

1933

1933

3241

KENYA
CO 533/437

3241

The Expulsion from Proclaimed Areas Ordinance.

Previous

3006/8/33.

Subsequent

23139/54.

Ag 247	346
W. Freestone	17
Th. R. H. H. H.	4/7
In. Hord	4/7
Room 309	4/7
W. Freestone	5
247	5/7
Libby legal	9/7
1257	

1933

#1

Gov. Payne - Secret - 11-3-33

Encls. copy of a draft bill dealing with the
expulsion of undesirable persons from proclaimed areas,
together with a statement of objects & reasons, &
needs approval by the of publication, with a view to
introduction at next session of Leg. Assn.

Encls. also a copy of the form of permit recently
revised & approved by the Central N. Rands Trust Board.

The powers conferred by this draft bill
are admittedly arbitrary - but the circumstances
demand it, and the Governor was
instructed to make them so.

There is always the danger that
legislation passed to meet an emergency
linger on the statute book long after the
emergency has passed - cf. D.O.R.A. It
might be well to direct the addition
of a clause limiting the duration of this
Ordinance to ^{two} ~~three~~ years, unless renewed
before the end of that period.

? Telegraph approval

BP Austin
23/3

I appreciate that the Secretary of State has given instructions that Kenya are to take arbitrary powers, but is not ^{draft} this Ordinance, which comes very near the introduction of "droit administratif," unnecessarily drastic?

If a man is deported from the goldfields, it is not merely a question of withdrawing what is admittedly a privilege, i.e., permit to reside in the native reserve, but he may be deprived of valuable vested mining rights. Further, the Ordinance would take away all resort to the courts, and I suggest that it is necessary to bear in mind the possibility of real injustice due to mistake, ^{substantial} irregularity in proceedings, and trumped up charges being manufactured, for instance, by people who want to secure another's claim in the goldfield.

The justification for providing that an appeal should lie to the Governor is ^{keeping the courts out of the picture and} that an appeal ^{presumably} to the courts is likely to cause delays, and the object of the Ordinance is to remove undesirable persons speedily. I see, however, that any time may be specified in the order for removal, and therefore it is quite possible to get rid of an undesirable person before the decision on the appeal is given, or even before the seven days allowed for appeal have expired. That being so, the justification mentioned above does not remain. Is there any reason, therefore, why an appeal should not lie to the courts, at least where questions of law are involved? In any case, is section 12, in its present extremely wide form, really necessary?

I would further suggest that "prima facie" should be substituted for "conclusive" ^{clause} in ^{in its present form} section 10, which would make it impossible to dispute a forged order; and that clause 11 should

at

- B at least be amended by the insertion of the words "bona fide" after "anything". As drafted, I am not at all sure that clause 11 would not relieve an
- C. unscrupulous informer from proceedings for conspiracy, libel, or perjury. As a further safeguard in this connection, I suggest that the Board should be
- D empowered, if not required, to take evidence on oath. It also seems necessary to provide expressly that the
- E. defendant (and the complainant) may call witnesses.
- F I suggest that "or" in line 7 of clause 5(H) should be "and", and that it should be made clear in clause 7 whether permission is to be obtained from the Board making the order of expulsion, or the Board of the
- G. area which the person concerned wishes to enter.

I agree.

I fully realise how important it is in the circumstances to be armed with the necessary powers to order the expulsion of undesirable persons from proclaimed areas, but I do think that the present Bill overdoes the "arbitrary powers" point. The Secretary of State, obviously, never meant that people should be exposed to the kind of dangers which Mr. Roberts-Wray mentions in the second paragraph of his minute, or that unscrupulous informers should be relieved from proceedings for conspiracy etc., as they might ^{possibly} be under clause 11 as at present drafted.

In my view, therefore, the Government of Kenya should be invited to reconsider the provisions of the Bill in the light of the criticisms made by Mr. Roberts-Wray, and to make the necessary amendments.

29th March, 1953.

H. Duncan.

would he? If he has any claims they will still be his though he can't work them. The result would be the same if his permit was cancelled?

A

This is the thing for which Kenya has telegraphed for an answer.

