

1937

38005

CO 533/476
KENYA

38005

LAND COMMISSION

Previous

1936

Subsequent

1938

R. 297

18/37

R. 369

168

Mr. Parker

21/8

Mr. Flood

24

R. 297

17/37

Mr. Parker

297

27/38

R. 307

21/1

98

LAND

Items of Special Interest:-

297
Copy made
38005/1/37

Ripni move, Completed Compensation paid and removal to approved new area completed "in respect of majority of residents". Others return to move as present.

Paugani Demolition of huts & removal of occupants commenced.

Delta Concessions Removal of natives to Kasigan Mountain Completed.

The references to the Correspondence should be inserted. (I have marked those items which I remember)

J.P. Paami
11/8/37

It will be seen that there are still a few items to be cleared up before the "Native Census" can be finalized.

? P. G.

J.P. Paami
24/8

Yes, there's a good deal yet.

J. C. Flood

24

It is now possible to send on the drafts of the Kenya Highlands Order-in-Council, ^{9th} Native Lands Order-in-Council, and recommendations for the new Native Lands Trust Ordinance, and for re-modelling the old Crown Lands Ordinance to provide for certain special areas recommended by the Carter Commission. Generally speaking, the impression formed by me is that the Commission has been over-elaborate and, further, that the whole tendency of land legislation in Kenya is the wrong way round. To the casual critic it would appear that the object of land regulation in Kenya has been to try to retain as much land as possible for alienation, and to confine the natives to as little as can be left to them in decency. Hence an attitude of mind which resents turning over unoccupied Crown Lands into Native Reserves, probably on the ground that the areas may be wanted hereafter or might possibly be leased to somebody, and hence the queer idea that natives should be parked in Reserves and kept there. Now Kenya can't do this, and it must be recognized that without native labour and native industry outside the Reserves the whole place would come to a standstill and crash. This is recognized, of course, by anybody who thinks for one minute, but I suggest that a better way to approach the problem is not how little land will do for the native but what is the smallest extent of land that Government can legitimately take out of the natives' traditional occupation. It is, of course, true that in Kenya in the days of the first occupation of it there were vast areas of land which were completely desert and un

*I think it is a shame
that every individual
has been in response
to demand*

*It will get more when
results come up for
discussion in some cases.*

*So E. S. has had it
planned to deal with
individual tenure*

and at that time I do not see what else could have been done ^{to} invite settlers, though when one looks back upon it the policy appears to be excessively ^{cautious} ~~cautious~~. It is, however, much too late to talk about this question since we have got the settlers, and we have got the policy of regarding Crown Land as an asset of Government which Government is entitled to exploit for financial advantage. Not that Government gets very much out of it - the total revenue from rent being only £54,000 in the present Estimates - but still Government does get something.

The Commission in paragraph 1821 of their Report remark that a just criticism of the present Native Lands Trust Ordinance is that it is too much obsessed with the idea of land as a sort of common reserved for a tribe and they point out that the tenure of land is becoming more individual so that the expedient of reserving areas to tribes and letting them find their own salvation inside them is not one which will solve the land problem. This is an interesting development and is in accord with what one has heard in other parts of Africa. I suppose the explanation of it is that with order established in the country the various communities are not liable to be uprooted from their villages by stress of war, and therefore acquire a growing sense of permanency in their occupation of certain lands. From this it is not a very far cry to individual ownership in

some

some form or another. In this country it is true that individual land ownership grew very slowly from the old Saxon communal village fields, but in Kenya at any rate the natives have before their eyes the white settlers with their individual ideas of ownership and it is only natural that the process should be quick.

