

38005/

C0533/462

38005/

4.

KENYA

4.

Land Commission Report.

Utilization of the Yatta Plateau.

Previous

1935 Feb.

Subsequent

297

10/3

M. Guinness 25/4

M. Duncan 12/5/36

Mr. Parker 13

M. Flood 23.5

S. C. Cottonley 25.5

R. 307

R. 297 12/9

R. 309 3/2

gives modified proposals as agreed by the Committee - Capt Wilson's notes covering approval of the action taken

The "B1" and "D" areas concerned in this proposal are shown clearly in the map below No. 1 on 38005/4/35. In view of the Governor's statement that the land in the "D" area is superior in quality to that in the proposed "Power Reserve", and the proposal to add 50% more "D" land than is being excluded from the "B1" area, the arrangement proposed can be regarded as satisfactory.

The decision to demarcate the area to be excluded from the "B1" land is also very prudent.

As regards the suggestion for adding further land from the "D" area, no compensation in advance for land which it may be necessary to exclude from the existing Native Reserve north of the river, the following questions arise however.

In Section 15(2) of the Native Lands Trust Ordinance, 1930, it is provided that when land is excluded from a native reserve, an area equal in extent and value shall be added to the reserve. Clause 36(3) of the new Native Lands Trust Bill in 38005/4/35 is in similar terms. It is for consideration whether the stipulation that land "shall be" added would be complied with in the case of land which (ex hypothesi) had been added to the reserve, possibly twenty years before the exclusion. If the words "shall be" are likely to cause trouble, will they not be altered in the Bill?

In Section 15(3)(i) of the Native Lands Trust Ordinance it is provided that any native dispossessed by the exclusion of any land shall be entitled to the use and occupation of the area which is added to the native reserve, so far as may be

practicable. There is a similar provision in Clause 38 of the new Bill, but without the words "so far as may be practicable".

In paragraph 5 of this despatch the Governor points out that until the time comes for the exclusion of the Power Reserve the natives will have the full use of that area on both sides of the river as well as of the land excised from the "D" block. But they will be different natives; and if the "D" block is fully occupied there would not be room (possibly in twenty years' time) for the natives disturbed from the Power Reserve, and they might therefore have to be accommodated elsewhere in the Reserve. From this point of view it would therefore seem necessary that the words "so far as is practicable" should be inserted in Clause 38 of the Bill.

Before sending this on I should be glad to have your observations on the points raised ~~above~~ above.


28.4.36.

X

In view of the words "shall add" in clause 36(3) of the Native Lands Trust Bill, I agree that there should be some provision to make it clear that the addition in question shall not be necessary where it has already been made, i.e. prior to the date of the actual exclusion

- 26
- B1. Land added to Reserves to meet a permanent need.
- C. Land set apart for leases to holders, as individuals or groups.
- D. Land available irrespective of race.

exclusion and in ^{anticipation} respect of it, under the 1930 Ordinance.

I also agree that the words which you suggest, or others to the same effect, should be added to clause 38 of the Bill in order to provide for the situation described in the penultimate paragraph of your minute above.

12/5/38.

H. Duncan.

I don't approve the Gov's proposals, but draw attention to these two points.

JJ Cassin
13/5

The situation is clear from the map in the 1935 paper. The addition of 'B' & 'D' land advised by the Commission would be all right if it were not for the possibility of needing some of the B land hereafter if the Seven Forks scheme comes off. There is very little likelihood of that actually happening but it is as well to provide for it.

Accordingly Nanga wants to cut out of the D block (blue on the map) and add to the B an area equal to all the piece south of the river Tana shown on the map and also the area which may be wanted from the Embu reserve hereafter. In order to avoid trouble the area so added is to equal the area needed for the 7 Forks scheme plus 50% even though it is really the better land.

The result will be that the bit of yellow on the map marked as for the Seven Forks scheme will be removed from the yellow and part of the blue will be converted into yellow. The practical result will be very little as the natives will have all the yellow and blue as the Seven Forks scheme comes off.

This has been discussed in on the map of "Seven Forks"

But if hereafter it is necessary to cut out from the Embu Reserve the bit north of the River then there may be trouble because the Ordinance prevents the addition of similar land as mandatory. If the exclusion has to be made then it might be argued that a new addition would have to be made even though it had already been done in advance.

But I don't like adding a dispensing power by saying "so far as may be practicable". To add such words might defeat the whole purpose because it could be argued that no compensating addition is practicable and therefore the reserves might be whittled down.

So I would not suggest this ~~part~~ (the Government don't) but would put the point at X in Mr. Duncan's minute.

