

Land Commission

Likyege Rightholder Compensation to

Previous

See 38005/7/36



Subsequent

1937

R 297 2/7  
Mr. S. Smith 6/7  
Mr. Parkin 13  
Mr. Flood 4  
R 298 16/7  
Mr. 297 27/8  
~~R 309~~ 19  
R 297 21/9  
R 309 19/10  
Mr. Parkin 9/11  
M. Flood  
Mr. Parkin 30/1  
297

1. Prof. Kenya — 289. Com. — 4/5/36
2. Prof. Kenya — 353. Com. — 25/7/36
3. Prof. Kenya — 262 — 25/7/36

a. i. land.

1. And: draws attention to report of removal of natives in Tigois area on 3/8/36 to which the apparently refers.

In Prokin

You suggested that we should point out to the Prof. that Mr. Pating's question of the 29<sup>th</sup> of April did not relate to the removal of the Tigois natives, but to the action which is being taken to compensate the title-holder. — See sections 260-271 of the Land Commission Report)

I submit Draft

Ch. 1/3/36  
9/7/36

The matter of natives mentioned, apart from any other, ought to have pointed out meaning the mistake.

J. P. P. 13/7

J. E. O. 14  
16/7

AIR MAIL  
19/7/36

4 So Kenya. 520 (3 hand)

16 JUL 1936

This was handed to me by Mr. Reed, on his departure on leave. It had become buried in a mass of pp. with which he was dealing at that time.

I assume that the S. of S. does not wish any comments on the historical part of the Article, but only in respect of the new points, arising out of the Report of the Land Commission, which are criticised.

(1) The Kikuyu "right holders"

The criticism is not directed to the adequacy of the compensation, but to the fact that these people are to be estopped from a right of appeal to the Courts of Justice against the decision of the Local Govt. what does this mean?

The recommendation to expunge these rights has been accepted by H.R.L. There is no question of "a decision by the local Govt." on the pt. of principle. Does it mean a decision by the local Govt. as to the amount of compensation to be awarded to each family?

But in so far as the compensation is to be dependent on the extent of the rights which are being expunged, the Commission gave (pages 362 & 364) cogent reasons why the arbitration of a Court is to be unsatisfactory.

If a claim is that there shall be a right of appeal to the Courts against the determination of these rights, it is more than clear that it is untenable. How can there be an appeal to a Court against a decision (validated by the necessary legal instruments) of policy taken in the general interest, of the nature themselves (page 366) as well as in the interests of the European tenants of the farms.

The Govt., by notice in Gazette, has called upon all these "right holders" to submit a statement of their claims of right, and also that they could be properly investigated; and we have passed on to the Govt. various suggestions, which have been made in Questions in Parliament (S. 3) that the claimants should be allowed legal advice, in the presentation of their claims.

\* (i.e. for disturbance, presumably also on the allocation of alternative land - the reserve.

And. 4580

(2) The Trust Board.

In para 25 of the white paper containing the Summary of Conclusions reached by the Trust Board, reasons were given why the functions of the Board can only be discharged properly by a body of men on the spot, with a knowledge of local conditions, & all to discuss proposals with the responsible officers of Govt. & the Local Native Councils. It does not seem necessary to say anything more on this point.

(3) The C.M.C.

It has now been made clear that the C.M.C. will not do more than to define the boundary of the Highlands.

Dist (V) We have heard that the numbers concerned are very much larger than 200 or 300, the point being that the Government should both as to alternative land and compensation. On the principle, because of the importance of long possession and development. It is the smaller holdings that the natives should be provided for elsewhere.

W.L.S. 20/7.

I suggest that no amount beyond that is necessary.

W.L.S. 20/7.

I haven't a letter yet - I think to Mr. Nicholson.

Ed. Boyd  
1/8/36.

6. Extract from a/o letter from Mr. Freeston to Mr. Flood dated 10th July, 1936.

Petty  
J. 29/8/36

7. Governor No. 441. ----- 25.8.36.  
No. 2 and; furnishes full report on the claims of the Kikuyu to land and action being taken under the Land Commission Report to provide compensation.

This is primarily in reply to Major Milner's question of the 20th May last (No. 12 on P. 4. File) in which he asked whether an assurance could be given that in any negotiations between the Kikuyu tribe and the Kenya Govt. concerning the offer by the latter of further land or cash in exchange for land hitherto or formerly of Kikuyu ownership, which is now to be included in areas scheduled for settlement by Europeans only, the Africans concerned will be provided with professional advice of a legal and/or actuarial character, or will be allowed to engage such professional assistance themselves.