The idea is to devise a procedure to get rid of undesirables quickly, i.e. to run them out of the gold area. The administration is the best judge of the undesirable; and there is a risk of a court upsetting an order because there is no evidence of crime or because the D.C. ~~has~~ did or didn't do something which bears no relation to the question at issue. What sort of evidence would a court require of a man being an 'undesirable'? Would it accept the oath of a D.C. that he is or would it need more?

X However there is a risk - albeit in my judgment a very slight one - of malicious charges to get rid of an unpopular character. Such charges as tampering with native women are easy to frame, hard to disprove, (especially as you may easily get perjured witnesses) and may readily lead to blackmail.

So with some reluctance I am inclined to agree that an appeal should lie but I think that such appeal might well be to a Judge in Chambers under the present law it is a Judge in Chambers who decides upon persons to be turned out of the Colony & the same procedure can well apply here. That ensures a judicial hearing.

Mr Roberts-Lorays points A to G are I think good & can be put to the Governor. (we shall have to telegraph which isn't satisfactory)

S. E. G. Hand
30.3.33

X In my view the risk of such charges getting through a board of local people is negligible. Remembering how recently a man might be expelled from Kenya

4
by purely executive action. I do not consider that such action for the purification of the gold fields is necessarily to be condemned, but I do not resist the House's Judge in Chambers proposal.

W.C.H.
31.3.33

Sec of State
Jagjee.

B.H.G.

3.4.33

I don't agree about an appeal to a Judge. It should be to the Governor. I dissent from the provisions to be drafted. There is no injustice. No non-native has a right to be in the Reserve. He could be refused a permit as he stands. He will enter Kenya the terms of his licence. The word bona fide may usefully be included.

The point about witnesses
& evidence on oath can be
put to the person as exhibitions.

Witnesses seem to me to
be a matter of course without
provision.

The person is not to be forced
in either.

PZ

6/4

#2 Emma Byrne Telby Sect. — 27 March 33
DESTROYED UNDER STATUTE

#3 Tolson tel 96 to ansd 7.4.33

By letter 2/5/33
#4 to For. Secret (w/c 1-5 on 5106/33 TL) A/1
(ansd. Orig sent on —) 28 Nov 1933

#5 Extract from Times of 15 April 33

? Party

H.S. Poursine
18/5/33
2 19 same

(M)

#6 Lib Secretary Shu (Combes) — 16 May '33.
Report of Select Committee on the expulsion from proclaimed
areas Ordinance. (10 copies).

Nº 20 can be put by; but when the
Ordinance is read, the question should be
considered of requiring it separately with
Nº 15 re. honon.

21/6 W

(M)

#7 Emma Byrne 31+2 — 5 June 33
Trans. 2 copies (authenticated) of the Expulsion from
Proclaimed Areas Ordinance No 21 of 1933.

#8 Lib Secretary Shu — 6 June 33.
Trans. 12 copies of the Expulsion from Proclaimed Areas
Ordinance

The points to which Mr. Roberts-Wray drew attention
at A, E, F + G in his minute of 27 April remain
unsettled.

#11. Apparently only one extension is provided
for. ? Signify n.d.n. by annexed dispatch.

order that S. of. may be furnished by the
end of April 1933 with a report on the
working of the Ordinance and Gov's recommendation
as to its continuance beyond May 18th 33

[Signature]
1/7/33

W. H. G. J.
4. 7. 33.

Yes: as it is only for a year subject to renewal
we are justified in asking for a report.

J. L. G. Hand

47

alone

(Library to send a copy to Mr. Boyd for the S. of.)

To Gov 501 (Yanwood) copy 374

5 JUL 1933

Sent
1/2/33

Notice
taken

By Miss Marshall
5/7/33

[Large signature]
Library

C. O.

Mr. ^{4/7/33} ~~Evans~~ ~~Wright~~
Mr. ~~Wright~~
Mr.
Mr. Parkinon.

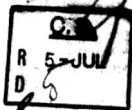
Mr. Tomlinson.
Sir C. Bottomley.
Sir J. Shuckburgh.
Permd. U.S. of S.
Parly. U.S. of S.
Secretary of State.

DRAFT.