We have been very bothered in considering this legislation by the ^{very great difficulty} impossibility of defining the various areas involved. Eventually we have received from Kenya an enormous definition of the Highlands. It is so large that it will be quite impossible to put it into an Order-in-Council and, indeed, as it refers to boundaries by reference to local numbers in the Kenya Land Register it would be meaningless if included in such an Order. Similarly, the boundaries of the various native lands are not at all clearly defined in the Commission's Report, or anywhere else, and we know that considerable adjustments have been going on and are still in progress in many places. Therefore there is only one possible solution which is to adopt what happened in 1930. In 1926 Kenya proclaimed large areas as Native Reserves under the Crown Lands Ordinance, and the Native Reserves under the Lands Trust Ordinance of 1930 were established by reference to that Gazette Notice. Kenya will, therefore, have to turn round and do it again and publish ^{two} Gazette Notices declaring (a) the boundaries of the area to be known as the Highlands shall be as follows and (b) the boundaries of the area to be known as the Native Lands shall be as follows Then the Orders-in-Council will proceed to refer to those

Gazette

Gazette Notices and say that these areas are declared to be the Highlands and the Native Lands respectively. It is not very satisfactory but it is the best that we can think of. A curious thing about it is that the Gazette Notices will be issued out of the Blue. The section of the Crown Lands Ordinance empowering the Governor to declare Native Reserves has been repealed and there is no particular provision under which any statutory force can be given to such a proclamation. However, I do not think that that is an insurmountable difficulty since it is open to the Governor to issue a Gazette Notice simply publishing for information the fact that under the legislation to implement the Carter Commission Report the following areas shall be so-and-so and so-and-so.

There is, and there will be, a difficulty about the farms in the Muhoroni area which are within the Highlands boundary but are in occupation of Indians. If the Order-in-Council proposed to extinguish altogether the rights of anybody other than a European to hold land within the Highlands area, then these Indians would present a very great difficulty. If it were proposed to take the area out of the Highlands there would be a howl from the European settlers. If it were to be laid down that, as the Commission

recommend

5
recommend, the land in question should be deemed to be excluded and that if, when it comes into the market, any of it is bought by a European it should automatically become part of the Highlands, it would not work either. Since, however, it is agreed that it is not practical politics to attempt to confine ^{the} land in the Highlands ^{by law} to Europeans, the remedy would seem to be much simpler and is to draw the boundary of the Highlands so as to include these few farms and leave them in the possession of Indians. Government will then be able to maintain the hitherto existing administrative practice and will be able to point to these farms as evidence that Government does not rigidly exclude Indians from the Highlands, while if they fall vacant I should think it quite possible that Indians would be allowed to buy them. The opposition to this would of course come from the extremists who try to adopt the attitude that in no circumstances whatever should any Indian be allowed to occupy any agricultural land in the Highlands, but I do not see how that sort of attitude can be maintained.

As regards the action to be taken, I suggest that it be as follows:-

(1) Separate despatches to Kenya on each of the instruments, i.e., one despatch with the Highlands Order-in-Council, one with the Native Lands Order-in-Council, and one each on the Ordinances. In the one on the Native Lands Ordinance, a copy of Mr. Dale's memorandum should be enclosed for guidance. In sending out the Highlands Order-in-Council, we should explain that this is as far as we think it is

possible

possible to go and say that it provides, so far as an Order-in-Council can do, adequate safeguards for the Highlands area, though the real and only safeguard must rest in the maintenance of the present administrative practice in regard to not leasing land to non-Europeans. So long as this is maintained and attention is not focussed on it the danger of non-Europeans will be negligible.

In the case of the Native Lands Order-in-Council, it would, I think, be well to add something to the effect that the land which is not included in the Highlands or the native lands will have to be watched very carefully and not disposed of recklessly without regard to existing native rights or possible requirements for the future, and for a future a very, very long way ahead. Kenya is in a curious position. It probably could carry a much greater native population than it has got. When we occupied the country the native population were low down in the list of savages and subject to incessant raiding and inter-tribal warfare. They are also, like most savages in Africa, very fairly disease ridden. The results of our occupation are now beginning to become manifest. It is really only since the war that the native has had a chance of existing under better and more hygienic conditions, and we hope that the population will be increased. If it is, then the question of accommodating that population must be considered. They cannot go outside Kenya, and if the reserves are not big

enough.

enough they must be allowed to occupy land outside the reserves and must have equal security. It follows, therefore, that even if there is a large quantity of unoccupied and unalienated Crown land outside the native zone or the white zone, Government should still regard it as primarily native land to be developed eventually, not by the white, but by the native, and should be just as careful in allowing leases of large areas to outsiders as if it was land in reserves. I don't mean that the same formalities should be applied, but rather that Government should cultivate that habit of mind. Odd leases for developing a big sisal plantation, or something of that kind, are reasonable and proper, but there should be no more hundred thousand acre grants, and any that are made should, I think, be on short leases, not more than ninety-nine years. Government would then be in a position to take stock of the situation from time to time. In saying this, I am, of course, looking centuries ahead, but I am fairly sure it is the right view to take.