Sections 360 & 372, Land Commission Report.

The assumption that the question has direct reference to the method proposed by the Land Commission for the settlement of the claims of the Kikuyu right-holders is, I think, correct.

In spite of the difficulties of settling the claim of these rightholders, on which I attach a separate note, it is clear that everything is being done to meet the Kikuyu grievances in an amicable way and at the same time to preserve the letter and spirit of the Land Commission Report. I suggest that Major Milner be informed in the sense of the last paragraph of the Governor's despatch.

A.R. ...

6.10.36.

Major Milner's q. was addressed to

M. Thomas, who promised to bring his suggestion to the notice of the Gov. but did not promise a further communication.

I assume however that the S. of C. will wish to let Major Milner know the result of the reference to the Gov. of So, something more than the bare bones of the last para. of the Gov's dep. is. I am to be rejoiced & I submit a copy for comment.

2/ Land. The appropriate authorities are doing their best to find a solution to the problem, so there is nothing more to be said till we hear further from Kenya. It is to be hoped that they will be as successful as they were in the case of the more of the Territory.

### 3/ Compensation for disturbances.

The Commission recommended that £2000 should be set aside for this purpose. But when this recommendation was made it was thought that there were only about 200 families to be provided for. Actually the

\* But it is the part of the trouble.

investigation has revealed that there are about 400 such families, yet the Gov. does not propose any increase in the provision for compensation. An extra £2000 is not a great matter for Kenya, but the difference between an average of 10/- a head & £1 a head will mean a good deal to the people concerned, & I should have thought that there would be every justification for a proportionate increase of the total amount to be distributed.

I enclose with the letter to Major Milner, express the hope that they will find a successful solution of the land problem; & as regards compensation for disturbances I suggest that in view of the discovery that there are so many more people to be provided for, than had been assumed by the Commission it would be reasonable & prudent to set aside a proportionately greater amount to be distributed among them.

Recd. 30.08.1931

J. J. P. 3/31

Since Major Milner has not referred to the point I think it is as well not to remind him. So I would say nothing to him about it, but keep the despatch in case he returns to the matter.

and can afford to expend some more money. So a  
reply on the lines Mr. Paslin suggests appears to be  
desirable.

We know the Govt. wants to do the right thing  
but the trouble is how to do it.

V.L.O. [unclear]

30-12-37.

~~XXXXXXXXXXXX~~

This has already been done in para 5  
of No. 14 on 38005/6/37, & para 7 of  
No 13 on 38004-11/37.

This can therefore be put by.

J.J. Paslin  
31/1/38

above.

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V.L.W. Hunt

31.12.37.

~~Handwritten scribble~~

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31/1/38

above.



C. O.

*I would not send this J. 51-12-37*

38005/11/36

For sig. by the S. of S.

Mr. Passin

9/21/36.

Mr. Flood

Mr.

(No. 12 on P.O. file)

Sir C. Parkinson.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Perm. U.S. of S.

Parly. U.S. of S.

Secretary of State.

**DRAFT.**

In your question in the H.C. on the 20<sup>th</sup> of May you ask whether <sup>to</sup> D.L. given an assurance that, in the negotiations in connection with the provision of alternative accommodation for those members of your Service and who have certain rights in the areas set apart for European occupation, the questions concerned will be provided with professional advice of a legal and/or actuarial character, or would be allowed to engage such professional assistance themselves.

Major J. Milner  
R.C., T.D., R.P.

As promised in Mr. Thomas's

my reply to brought

your suggestion to the notice of the Government

**FURTHER ACTION.**  
Copy to Gov. with  
prop. suggested  
minutes.

has however replied that, while there is no legal objection to the employment of by the Native claimants of professional advisers in the submission of their claims, he does not consider that the intervention of advocates and of any assistance to the individuals concerned, he considers in fact that the employment of such advisers would be a waste of money for the litigation and might seriously disturb the friendly atmosphere in which the subject is now being considered.