Kaya.
No 501

OHJ

23/4/33



5 July 1933

By Air Mail

Answered by NO1
23139/34

(1)

I have etc. to acknowledge the receipt of Sir Joseph Byrnes's despatch No 542 of the 5th June and to inform you that His Majesty will not be advised to exercise his power of disallowance in respect of Ordinance No XXI of 1933, entitled: "An Ordinance to make provision for the expulsion from certain areas of the Colony of persons whose presence therein is deemed to be undesirable."

(2) I shall be glad if you will furnish me, by the end of April 1934, with a report on the working of the Ordinance and ^{and your} ~~any~~ recommendations ~~you may have to make~~ with regard to the continuance of the Ordinance beyond the 1st May, 1934.

Yours etc



87
THE SECRETARIAT,
NAIROBI,
KENYA.

WHEN REPLYING
PLEASE QUOTE
No. S/C. MIN.
AND DATE

1/1/10/32.

RECEIVED
26 JUN 1933
C. O. REGY

6th June, 1933.

Ac Y

The Colonial Secretary of the Colony and Protectorate of Kenya presents his compliments to the Under Secretary of State for the Colonies and with reference to Kenya despatch No. 342 of the 5th June, 1933, has the honour to transmit twelve printed copies of Ordinance No. XXI of 1933 entitled "An Ordinance to Make Provision for the Expulsion from Certain Areas of the Colony of Persons whose Presence Therein is Deemed to be Undesirable".

de



Colony and Protectorate of Kenya.

IN THE TWENTY-FOURTH YEAR OF THE REIGN OF

HIS MAJESTY KING GEORGE V.

JOSEPH ALOYSIUS BYRNE, K.C.M.G., K.B.E., C.B.,
Governor.

Assented to in His Majesty's
name this 18 day of May,
1933.

J. BYRNE.

Governor

**AN ORDINANCE TO MAKE PROVISION FOR
THE EXPULSION FROM CERTAIN AREAS OF
THE COLONY OF PERSONS WHOSE PRESENCE
THEREIN IS DEEMED TO BE UNDESIRABLE**

ORDINANCE No. XXI of 1933

An Ordinance to Make Provision for the Expulsion from Certain Areas of the Colony of Persons whose Presence Therein is Deemed to be Undesirable.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as " the Expulsion from Proclaimed Areas Ordinance, 1933." Short title.

2. In this Ordinance:—

Interpretation.

" Board " means the Board established for any proclaimed area under section 4 of this Ordinance;

" proclaimed area " means an area to which this Ordinance has been applied by proclamation of the Governor;

" expulsion order " means an order made under section 5 of this Ordinance.

3. This Ordinance shall apply to such areas of the Colony as the Governor by proclamation may from time to time declare. Application.

4. (i) For every proclaimed area the Governor shall appoint a Board, which shall consist of the Provincial Commissioner of the Province in which such area is situated, who shall be the Chairman of the Board, and such persons unconnected with the public service as the Governor may appoint, who shall, whenever possible, be persons resident in or connected with such area.

Appointment of Board for a proclaimed area.

(ii) If the Provincial Commissioner is prevented from attending any meeting of the Board he may depute the District Commissioner of the district in which the proclaimed area is situated to attend such meeting and in that case the District Commissioner shall be Chairman of the Board during the absence of the Provincial Commissioner.

Provincial Commissioner to depute District Commissioner to act as Chairman.

(iii) The Chairman and three members of the Board shall constitute a quorum.

Procedure when District Commissioner deems a person to be undesirable.

5. (i) If complaint is made to the District Commissioner of a proclaimed area or if he has reason to believe that the presence within such proclaimed area of any person, other than a native of such proclaimed area, is undesirable, he may notify such person of the grounds on which it is considered that his presence is undesirable, and shall in such notification inform him of the place at which and the date on which his case will be investigated by the Board (which date shall not be less than seven days after the service upon him of such notification) and that he may appear personally before the Board or may in writing show cause why he should not be ordered to leave and to continue to absent himself from such proclaimed area, and that if he does not appear personally or submit grounds of excuse in writing the Board may proceed to a decision in his absence.

(ii) The Board shall have the powers of the Supreme Court to summon witnesses and to call for the production of books, plans and documents, and to examine witnesses and parties concerned on oath. All summonses for the attendance of witnesses or other persons, or the production of documents, may be in such form as the Board may determine and shall be signed by the Chairman, and oaths may be administered by any member of the Board.