J. I. G. Flood
23.5.

As Lord Swinton's conditions have been met, it is not necessary to go on again. But they must certainly be careful over the Embu bit; the amendment must not have any loophole for avoiding the compensating addition.

As per Flood's proposal.

W.C.S.
25.5.36
alone

The only observation than to make regarding the attached draft despatch relates to the point dealt with in the penultimate paragraph of Mr. Paskin's minute of 28/4/36 and in the last paragraph of my minute of 12/5/36 above.

I do not follow the argument put forward by Mr. Flood in the penultimate paragraph of his minute of 23/5/36. The words "so far as may be practicable" would relate, not to any compensating addition, but to the right of the disturbed native and his family to reside in the added area. (In the present case, of course, the compensating addition to the Native Reserve is to be made now under the 1930 Ordinance in anticipation of the exclusion in question).

If the situation described in Mr. Paskin's minute eventually materialises, the effect of omitting from clause 28 of the 1936 Bill the words referred to above (which, incidentally, are included in section 15(3)(1) of the 1930 Ordinance) will be that the Government will be faced with a legal obligation which they will not be able to carry out.

A. Duncan

27/5/36

Yes, I am obliged to Mr. Duncan for pointing out my mistake. I had been looking at, not Section 15(3) of the 1930 Ordinance, but Section 15(2), and my objection to a dispensing power would only apply to that Section and not to Section 15(3), which, as Mr. Duncan points out, gives the natives the right to occupy the added land so far as may be possible. I have accordingly

added

added a paragraph to the draft.

8.6.1936

2 To Kenya, 415 (1 hour) 16 JUN 1936

[Handwritten initials]

- 3. Deputy Governor No. 421.----- 14.8.36.
2 and agrees with amendments suggested, and submits
proposed addition to clause 36(3) for approval.

*This does not call for any action
the wording of the amendment proposed
can be considered when the text of
the Bill is considered. I have made
a note on 3605/415.*

Simple can be put to

*J. J. Cannon
3/2
at home*

[Handwritten initials]
30

added a paragraph to the draft.

8.6.1936

2 To Kenya, 415 (1 known)

16 JUN 1936

- 3. Deputy Governor No.421.----- 14.8.36.
2 and agrees with amendments suggested, and submits
proposed addition to clause 36(3) for approval.

This does not call for any action
other than making of the amendment proposed
can be considered when the text of
the Bill is considered. I have made
a note on 38005/1/36

This file can be put to

19/6/36
3/2
at [unclear]

KENYA.

No. 421



GOVERNMENT HOUSE,
NAIROBI,
KENYA.

3
5

RECEIVED

12 SEP 1936

14 August, 1936.

Sir,
C. O. REPLY

38005/6
(8)

I have the honour to refer to your despatch No. 415 of the 16th. of June, 1936, on the subject of a possible exclusion from the Eria Native Reserve of an area of land which may be required for the purposes of an electric power scheme at the "Seven Forks" site on the Tana River.

2. I agree that provision should be made in Section 32 (3) of the draft Native Lands Trust Bill to provide for cases of this kind and to make it clear that no further addition to the Reserve will be necessary at the time when the exclusion actually takes place if land has already been added in anticipation. The following addition to clause 32(3) is suggested:-

"Provided, however, that in cases where an equivalent area of land has been added to the native lands before and in anticipation of any individual exclusion no additional area need be added under the provisions of this subsection".

3. I would also in agreement that section 38 (1) of the proposed Bill should be amended by the inclusion of the words "so far as may be practicable".

I have the honour to be,
Sir,
Your most obedient, humble servant,

Arthur

GOVERNOR'S DEPUTY.

THE RIGHT HONOURABLE
W. G. A. CRISBY-GORE, P.C., M.P.,
SECRETARY OF STATE FOR THE DOMINIONS,
DOWNING STREET,
LONDON S.W. 1.

C. O.

Mr. Paskin 26.5.77

Mr. Duncan 13.5.77

Mr. Flood 10.6.77

Sir C. Parkinson

Sir G. Tomlinson

Sir C. Bottomley

Sir J. Shackburgh

Permt. U.S. of S.

Partly. U.S. of S.

Secretary of State

Downing Street,

16 JUN 1936

Please see new para. 11.5. See the new para. 11.5. terms of the new para. 11.5.

Sir,

and (31)

I have etc. to ack. the receipt

of your desp. no. 81 of the 13th of feb.

and to inform you that I approve your

proposals in regard to the provision to

be made as compensation for a possible

exclusion from the native Reserve of an

area of land which may be required for

the purposes of an electric power scheme

at the "Seven Forks" site on the Tana

River.