You will recall that in paras. 362-364 your Report the Land Commissioner explained that any attempt to establish the precise extent of each individual's rights by means of the ordinary procedure of a Court would be involved in a matter of unascertainable facts, and in para 368 they recommended that

the responsibility of drawing up lists  
of the persons to be compensated for  
disturbance, and of the amounts to  
be paid to each claimant, shall be  
placed for the Local Native Council  
as the majority, if not all  
the right holders reside in the Kham  
area a District Officer was specially  
detailed in April last to assist  
Kham Local Native Council and  
its President in the heavy task of  
sifting the claims. Notices were  
published in the Official Gazette and  
the local newspapers inviting the  
submission of claims, & all necessary  
steps were taken to ensure that  
possible claimants were aware of  
the investigation was being conducted.  
As an indication of the thoroughness  
with which these preliminary enquiries  
have been conducted, I may mention  
that the number of substantiated  
claims is greatly in excess of that  
suggested by the Commission in Section  
357 of their Report.

~~The Gov. states that~~  
The Gov. states that, in  
accordance with the considered views  
of the Commission, in para 364 of their  
Report, it was thought desirable

to exclude from the investigation any suggestion of formal legal procedure. It was therefore made clear that the District Officer was now detailed for his work was acting solely on behalf of the President of the Kikuyu Local Native Council and not in any magisterial capacity. The next stage of the enquiry devolved upon the Local Native Council who will be called upon to distribute the sum available for disturbance compensation to those who are accepted as being entitled thereto.

at the same time the Govt. of Kenya is actively promoting and engaged in endeavouring to find a satisfactory solution of the problem of providing alternative accommodation for those natives who will have to move.

#### KIKUYU RIGHTHOLDERS.

These are the Kikuyu natives who claim rights to land which was either alienated on lease or freehold to European farmers under the Crown Lands Ordinance 1908 or the Crown Lands Ordinance, 1915.

The Commission pointed out that the number of householders who took compensation and left the land before 1908 was 962. Of these the number of rightholders were judged to be 750-800. According to the Commission's computation the number of householders who remained on the land when the farms were alienated was about 632. Possibly about 500 of them were rightholders. Some 300 or 400 of these families eventually left.

According to the above figures about 230-330 families, of which about 200 were rightholders, remained on the land that was alienated.

The Land Commission's recommendation as regards the Kikuyu rightholders was to the effect that in consideration of a sum of 25,000 to be paid to the Local Native Councils for distribution to the persons affected, and in consideration of a block addition of 2,000 acres which should be added to the tribal territory in general compensation for disturbance and in consideration of the general settlement with the tribe, both in respect of its rights and its economic needs, all private rights of Kikuyu to land outside the Kikuyu Native Reserve should be extinguished, except

(a) such rights, if any, as may be held under title;

(b)

(b) such rights as may have been acquired in another Native Reserve, e.g. as a muhoi or tenant under the system of land tenure obtaining.

The investigation of the claims of those rightholders who have had uninterrupted occupation from the date of alienation until June 1932 has resulted in the substantiation of claims from about 370-400 families, or some 4,000 individuals, which is far in excess of the number estimated by the Land Commission. But the Governor makes no proposal for an increase of the £2,000 adjudged to be necessary for their disturbance compensation payment. However, the first Kiambu-Kikuyu grievance, in paragraph 8 of the despatch, does not refer to the cash compensation. The grievance is that the land recommended for the accommodation of those natives who had been deprived of their holdings through alienation to European farms and who are now squatters on farms, is entirely inadequate. The Governor says that it must be admitted that this grievance is not entirely groundless. In view of the larger number of substantiated claims this statement must I think be accepted.

The remaining grievances relate to the actual site and value of the 2,000 acres recommended by the Commission for addition to the tribal territory. It will be seen that steps are being taken to arrive at an amicable settlement with the Kiambu Kikuyu. The Chiefs are being taken on conducted tours of the land to be added. Some particular objections are being met by the provision of water or the revision of boundaries.

But

10  
But it seems certain that some further land will have to be given in satisfaction of the claims of the rightholders and the Governor proposes to address the Secretary of State on this point at a later date.

*Para 353*  
It may not be out of place to mention here that as regards the great body of 110,000 squatters the Commission found that, generally speaking, squatters in the settled area must be held to have gone there of their own free will with a view to better themselves and not as a result of economic pressure, except such as is connected with shortage of pasture. The average squatter undoubtedly is richer in stock than the average native in a Reserve and consequently has been able to marry more wives and have more children. It is true that if he returns to the Reserve he will probably be put to some expense in establishing himself there but, when that expense has been defrayed, it is likely that he will be better off, on balance, than his relations who remained in the Reserve.

*as regards the provision of land*  
The position of the squatter is discussed in

38086/5/36.