(iii) The Board after considering the case against such person and any representations made by him, may, if it is satisfied that the presence of such person within the proclaimed area is undesirable, by order declare that such person shall, within a time to be limited by such order, remove himself from such proclaimed area, and continue to absent himself from such area or any other proclaimed area within the same Province so long as such order shall remain in force.

(iv) Any person against whom an expulsion order has been made by the Board may, within seven days of the making of such order, appeal against such order in writing to the Governor in Council, whose decision shall be final: Provided that, notwithstanding such appeal, such person shall remove himself from such proclaimed area within the time limited in the order referred to in the last preceding sub-section.

6. An expulsion order may be expressed to be in force for a time to be limited therein or for an unlimited time. Duration of expulsion order.

7. If a person against whom an expulsion order from a proclaimed area has been made wilfully neglects or refuses to leave such area within the time limited by the said order, or while the expulsion order is still in force enters or attempts to enter such area or any other proclaimed area within the same Province without the written consent of the Board, which consent may be given subject to any terms as to security for good behaviour or otherwise as to the Board may seem good, such person shall be liable to imprisonment for a term not exceeding six months.

8. If a person against whom an expulsion order has been made has been sentenced to a term of imprisonment such sentence of imprisonment shall be carried out before the expulsion order is carried into effect. Sentence of imprisonment to be served before expulsion order is enforced.

9. The expenses of expulsion from a proclaimed area may be defrayed from the public revenues of the Colony. Expenses of expulsion.

10. In any prosecution for an offence against this Ordinance the production of an expulsion order purporting to be signed by the Chairman on behalf of the Board shall be conclusive evidence that the same is valid and lawfully made. Evidence.

11. No action shall be brought by any person against whom an expulsion order has been made with reference to anything bona fide done or omitted to be done in the execution or purported execution of that order or of the provisions of this Ordinance. Indemnity.

12. No court of law in the Colony shall have any jurisdiction to review, quash, reverse or otherwise interfere with any proceeding, act or order had, done or made under this Ordinance. Restriction of jurisdiction of courts of law.

13. The Governor may make Rules for the better carrying out of the provisions of this Ordinance. Rules.

14. This Ordinance shall continue in force for one year from the date of its coming into operation, and shall then expire: Provided that the Governor may, by proclamation, with the approval of the Legislative Council, declare that this Ordinance shall remain in force until a date to be fixed in such proclamation. Duration of Ordinance.

No. XXI*Expulsion from Proclaimed Areas***1988**

Passed in the Legislative Council the ninth day of May in the year of Our Lord one thousand nine hundred and thirty-three.

This printed impression has been carefully compared by me with the Bill which passed the Legislative Council and is presented for authentication and assent as a true and correct copy of the said Bill.

H. E. BADER

Acting Clerk of the Legislative Council.



KENYA.

No. 342.

7¹²
GOVERNMENT HOUSE
NAIROBI,
KENYA.

5th June, 1933.

Sir,

I have the honour to transmit two authenticated copies of Ordinance No. XXI of 1933 entitled "An Ordinance to Make Provision for the Expulsion from Certain Areas of the Colony of Persons whose Presence Therein is Deemed to be Undesirable", which passed its third reading in the Legislative Council on the 9th May and was assented to in His Majesty's name on the 18th May, 1933, together with the Legal Report in duplicate furnished by the Attorney General. Further printed copies of the Ordinance are being transmitted under separate cover.

Amended (9)

2. This Bill has been the subject of separate correspondence. On the recommendation of Select Committee Clause 5 (iv) of the Bill was amended as shown, and provision was made in Clause 14 for the Ordinance to expire after one year. As regards Clause 5 (iv) considerable opposition was evinced by the European Elected Members of Legislative Council to the provision in the Bill which conferred a casting as well as a deliberate vote on the Chairman of the Board. This provision was originally inserted by way of common form, but in practice a decision to exercise the power of expulsion against the views of one-half of the unofficial members of the Board would probably never occur. The Provincial Commissioner, Nyanza who will be responsible for the administration ---

THE RIGHT HONOURABLE
MAJOR SIR PHILIP CUNLIFFE-LISTER, P.C., G.B.E., M.C., M.P.
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON....S.W.1.

