and not vice versa, it is the general custom among the communities of Tanganyika, as in other parts of the world, for a wife to follow her husband to his place of abode. In the cases in which a female resident of Tanganyika wishes to marry a man from another country and bring him with her to live in Tangyika, it is considered both necessary and desirable that he should comply with the same requirements of the immigration law as are applicable to other would-be immigrants. A wife and minor children are dependent on the husband and father and therefore have a claim to be admitted under his entry permit. A husband, however, ought properly to stand upon his own claims in this respect.

5. There is no truth in the suggestion that a Tanganyika resident may lose his or her rights to live in the territory by marrying a person from another country, and that there is legal restriction on the choice of a spouse. Nor is it true that Tanganyika is pledged to an immigration law uniform with those of the other East African Territories under British administration or protection; on the contrary, owing to its position under the Trusteeship Agreement and its different problems, Tanganyika's immigration legislation and practice has progressively tended to diverge from that of the other East African territories.

6. The assertion of the petitioner that the repeal of the exemption regulation already mentioned took place at a few hours' notice is incorrect. As is required by law, the amending regulations were laid before Legislative Council thirty days before they came into effect. There was opportunity for them to be debated, and for a resolution on the subject to be passed by the Council at both the July and October sessions of the Council this year, but no member of the Council has introduced any motion relating to them.

7. It is submitted that it would be appropriate for the Council to take no action on this petition.