Gazette and the local newspapers inviting the submission of claims, and all reasonable steps were taken to ensure that all possible claimants were aware that the investigation was being undertaken.

5. In this preliminary enquiry it was made clear that Mr. Phillips was acting solely on behalf of the President of the Kiarbu Local Native Council and not in any ministerial capacity. It seemed necessary to exclude from the investigation any suggestion of formal legal procedure, which would have been definitely opposed to the considered recommendation of the Commission in Section 304, and would not have been the best method of ascertaining the facts.

6. This part of the enquiry is now practically completed and it appears that the number of substantiated claims comprises approximately 270 - 400 families, or some 4,000 individuals. This number is greatly in excess of that suggested by the Commission in Sections 357 and 1855 respectively of the Report.

The next stage of the enquiry devolves upon the Local Native Council who will be called upon to distribute the sum available for disturbance compensation to those who are accepted as being entitled thereto.

It is proposed, however, to postpone the actual disbursement of this money until the natives concerned are ready to enter into occupation of the land to be allotted to them in accordance with Section 370 of the Report.

7. It was only to be expected that the commencement of the investigation as to Native claims of right on European owned farms would be regarded by the

.....Kiarbu

Kiambu Kikuyu as an opportunity of re-opening the whole question of the settlement of Kikuyu claims as recommended by the Commission. I think it right, at this juncture, to advise you that deep and widespread dissatisfaction has recently become manifest amongst the whole of the Kiambu section, including the responsible leaders.

8. The main causes of this dissatisfaction are:-

Firstly, that in their view the land recommended for the accommodation of those who had been deprived of their holdings through alienation to European farms and who are now squatters on farms is entirely inadequate.

Secondly, that much of the compensation land is inferior in value to that of which they had been deprived.

Thirdly, that the Commission in their compensation proposals regarded the Kikuyu tribe as an entity and although on the Commission's showing 6/7ths of the areas taken from the Kikuyu tribe were in the Kiambu District, the bulk of the compensation land is in the Fort Hall and Nyeri Districts, and that, in consequence, the natives of those districts will benefit and not the Kiambu Kikuyu who suffered the loss. The Kiambu residents are reluctant to go to land where they know they will not be welcome and to which claims will certainly be pressed by the local Kikuyu.

2. It must be admitted that the first cause of dissatisfaction is not entirely groundless.

If and when the squatters now residing on European farms return to their Reserves there is no doubt

.....that



that difficulty will be experienced in finding satisfactory accommodation, particularly in the Kikuyu Reserve. This was recognised by the Commission in Section 552 of the Report. When that problem arises it will have to be dealt with either by development of the system of individual or family tenure in the "C" areas or by some other means.

The second objection is not on the whole justified, and is due chiefly to lack of personal knowledge on the part of the Kiambu leaders of the land in other districts which is being offered. In order to overcome this objection, the leaders are being taken by the Provincial Commissioner, Central Province, on a conducted tour of all the areas which it is proposed to add to the Kikuyu Reserve. Some particular objections are being met by the provision of water or the revision of boundaries.

The third cause of grievance is one that is unavoidable if the letter and spirit of the Commission's Report are to be followed. The Commission, I think wisely, recognised that the solidarity of the Kikuyu tribe should be encouraged by the interpenetration of various sections of the tribe, and in particular by the migration of Kiambu Kikuyu to the more sparsely populated parts of the new combined and enlarged Kikuyu Reserve.

There is, however, a real difficulty here. It is not merely that immigrants from Kiambu will, in many cases be unwelcome, but will under the traditional system of land tenure be actually debarred from settling even where land is apparently available. In the established Reserves all land, even though unoccupied, is claimed as part of some

"githaka", and although members of the githaka holder's clan, even from afar, might establish a right to reside there, members of another clan certainly could not, and could only be accepted as tenants with no security. To some extent this disability would operate, probably in respect of certain of the lands to be added which may be the subject of local claims.

A process of gradual migration has, however, begun, and I trust that it will not be seriously retarded by the difficulties outlined above. I am confident that it will ultimately be accepted as a fit and proper development even by those to whom at present it seems most objectionable.

10. It is probable, however, that some further measures by way of provision of land will be necessary in order to placate the Kikuyu dissatisfaction and the Chief Native Commissioner, the Acting Commissioner for Local Government, Lands and Settlement, and the Administrative Officers concerned are now actively engaged in endeavouring to find a satisfactory solution to the problem. On this subject I will address you at a later date.