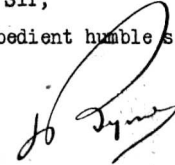
administration of this Ordinance to a preponderating degree considered that the provision was really of academic importance only and that decisions of the Board should be, if not unanimous, at least by a clear majority. The proposed excision of the sub-clause was therefore accepted by this Government.

5. I trust that I may be informed at an early date that His Majesty's power of disallowance will not be exercised in regard to this measure.

I have the honour to be,

Sir,

Your most obedient humble servant,



BRIGADIER GENERAL
G O V E R N O R.

THE EXPULSION FROM PROCLAIMED AREAS BILL, 1933.

In view of the probable increase in mining activities which are at present predominantly concentrated in the North Kavirondo Native Reserve it is considered most desirable in the interests both of ^{the} miners and of the natives concerned that the administration should be equipped with the necessary power to deal summarily and expeditiously with any person or persons whose presence is likely to lead to undesirable incidents. At the same time it is considered advisable that so far as possible such arbitrary powers should not be exercised without the consent of representative members of the unofficial community interested in the development of the mining areas.

2. The Bill provides that for every proclaimed area the Governor shall appoint a Board, which shall consist of the Provincial Commissioner of the Province in which such area is situated, who shall be the Chairman of the Board, and such persons unconnected with the public service as the Governor may appoint, who shall, whenever possible, be persons resident in or connected with such area.

3. The Boards are given power to order a person whose presence after due consideration is deemed to be undesirable, to remove himself from a proclaimed area and to remain out of such area so long as such order remains in force.

4. Appeal against an order of expulsion lies to the Governor in Council.

5. In my opinion His Excellency the Governor may properly assent to this Bill in the name and on behalf of His Majesty.

Nairobi,
12th May, 1933.

T. D. H. M.
ACTING ATTORNEY GENERAL.

R E P O R T.

OF

THE SELECT COMMITTEE APPOINTED TO CONSIDER
AND REPORT UPON A BILL TO MAKE PROVISION
FOR THE EXPULSION FROM CERTAIN AREAS OF
THE COLONY OF PERSONS WHOSE PRESENCE
THEREIN IS DEEMED TO BE UNDESIRABLE.

Your Excellency,

We, the members of the Select Committee of
Legislative Council appointed by Your Excellency, have the
honour to report that we have considered the provisions of
a bill to make provision for the expulsion from certain
areas of the Colony of persons whose presence therein is
deemed to be undesirable, and recommend that the following
alterations be made to the bill :-

Clause 4. That sub-clause (iv) of this clause be deleted.

Clause 5. That sub-clause (iv) of this clause be deleted
and that the following sub-clause be substituted
therefor :-

"(iv) an person against whom an expulsion
order has been made by the Board may within
seven days of the making of such order appeal
against such order in writing to the Governor
in Council whose decision shall be final:
Provided that notwithstanding such appeal, such
person shall remove himself from such proclaimed
area within the time limited in the order
referred to in the last preceding sub-section".

Clause 14. That this clause be deleted and that the
following clause be substituted therefor :-

Duration of Ordinance. 14. This Ordinance shall continue
in force for one year from the date
of its coming into operation, and shall then

expire: Provided that the Governor may, by proclamation, with the approval of the Legislative Council declare that this Ordinance shall remain in force until a date to be fixed in such proclamation!"

We have the honour to be,
Your Excellency's obedient servants,

W.M. LOGAN.	(CHAIRMAN)
T.D.H. BRUCE.	(MEMBER)
A de V. WADE.	(MEMBER)
H.K. MOLTGENEY.	(MEMBER)
J.G. KIRKWOOD.	(MEMBER)
CONWAY HARVEY.	(MEMBER)
T. J. O'SHEA.	(MEMBER)
G. BURNS.	(MEMBER).

NAIROBI.

5th May, 1955.

5
14

Times 15 April 1951

MINING IN KENYA

BILL FOR EXPULSION OF UNDESIRABLES

FROM OUR CORRESPONDENT

NAIROBI, APRIL 12

The Government is seeking exceptional powers providing for the expulsion from certain areas of the Colony persons whose presence therein is deemed undesirable.