25.9.57

7

Sir C. Phipps

I am anxious not to add unduly to the amount of reading matter on these questions. The Carter Commission Report was formally accepted by H.M.G. in the White Paper, and I think that it has been agreed that our best way of avoiding controversy is to keep to the Report as far as possible.

1. From the point of view of the natives, it is impossible to expect them to appreciate the merits of a general settlement. If a particular section consider that they suffer, they will complain (as they have done in the case of the Tigon) quite regardless of the benefits which natives have received elsewhere. In addition, there will certainly be an outcry on behalf of the natives to the proposal to extinguish native rights over land except where provided for under these arrangements and except, of course, in the coastal strip. But all this follows the Report and that is a good offset to criticism.

I think, however, that it would be desirable to bring to the notice of the Governor, separately from these instruments, the necessity of dealing with cases where native rights are thus extinguished but where it is not, in practice, contemplated that the natives should be removed. In such cases (and I think that they will be fairly numerous) some new form of tenure will have to be devised. In this way, incidentally, I think that it may be possible to meet the criticisms of those (Professor Macmillan and Mr. Creech Jones) who, starting off from the resident native labourers, have taken up the case of natives resident on European estates, ^{otherwise than under} ~~otherwise than under~~ the New Labour Agreement.

2. Coming to the Europeans, they have already been told semi-officially that there is no chance of an Order-in-Council which will give statutory effect to the administrative practice of the reservation of Highland land to Europeans. The draft Order-in-Council now submitted goes further than we formerly contemplated in providing for an Advisory Land Board for the Highlands, corresponding to the Native Land Trust Board. Mr. Flood has gone into this question in his ^{general} note. It does not fully carry out the Commission's first thoughts (that the European community should have the same measure of security as natives) but we may regard it as sufficiently carrying out the recommendation of the last paragraph of the Report, that there should be analogous safeguards. It is the best we can do.

3. As regards Indians. As I have said, it was originally contemplated here that the Highlands Order-in-Council should merely define. Even that was doubtfully acceptable to Sir Joseph Bhoré when he saw Lord Swinton, and you will see that when I went to the India Office about the Report, I told Sir F. Stewart that only a defining Order-in-Council was ^{in mind} required. (At the same meeting the question of the Muhoroni farms was taken up and I pointed out that the future arrangements with regard to these anomalous cases could be dealt with by the application of the administrative practice or the Governor's general power to

control

control transfers between persons of different race.]

The question is whether this new matter relating to the Highlands Advisory Board will not create suspicion in the minds of Indians and the Government of India, ^{that} after all the Europeans are to be masters in their own Highlands.

If the matter were not now one of urgency, I should prefer that we should take the India Office with us before the documents are laid before the Governor for public discussion in Kenya, but as it is, I think that we must work on parallel lines and when we write to the Governor, write also to the India Office, to let them know what we have in mind.

Done

W.S.

29.9.1937

*When Lord Swinton's letter called for a
consideration of the arrangements to be
made for the Highlands. I have drafted
the Order-in-Council.*

W. Flood

W.S.

*I am very glad to see the progress
made by I.A. Dept. with Mr.
Dale's help in this very difficult
complicated matter. I have
read with interest Mr. Flood's
memoranda on the various
draft documents
as to procedure. I understand
that Mr. Dale will wish to*

38005/3/35
N^o 34

58a
1586

showing the various drafts
more particularly the
draft Order in Council to
Sir G. Buxton. You will
no doubt arrange with
Mr. Gale accordingly
I should like him to
consider them with Sir G. Buxton
what arrangement can
be made for discussion
in Kenya of the draft
Order in Council. Such
publicity will be essential,
I think, & if it would be
unconstitutional to place
either or both the draft
Orders before the Leg. Council,
some alternative must
be devised. Would it be
possible to publish the
substances of the Orders
classified by clause, while
avoiding the verbatim
part?