11. I will now refer to Major Milner's question. Although there is no legal objection to the employment by the Native claimants of legal or accountancy advisers in the submission of their claims, I do not consider that the intervention of advocates will be of any assistance to the individuals concerned or to the Local Native Council in its adjudication of the claims. Expenditure on professional advice would be merely a

Mr. Flood give and were any thing with  
this E was 25 8 36 6

R297

EXTRACT FROM MR. FREESTON'S LETTER TO MR. FLOOD.

This goes on the  
removal of Kikuyu papers.

DATED 10th. JULY. 1936.

X X X X X X

Hosking ( now acting vice Logan) told me  
yesterday that there is likely to be quite a spot of  
bother with the Kiambu Kukes if the Morris Carter  
proposals are carried out. Apparently there are  
4,000 candidates for eviction, not only the 200 families  
that Carter talked of; and they're naturally not happy  
at getting only 10/- a head, and a problematical patch  
of inferior land miles away!

X X X X X X

COPY.

Original on 42022/36 Tanganyika.  
THE ROYAL AFRICAN SOCIETY.

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E

Imperial Institute,  
South Kensington, S.W.7.  
23rd June, 1936.

My dear Boyd,

In case you think the Secretary of State and/or the Department concerned might like to see them, I enclose a rough proof of an article by Edwin Smith on the Kenya land question, to appear in our July Journal, and a copy of a letter to me, with enclosure, by one of our members in Tanganyika, A. T. Culwick, (author of "Ubena of the Rivers") regarding native feeling about the Tanganyika Mandate.

Edwin Smith's article was written after consultation with Sir Robert Hamilton and Lugard.

Yours sincerely,

(Signed)

H. Michelson.

E. B. Boyd, Esq., C.M.G.,  
Colonial Office,  
Downing Street, S.W.1.

Unconnected proof  
20 JUN 1936  
for the July Journal of  
**THE ROYAL AFRICAN SOCIETY**

3 pages

## LAND IN KENYA

Rev. EDWIN W. SMITH

LORD LUGARD's letter in *The Times* of May 27th, was a timely reminder that the Land Question in Kenya is not yet settled. It was also a reminder that the interests of two or three million Africans are affected, and that principles and precedents of far-reaching importance are involved in the decision now to be taken.

Fifteen years ago the Kenya High Court declared that the rights of the Africans in their lands had disappeared; the Africans had become tenants at will of the Crown. This intolerable situation was in part relieved when the Native Lands Trust Ordinance of 1930, set aside, for the use and benefit of the tribes for ever, the Reserves which had been demarcated in 1926, and vested their control in a Central Board. There was to be no exclusion of land except for public purposes and where it was taken for these purposes land of equal value was to be substituted. The Carter Commission subsequently declared it to be quite illusory to suppose that the inclusion of the words "for ever" in an Ordinance gives any legal sacrosanctity against amendment; and, in fact, an Amending Ordinance in 1933, permitted the exclusion of land from a Reserve for the purpose of mineral development by Europeans without the substitution of an equivalent area.

The Ordinance of 1930 proved unsatisfactory in working. The Carter Commission was appointed in 1932 to review it, to make recommendations for satisfying the needs of Africans in respect of land, and to propose a settlement for certain doubtful questions of right. It is neither possible nor necessary to restate here all the conclusions which the Commission reached in their lengthy and very able Report. They recommended that the present African Reserves, with additions, should be recognised, and vested in a Trust, not as Crown Lands but as Native Lands; that other areas be set aside to meet the African economic needs whether enduring or temporary; and that Native Leasehold Areas should be provided. The Commission defined the Highland area of 16,700 square miles to be set aside as a European Reserve. Land outside all these areas (with certain exceptions) was to be classed as D land and there all races were to have equal privileges. The Commission proposed a complete reconstruction of the Lands Trust Ordinance. They recommended that an Order in Council should safeguard the new Ordinance in all cardinal matters, should protect the status of the Trust Board, should define the external boundaries of the African and European Reserves and of the Native Leasehold Areas, and should make impossible the reopening of any claims by Africans to land other than that now allotted to them. Anything contained in such a Royal Order would of course not be amendable by a local Ordinance.

The Report of the Commission was presented to Parliament in May, 1934, and was accompanied by a White Paper in which the Government accepted its main recommendations. Two years have passed and still the Report remains unimplemented. The all-important Order in Council has not been published. The Government has undertaken that before it is issued it

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1. In regard to the Africans whose admitted rights to land in European occupation it is proposed to "expunge."