An official statement says that, in view of the probable increase of mining activities, it is considered desirable in the interests both of the miners and of the natives concerned that the Administration be equipped with the necessary power to deal summarily and expeditiously with any person or persons whose presence is likely to lead to undesirable incidents. At the same time it is considered advisable that as far as possible such arbitrary powers should not be exercised without the consent of the representative members of the unofficial community interested in the development of the mining areas.

The Bill introduced into the Legislature confers on provincial commissioners powers of expulsion and proposes the creation of an advisory board of unofficial residents, by whose advice the provincial commissioners will be guided. Appeal against expulsion lies direct to the Governor.

The Bill has been favourably considered by the Miners' Association and is likely to be supported by all sections of the settlers in the interest of Kenya's reputation and the avoidance of trouble with the Africans

C. O.

11 7 APR
D 8

3006/8

3 19

- Mr. ~~Frederick~~ 7/4
- Mr. ~~Roberts-Wynn~~ 7-4
- Mr. ~~Hard~~ 7-4 *above*
- Mr. ~~Parkinson~~
- Mr. ~~Tomlinson~~
- Sir C. ~~Balmain~~
- Sir J. ~~Stuckburgh~~
- Permu. ~~U.S. of S.~~
- Parly. ~~U.S. of S.~~
- Secretary of State.

Keays coded sent
H. 30f
7/4
130
No 96

Secret. You to by Secret.

DRAFT Tel.

Gov. Nauck

Following suggestions are put
forward after legal examination
of Bill enclosed in your dep.
11 March Secret.

Clause 5 should include
provision for summoning witnesses
on either side
and taking evidence on oath
Clause 11. Insert "bona fide"
between "anything" and "done".

also suggest that Ordinance should expire two
years after enactment unless
previously extended by Governor's
order with my approval.

SECRET

AIR MAIL

KENYA
No.

SECRET



1/16/33 10
GOVERNMENT HOUSE
NAIROBI
KENYA

RECEIVED
2 0 MAR 1933
G.O. OFFICE

2
11 March, 1933.

Amawd (60 5015/3378) 00678

No. 5
No. 13
3006/33

Sir,

With reference to your despatch No. 78 of the 6th February and my secret telegram No. 54 of the 4th March, I have the honour to enclose a copy of a draft Bill dealing with the expulsion of undesirable persons from proclaimed areas, to which is attached a statement of Objects and Reasons.

2. As a result of discussion with the Provincial Commissioners, it is proposed in Clause 4 of the Bill to appoint the Provincial Commissioner of the Province to be Chairman of the Board. The previous provision was inserted as it was thought that it might involve undue inconvenience and delay if the Provincial Commissioner was required to preside at each meeting of the Board. The Provincial Commissioner of the Nyanza Province who will be the officer most affected represented, however, that in his opinion it was desirable to entrust the chairmanship to the senior officer of the Province, and he did not consider this additional duty would cause any real difficulty. The machinery of the Bill will thus be that the District Commissioner acting under Clause 5 will cause the first notification to be issued to such person or persons as he may consider undesirable, and will.....

THE RIGHT HONOURABLE
MAJOR SIR PHILIP CUNLIFFE-LESTER, P.C., G.B.E., M.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON, S.W.1.

will appear before the Board in the role of complainant. It is anticipated that it is not unlikely that a person upon whom such notice is served will not await the investigations of the Board with their attendant publicity, but will forthwith remove himself, and it may transpire in practice that actual meetings of the Board will be required only rarely.

3. While the object of this Bill is to give powers of expelling undesirable persons from native reserves, it is not feasible to apply the Ordinance specifically to native reserves as gazetted for the reason that a more or less composite mining area will arise in the North and Central Kavirondo Reserves and in the South Kavirondo and Masai Reserves. The provision in Clause 2 of the Bill for the declaration of a proclaimed area will therefore enable such mining areas to be grouped together for the purpose of this Ordinance, a course which is clearly desirable.

4. A further provision which has been introduced as a result of the Provincial Commissioners' recommendations is that an expulsion order should apply in respect of all other proclaimed areas in the same Province. It may be desirable to have separate Boards in North, Central and South Kavirondo, and it is clearly desirable that a person expelled from one of these areas should not be able to enter another and adjacent Reserve.