Subject to discussion
with Sir G. Buxton, the Dept.
should put up a draft
despatch or despatches
for comment by the S.J.S.
and a draft letter
to the India Office. I take

It is not the intention of the
Office will be of an informative
character and that it is
not proposed to seek the
approval or concurrence
of the India Office or Govt.
of India.

Recd
3.10.37
Claus

10
Sir G. Bushé.

58005/6/35

Here are the papers relating to Kenya land and the various drafts arising out of the recommendations of the Carter Commission. Kenya sent home a draft Native Lands Order in Council, a draft Native Lands Trust Ordinance, and a draft Bill to amend the Crown Lands Ordinance, all of which you will find here flagged. In drafting the Native Lands Order in Council, Kenya followed literally what they considered to be the recommendation of the Commission for "safeguarding" the fundamental provisions of the Native Lands Ordinance by Order in Council. The result was their draft Order in Council was, most of it, a verbatim repetition of the important provisions of their draft Ordinance. This clearly would not do, and I have therefore entirely redrafted the Native Lands Order in Council. I have also drafted a Highlands Order in Council. You need not, I suggest, bother with the two draft Ordinances which contain provisions of detail.

My draft Highlands Order in Council is short and, I think, speaks for itself.

With regard to the Native Lands Order in Council, Mr. Flood has stated, in the document attached flagged A, the important facts in relation thereto. In addition I have underlined in red on the attached copy of the White Paper all the recommendations of the Commission which were accepted by H.W.G. in the White Paper, and have ticked those to which we have given effect either in the Native Lands Order in Council, the Highlands Order in Council, or the Ordinances. Where the

White

White Paper has accepted a recommendation that a provision should be in an Order in Council, that provision has been incorporated in the appropriate Order in Council. I would, however, like to draw your attention to the following points:-

(1) You will see that all the recommendations accepted by H.M.G. have, in fact, been carried out with the exception of the very first recommendation, which appears in paragraph 6 of the White Paper. This is to the effect that lands added by the Commission to the Native Lands on economic grounds (which they call "Class B.1") as opposed to those to which the Commission thought the natives had a right, should be added subject to special conditions as to economic user. Mr. Flood, in the passage I have marked Q in his memorandum marked A, has explained the reason for this. I should add that the whole of the Native Lands (i.e. Class A and Class B(1)) will be subject to Government control as to use, both in such Ordinances as the Crops Production and Livestock Ordinance, 1926, (as they always have been) and under Clause 64 of the proposed Native Lands Trust Ordinance.

(2) The recommendation in paragraph 13 of the White Paper that the Order in Council should declare that "all claims have been satisfied and extinguished" has been implemented by the second recital and Clause 10 of the Native Lands Order in Council which extinguishes,

with

with certain exceptions, all existing rights to land outside the areas of the Native Lands. It does not seem to me possible to do more than this.

(3) The recommendation in paragraph 11 is a matter for the Ordinance, and as drafted by Kenya has not apparently been altogether carried out. Mr. Flood is going to add something to the despatch on this point.

(4) I have not inserted in either Order in Council a provision authorising His Majesty to vary or revoke the Orders. This seems quite unnecessary as both the British Settlements Act and the Foreign Jurisdiction Act, under which the Orders are made, expressly give power to do this.

(5) Sir C. Parkinson, in his minute on the top of the file, has raised the question of the procedure to be followed. As I understand it, the most convenient will be as follows: We shall send all these drafts out to Kenya and the Governor will discuss with his Executive Council the provisions of all the drafts including the draft Orders in Council. The draft Orders in Council will, of course, not be published, nor will it be possible, I think, to publish the substance of the Orders clause by clause as Sir C. Parkinson suggests, but there will, I think, be no objection to communication of the terms of the proposed draft Orders in Council to the Executive Council. When the Executive Council has agreed the terms of all the drafts we shall submit the Orders to His Majesty and at the same time the two Bills will be published in Kenya, and the Objects and Reasons will contain some general statements

to

Mr. Flood

To say that the Commission
recommendation in para
805 must be done in
mind & act on it

Mr. Flood's this complete?