23 JUN 1930

Land in Kenya—2

The Commission acknowledge that, in spite of orders to the contrary, land in effective Native occupation was alienated to Europeans. In some instances the Africans remain on those lands. It is now proposed to compensate the tribes by adding certain tracts to the Reserves and to make monetary payments to the Africans who still remain on the farms. "Two or three hundred" Kikuyu (inclusive of women and children) are to have £2,000 distributed among them. In view of this compensation, the Commission say, all Native rights outside the Reserves should now be extinguished by Order in Council. Lord Lugard put the situation in these words: "Though we may assume (and on this point assurance would be welcomed) that the land given in exchange is of equal agricultural value, and that the pecuniary valuation is the present-day market value, there remains the fact that Natives whose unequivocal right to the land is admitted, and who have the status of British subjects, are to be compulsorily evicted, not because the land is required for a 'public purpose' but for the benefit of a racial minority, and are to be estopped by means of a Royal Order in Council from that right of appeal to the Courts of Justice, and ultimately to the Privy Council, against the decision of the local Government, which obtains in other British Colonies."

2. The Trust Board. The Government rejected, all too summarily, the Commission's proposal that the Trust Board, in which the Native lands are vested, should be resident outside Kenya. There is surely weight in the Commission's argument that if the Board is to command the confidence of the Africans it is essential that the Board should be removed from the sphere of local politics. It should be free to challenge if necessary any executive action by the local Government which it might consider unjust. The Government insisted that the Board must reside in Kenya. Lord Lugard suggests that if the Commission's proposal were now accepted the right of appeal to the Courts of Justice by Africans aggrieved in respect to the lands which they claim might be made subject to allowance by the Trust Board. This would avoid unnecessary litigation.

3. The third point was brought up by Sir John Harris who stated that the Government proposes to include in the Order in Council a prohibition against sale or lease of land in the Highlands to any person of colour. Sir Robert Hamilton quoted what the then Colonial Secretary said to the Chairman of the Commission who had asked about the privileged position of Europeans in the Highlands: "no person other than a European shall be entitled to acquire by grant or transfer agricultural land in such area or to occupy land therein." The Commission admitted the cogency of the argument that since Europeans can obtain leases in the African Reserve, Africans should be able to lease land in the European Reserve on the same conditions. But they laid it down that the only land in the Highlands to be leased to Africans should be land adjacent to an African Reserve and that this should be leased only if the accredited representatives of the Europeans agreed. As for the 150,000 squatters, the Commission urged that they should not be allowed to become tenants on European farms. It appears then that from the European Reserve

23 JUN 1950

Land in Kenya—2

The Commission acknowledge that, in spite of orders to the contrary, land in effective Native occupation was alienated to Europeans. In some instances the Africans remain on those lands. It is now proposed to compensate the tribes by adding certain tracts to the Reserves and to make monetary payments to the Africans who still remain on the farms. "Two or three hundred" Kikuyu (inclusive of women and children) are to have £2,000 distributed among them. In view of this compensation, the Commission say, all Native rights outside the Reserves should now be expunged by Order in Council. Lord Lugard put the situation in these words: "Though we may assume (and on this point assurance would be welcomed) that the land given in exchange is of equal agricultural value, and that the pecuniary valuation is the present-day market value, there remains the fact that Natives whose unequivocal right to the land is admitted, and who have the status of British subjects, are to be compulsorily evicted, not because the land is required for a 'public purpose' but for the benefit of a racial minority, and are to be estopped by means of a Royal Order in Council from that right of appeal to the Courts of Justice, and ultimately to the Privy Council, against the decision of the local Government, which obtains in other British Colonies."

2. The Trust Board. The Government rejected, all too summarily, the Commission's proposal that the Trust Board, in which the Native lands are vested, should be resident outside Kenya. There is surely weight in the Commission's argument that if the Board is to command the confidence of the Africans it is essential that the Board should be removed from the sphere of local politics. It should be free to challenge if necessary any executive action by the local Government which it might consider unjust. The Government insisted that the Board must reside in Kenya. Lord Lugard suggests that if the Commission's proposal were now accepted the right of appeal to the Courts of Justice by Africans aggrieved in respect to the lands which they claim might be made subject to allowance by the Trust Board. This would avoid unnecessary litigation.