5. I have not yet received the comments of the Executive of the Miners' Association but should be grateful to learn by telegram whether you approve of the publication of this Bill for introduction in the next session of Legislative Council.

6. I take this opportunity, with reference to my telegram No.46 of the 20th February, to enclose a copy

of

No.9

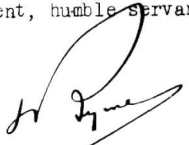
3006/1/33

the form of permit recently revised and approved by
the Central Native Lands Trust Board.

I have the honour to be,

Sir,

Your most obedient, humble servant,



BRIGADIER GENERAL.
GOVERNOR.

A B I L L
TO AMEND PROVISIONS OF THE EXPULSION FROM CERTAIN
AREAS OF THE COLONY OF PERSONS WHOSE PRESENCE
THEREIN IS DEEMED TO BE UNDESIRABLE.

BE IT ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

Short title.

1. This Ordinance may be cited as "the Expulsion from Proclaimed Areas Ordinance, 1933."

Interpretation.

2. In this Ordinance —

"Board" means the Board established for any proclaimed area under section 4 of this Ordinance,

"Proclaimed area" means an area to which this Ordinance has been applied by proclamation of the Governor,

"Expulsion order" means an order made under section 5 of this Ordinance.

Application.

3. This Ordinance shall apply to such areas of the Colony as the Governor by proclamation may from time to time declare.

Appointment of Board for a proclaimed area.

4. (i) For every proclaimed area the Governor shall appoint a Board, which shall consist of the Provincial Commissioner of the province in which such area is situated, who shall be Chairman of the Board, and such persons unconnected with the public service as the Governor may appoint, who shall, whenever possible, be persons resident in or connected with such area.

Provincial Commissioner to deputise District Commissioner to act as Chairman.

(ii) If the Provincial Commissioner is prevented from attending any meeting of the Board he may deputise the District Commissioner of the district in which the proclaimed area is situated to attend such meeting and in that case the District Commissioner shall ^{be} Chairman of the board during the absence of the Provincial Commissioner.

(iii) The Chairman and three members of the Board shall constitute a quorum.

(iv) The Chairman shall have a casting vote as well as a deliberative vote.

Procedure when District Commissioner deems a person to be undesirable.

5. (i) If complaint is made to the District Commissioner of a proclaimed area or if he has reason to believe that the presence within such proclaimed area of any person, other than a native of such proclaimed area, is undesirable, he may notify such person of the grounds on which it is considered that his presence is undesirable, and shall in such notification inform him of the place at which and the date on which his case will be investigated by the Board (which date shall not be less than seven days after the service upon him of such notification) and that he may appear personally before the Board or may in writing show cause why he should not be ordered to leave and to continue to absent himself from such proclaimed area, and that if he does not appear personally or submit grounds of excuse in writing the Board may proceed to a decision in his absence.

(ii) The Board after considering the case against such person and any representations made by him, may, if it is satisfied that the presence of such person within the proclaimed area is undesirable, by order declare that such person shall, within a time to be limited by such order, remove himself from such proclaimed area, and continue to absent himself from such area ^{proclaimed} or any other area within the same province so long as such order shall remain in force.

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(iii) Any person against whom an expulsion order has been made by the Board may within seven days of the making of such order appeal against such order in writing

to the Governor, whose decision shall be final.

Duration of
expulsion
order.

6. An expulsion order may be expressed to be in force for a time to be limited therein or for an unlimited time.

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7. If a person against whom an expulsion order from a proclaimed area has been made wilfully neglects or refuses to leave such area within the time limited by the said order, or while the expulsion order is still in force enters or attempts to enter such area or any other proclaimed area within the same province without the written consent of the Board, which consent may be given subject to any terms as to security for good behaviour or otherwise as to the Board may seem good, such person shall be liable to imprisonment for a term not exceeding six months.

Sentence of
imprisonment
to be served
before
expulsion
order is
enforced.

8. If a person against whom an expulsion order has been made has been sentenced to a term of imprisonment such sentence of imprisonment shall be carried out before the expulsion order is carried into effect.

Expenses of
expulsion.

9. The expenses of expulsion from a proclaimed area may be defrayed from the public revenues of the Colony.

Evidence.