2. I desire however to invite reference

to Sec. 15(2) of the Native Lands Trust

Ordinance, 1930 which provides that when

land is excluded from a Native Reserve,

the Gov. shall add to the Reserve an area

equal in extent and value to the area

excluded. Clause 36(3) of the draft

Native Lands Trust Bill is in similar

terms. In the case under consen, however

before



DRAFT.

Kenya.

No. 415

GOVERNOR.

FURTHER ACTION.

before the question of an exclusion

arises, an addition will already have

(under the Ordinance of 1930)
been made to the Reserve prior to the

date of the exclusion and in anticipation

of it. I am advised that some provision

should be included in this Clause to

make it clear that, in such a case, no

further addition to the Reserve will be

necessary at the time when the exclusion ^{actually}

takes place.

3. I would also draw attention to

the fact that Section 15(3)(1) of the

1930 Lands Trust Ordinance provides that

native dispossessed by the exclusion of

any land shall be entitled to the use of

the added area "so far as the same may be

practicable", and it is for consideration

whether words to that effect should not be

added to Clause 38 of the proposed Bill.

^{draft}
As pointed, that Clause provides that a

native who is disturbed shall be entitled

to reside during the term of exclusion,

in the area which has been added, and it

might

G. O.

Mr.

Mr.

Mr.

Sir C. Parkinson.

Sir G. Tomkinson.

Sir C. Bottomley.

Sir J. Stuckburgh.

Parlt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

DRAFT.

might be that an added area ^{would} might

present some difficulties in regard

to occupation. It would seem,

therefore, advisable to insert the

words "so far as may be practicable"

^{a similar}

in order to make sure that Government

is not placed in an impossible

position by being confronted with a

legal requirement for allowing the

disturbed natives to occupy the added

land) which cannot, in practice, be

carried out.

(Signed) W. ORMSBY GORE.

FURTHER ACTION.

KENYA

NO. 91



GOVERNMENT HOUSE,

NAIROBI,

KENYA

RECEIVED

- 5 MAR 1936

C. O. REGY

13 FEBRUARY, 1936.

Sir,

I have the honour to refer to Sir Philip Cunliffe-Lister's despatch No. 229 of the 27th March, 1935, on the subject of the Yatta Plateau.

2. The proposed modifications of the recommendation of the Land Commission have received the concurrence of Mr. Hemsted and Capt. Wilson on the lines indicated hereunder.

3. Adequate provision for an Electric Power Reserve at the "Seven Forks" site requires the inclusion of a comparatively small area on the northern side of the river, now within the Embu Native Reserve, in addition to the land in the "B1" block south of the River, comprising a total area of approximately 3580 acres.

4. Whether a Power Scheme in this area will ever materialise is hypothetical. It would appear unnecessary at this stage, therefore, to take any steps to set in motion the machinery of the Native Lands Trust Ordinance, 1930, for the exclusion of the northern portion from the Embu Reserve since it will not for a long time and may never be required. On the other hand, if it transpired subsequently that the natives preferred exclusion to "setting apart" in regard to the land in the Embu Reserve and that the provisions contemplated in clause 36 of the draft Native Lands Trust Bill which has been sent to you would have to be fulfilled, it might be difficult to find a suitable ...

23034/7/36
(in circ)
THE RIGHT HONOURABLE,
J.H. THOMAS P.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON S.W.1.

2.

suitable area of Crown Land of equivalent value.

It has seemed wise, therefore, to take steps at this stage to provide for such a contingency and to include in the excision from the "D" area a sufficient area to cover it. The land in the "D" area is superior in quality to that in the proposed "Power Reserve". In order, however, to meet possible objections arising from the loss of a section of river frontage 50% increase in area has been provided in the excision from the "D" block. Although this land is somewhat remote from "Seven Forks" this disability will not be serious since under the new Ordinance both the E1 area and the Embu Reserve will be included in the same block of Kikuyu Native Lands.

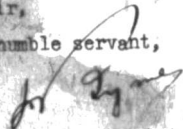
5. Until the time comes for the exclusion of the Power Reserve the natives will, of course, have the full use of that area on both sides of the river as well as of the land excised from the "D" block. It is, however, intended to demarcate in the near future that part of the Power Reserve which lies south of the river so that the position will be clear to the natives. If in fact at that time "setting apart" rather than exclusion is agreed to in respect of the land required north of the River, then the additional area now to be taken out of the "D" area will be a nett addition to the Reserve Lands.

6. In order that future misunderstanding may be avoided the position is now placed on record, and I should be glad to have your formal covering approval of the action taken.

I have the honour to be,

Sir,

Your most obedient, humble servant,



BRIGADIER-GENERAL.
GOVERNOR.