3. The third point was brought up by Sir John Harris who stated that the Government proposes to include in the Order in Council a prohibition against sale or lease of land in the Highlands to any person of colour. Sir Robert Hamilton quoted what the then Colonial Secretary said to the Chairman of the Commission who had asked about the privileged position of Europeans in the Highlands: "no person, other than a European shall be entitled to acquire by grant or transfer agricultural land in such area or to occupy land therein." The Commission admitted the cogency of the argument that since Europeans can obtain leases in the African Reserve, Africans should be able to lease land in the European Reserve on the same conditions. But they laid it down that the only land in the Highlands to be leased to Africans should be land adjacent to an African Reserve and that this should be leased only if the accredited representatives of the Europeans agreed. As for the 150,000 squatters, the Commission urged that they should not be allowed to become tenants on European farms. It appears then that from the European



the fact that Natives whose unequivocal right to the land is admitted, and who have the status of British subjects, are to be compulsorily evicted, not because the land is required for a 'public purpose' but for the benefit of a racial minority, and are to be estopped by means of a Royal Order in Council from that right of appeal to the Courts of Justice, and ultimately to the Privy Council, against the decision of the local Government, which obtains in other British Colonies.

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AIR MAIL

4

C. O.

Mr. Grossmith.

Mr. *Parkin* 13/17

Mr. *Flori* 14/18

Sir O. Parkinson.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shackleton.

Parli. U.S. of S.

Parly. U.S. of S.

Secretary of State.

Downing Street,

16 July, 1936.

Sir,

I have etc. to acknowledge

the receipt of your despatch No. 262

of the 23rd of May regarding Mr.

Paling's question in the House of

Commons on the 29th of April, and to

suggest that the question does not

relate to the removal of the natives from the

Tigeni area, but the action which is

being taken in respect of the Kikuyu

right-holders mentioned in Sections

360-371 of the Kenya Land Commission

Report.

(Signed) W. ORMSBY GORE.

DRAFT.

KENYA.

NO. 520

GOVERNOR.

that both this  
question & the  
question asked  
by Major Paling  
on the 20<sup>th</sup> of  
May, of wh.  
a copy was sent  
to you with  
the letter of  
22<sup>nd</sup> June  
from the  
Secretary to the

FURTHER ACTION.

AIR MAIL

4

C. O.

Mr. Grossmith.

Mr. *Peckin* 13/11

Mr. *Flood* 14/11

Sir C. Parkinson.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

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Secretary of State.

Downing Street,

16 July, 1936.

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Paling's question in the House of

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to the removal of the natives from the

Tigoni area, but ~~the~~ action which is

being taken in respect of the Kikuyu

rightholders mentioned in Sections

360-371 of the Kenya Land Commission

Report.

(Signed) W. ORMSBY GORE.

DRAFT.

KENYA.

NO. 520

GOVERNOR.

*that both this question & the question asked by Major Nelson on the 20th of May, of wh. a copy was sent to you with Mr. Thomas' dep. No 353 of the 25th of May, relate to the*

FURTHER ACTION.

AIR MAIL

4

C. O.

Mr. Grossmith. 6/

Mr. Parkin 13/1

Mr. Flood 14/6

Sir O. Parkinson.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shackburgh.

Parli. U.S. of S.

Parly. U.S. of S.

Secretary of State.

Downing Street,

16 July, 1936.

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Report.

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DRAFT.

KENYA.

NO. 520

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Dep. No 353  
from 25<sup>th</sup> May  
relate to the

FURTHER ACTION

AIR MAIL

4

O.

- Mr. Grossmith.
- Mr. *Parkin* 13/11
- Mr. *Flood* 14/10
- Sir O. Parkinson.
- Sir G. Tomlinson.
- Sir C. Bottomley.
- Sir J. Shuckburgh.
- Parly. U.S. of S.
- Parly. U.S. of S.
- Secretary of State.

Downing Street,

16 July, 1936.

Sir,

I have etc. to acknowledge the receipt of your despatch No.262 of the 23rd of May regarding Mr.

Paling's question in the House of

Commons on the 29th of April, and to

*as per*  
I understand, however, ~~that~~ <sup>does</sup> suggest that the question relates not

to the removal of the natives from the

Tigoni area, but ~~the~~ action which is

being taken in respect of the Kikuyu

rightholders mentioned in Sections

360-371 of the Kenya Land Commission

Report.

(Signed) W. GEMSBY GORE.

DRAFT.