10. If any prosecution for an offence against this Ordinance the production of an expulsion order purporting to be signed by the Chairman on behalf of the Board shall be conclusive evidence that the same is valid and lawfully made.

Indemnity.

11. No action shall be brought by any person against whom an expulsion order has been made with reference to anything done or omitted to be done in the execution or purported execution of that order or of the provisions of this Ordinance.

Restriction
of jurisdiction
of courts
of law.

12. No court of law in the Colony shall have any jurisdiction to review, quash, reverse or otherwise interfere with any proceeding, act or order had, done or made

bona fide
[Signature]

under this Ordinance.

Rules.

13. The Governor may make rules for the better carrying out of the provisions of this Ordinance.

OBJECTS AND REASONS.

In view of the probable increase in mining activities which are at present predominantly concentrated in the North Mavorondo Native Reserve it is considered most desirable in the interests both of the miners and of the natives concerned that the administration should be equipped with the necessary power to deal summarily and expeditiously with any person or persons whose presence is likely to lead to undesirable incidents. At the same time it is considered advisable that so far as possible such arbitrary powers should not be exercised without the consent of representative members of the unofficial community interested in the development of the mining areas.

It is therefore proposed to confer on Provincial Commissioners powers of expulsion from those areas of persons whose presence therein is for any reason undesirable and at the same time it is proposed to establish Advisory Boards of unofficial residents by whose advice Provincial Commissioners will be guided.

Appeal against an order of expulsion lies to the Governor.

If the Bill becomes law it may involve Government in some small expenditure in the payment of travelling expenses, but on the other hand it is hoped that it will have a salutary effect in the preservation of law and order and thereby save additional expenditure which would otherwise be necessitated by the maintenance of additional Police in the areas concerned.

MINING ORDINANCE, 1931.

It is provided in Section 13(i) of the above Ordinance that land within a Native Reserve is excluded from prospecting or occupation under a prospecting right except with the consent in writing of the Native Lands Trust Board and on such conditions as may be prescribed.

A.B. (hereinafter called "the Licensee") having satisfied me that he is a fit and proper person to be granted a permit to prospect in a Native Reserve, is hereby permitted to enter the Native Reserve for the purpose of prospecting therein subject to the following conditions:-

- (a) The Licensee has before the issue of this permit deposited with the sum of £ 25....

The said sum shall be repaid to the Licensee upon his surrendering the permit or upon its cancellation as hereinafter provided subject always to the deduction from the said sum of moneys proved to be due and owing by the Licensee for labour employed by him or as compensation payable by him under the Mining Law.

- (b) This permit may be cancelled forthwith if the Licensee-
 - (1) surrenders or fails to renew his prospecting right or prospecting licence, or if such right or licence is lawfully revoked;
 - (2) is convicted of any criminal offence against person or property for which he has been sentenced to a term of imprisonment for not less than one month or to a fine of not less than ten pounds;
 - (3) conducts prospecting operations in such a manner that, in the opinion of the Medical Officer of Health the breeding of mosquitoes is facilitated. All constructions and excavations, such as dams, channels, pits, holes, wood work or other constructions must be allowed to remain only so long as they are actually necessary to the work in progress. On cessation of the work for a period of ten days or more all pits, holes, dams, channels or other excavations or constructions likely to breed mosquitoes must be effectively filled in or drained, and streams or rivers must be left with a perfectly free flow in one central channel;
 - (4) fails punctually to pay any labour employed by him or to pay compensation due under the law relating to mining;
 - (5) after residing over 7 days in a native location of the Reserve shall fail to pay on demand to the District Commissioner or to such person as he may direct on behalf of the Local Native Council the sum of -/50 per diem or such monthly sum not exceeding 15/- per mensem as the District Commissioner may require;
 - (6) conducts himself in the Reserve in a manner prejudicial to peace and good order;

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(7) employs in the Reserve, except with the written permission of the District Commissioner, any person who has been convicted of a criminal offence against person or property and has been sentenced to a term of imprisonment for not less than one month or to a fine of not less than ten pounds, or who has in the Reserve conducted himself in a manner prejudicial to peace and good order.

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PROVINCIAL COMMISSIONER.

Date