YA.

MEMOR.

that both this question & the question asked by Major Andrew on the 20<sup>th</sup> of May, of wh. a copy was sent to you with Mr. Thomas' dep. No 353 of the 25<sup>th</sup> of May relate to the

ACTION

I shall be obliged if you will

consider Mr. Paling's question from this

aspect and furnish me with ~~the desired~~

information. *to enable me to reply to*

*it.*

I have, etc.

KENYA.

No. 262



GOVERNMENT HOUSE

NAIROBI.

KENYA.

23 MAY, 1936

Sir,



I have the honour to refer to your despatch No. 289 of the 4th May, 1936, enclosing a copy of Mr. Paling's question in the House of Commons regarding the removal of Kikuyu natives from their holdings.

2. It is presumed that the question refers to the removal of natives from the Tigon Area to a portion of Forest Reserve in accordance with the recommendations of Section 598 of the Kenya Land Commission Report. These natives number 167 men, 177 women and 263 children, or a total of 607. A full report of the steps which have already been taken and which it is proposed to take in connection with this removal was given in my despatch No. 65 of the 3rd February last. No action to carry out the proposals will be taken until your reply has been received.

The natives concerned have been fully informed by Administrative Officers of the grounds on which their removal has been recommended, viz: that it is undesirable in the interests of both natives and Europeans alike to perpetuate the existence of this small island of native occupation in the midst of a European Settled Area, and the responsible members of the community have expressed their satisfaction with the area offered to them in exchange.

I have the honour to be,

Sir,

Your most obedient, humble servant,

*H. J. ...*

BRIGADIER-GENERAL.

G O V E R N O R .

THE RIGHT HONOURABLE,

J. H. THOMAS P.C., M.P.,

SECRETARY OF STATE FOR THE COLONIES,

*Handwritten notes:*  
No 3 - 38005/7/36  
1/4  
1/4

KENYA.

No. 262



GOVERNMENT HOUSE

NAIROBI,

KENYA.

23 MAY, 1936

Sir,



*P. 4 file (1)*  
I have the honour to refer to your despatch No. 289 of the 4th May, 1936, enclosing a copy of Mr. Paling's question in the House of Commons regarding the removal of Kikuyu natives from their holdings.

*3 on 38005/7/36*  
*14*  
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*14*  
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I have the honour to be,

Sir,

Your most obedient, humble servant,

*H. Dymally*  
BRIGADIER-GENERAL.

GOVERNOR.

THE RIGHT HONOURABLE,  
J.H. THOMAS P.C., M.P.,  
SECRETARY OF STATE FOR THE COLONIES,  
DOWNING STREET,  
LONDON...S.W.1



Mr. Passin 22/5. J.

Mr. ~~Passin~~

Mr.

Sir C. Parkinson

Sir G. Tomlinson

Sir C. Bottomley

Sir J. Shuckburgh

Parlt. U.S. of S.

Party. U.S. of S.

Secretary of State

22.

DRAFT.

Henry

No 353

Gov.

Q.A. (No 12).

Answer

25 MAY 1936

Sir,

I have the pleasure to transmit to you ~~for your own~~ the orig. copies of questions & answers in Parliament in regard to the arrangements for investigating the claims of foreign nations living on alienated land.

I earnestly trust you will give careful consideration to the suggestion that these nations should be provided with, or should be allowed to engage, professional advice & assistance in the presentation of their claims, & that you will furnish me with your observations on this subject.

FURTHER ACTION.

N.S. - No 11.

(Signed) J. H. THOMAS

C. O.

*1/3/36*  
*Mr. Pant 1/3/36*  
Mr.  
*J.P.*  
Sir C. Parkinson.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.



AIR MAIL

*Stt.*  
*Hand 3*

4 May 1936.

Sir,

I have etc. to transmit

**DRAFT.**

Kenya.

No. 289

Governor.

to you <sup>a</sup> copies of a question <sup>asked</sup>  
to me in the House of  
~~answer in Parliament on the~~ Commons, regarding the  
29th of April, on the subject  
~~removal of sections~~ <sup>in Kenya</sup>  
of land held by natives, and to  
~~Kenya natives from their holdings~~  
and to request that you will furnish  
the necessary  
me with a report showing what  
information to  
action is being taken.  
*enable me to reply*  
*to Mr. Panting.*

*[Handwritten signature/initials]*

I have

etc.

FURTHER ACTION.

(Signed) J. H. THOMAS