The ordinance gives the Gov.
power to apply it to any area

less it has no meaning

whether it applies to the

Native

NS

to the effect that it is anticipated that Orders in Council will be made implementing the important provisions of the Commission's report, while the Bills carry out the recommendations in detail. I suppose there would be no objection to referring to the proposed Orders in Council in this way. When the Orders in Council are made the Bills will then be passed through the Legislature, and the Governor will bring the whole lot into operation at the same time.

I pass this minute through Mr. Flood in case he has any observations before you consider it.

15.10.37.

Mr. Pale.

This has been a colossal piece of work, and I have only a few points which I have discussed with you.

(1) Whether an Ordinance which is contrary to an Order in Council made under the British Settlements Act is or is not valid is a moot point, but I think the position could be made quite clear by a slight amendment of the Letters Patent. Personally, however, I do not think that it matters, and I should leave things as they are.

(2) As regards the Native Lands Order,

I do not really see how we can refer to Ordinances which are non-existent, cannot be identified, and of which the provisions ex hypothesi are unknown to H.M. in Council when the Order is made. And this procedure raises a further difficulty because under it I can see that you must have your definition of Ordinance which is contained in Section 2 of the draft Order. But the effect of this definition is to make the provisions of Section 4(3), 4(4), 7(1) and 7(2) meaningless. Or to take Section 4(3) and put it colloquially, am I not right in thinking that all that is said is this - that the areas of land shall not be altered save in so far as the Legislature of Kenya chooses to alter them by Ordinance?

I think that we should have to have the Ordinances passed first. If that is done, we could have proper references to the Ordinances in the Order in Council, and for the present definition of Ordinance we could substitute something to the effect that references to the Native Trust Ordinance, 1927, and the Crown Lands Ordinance, 1937, shall include Ordinances amending them provided that the amending Ordinances were reserved and assented to by H.M. If we must, by I think we must, contemplate some amendments to these Ordinances, this is the only way of securing some form of protection that I can think of.

I understand from you that there would be no difficulty about this provided that the Kenya Legislature could know what was going into the Orders in Council, and, if that is the case, I should

should see no harm in laying upon the table of the House in Kenya the substance of the Orders under some such label as "Draft Proposals".

Lastly, I cannot understand Section 11 of this Order. You have shown me some remarks by the Commission which, to my mind, do not make much sense, but I really can find nothing to justify Section 11, although I am, of course, open to persuasion.

RB 15.10.37.

I have asked the drafts in accordance with the above comments of Sir C. Bush (except the last) and he agrees with my alterations.

With regard to clause 11, this can put in simply because of para 1644 of the Commission Report. In kind there is no necessity whatever for any of it, but on the other hand the point is of political importance considerable. Whatever is required, something should be said in the despatch in explanation.

W.Dale

18.10.37

Five drafts 4 Sept 1937 letter to J.O.

These have been reviewed again on the instructions of the J.O.

Sir C. Robinson

The drafts have now been reviewed again by Mr Dale and Sir C. Bush. I have had the draft Order-in-Council fair copied, and I send them on herewith, together with four drafts - one draft dealing with the Highlands Order, one with the Native Lands Order, one with the Native Lands Ordinance sending out Mr. Dale's memorandum, and a general one talking about the whole thing and suggesting a course of procedure. I think that the course of procedure will be satisfactory to opinion in Kenya, since it will show that Government is perfectly in earnest and will also make it clear that the Highlands will be safeguarded as much as they can be. Some settler opinion professes to be alarmed lest the Highlands should not be safeguarded in exactly the same way as the native lands, but to do so would, I think, prove very unsatisfactory to the settlers, since it would prevent them from selling land except under extraordinary conditions. It might also be argued that it would not be possible to allow any freehold area in the Highlands, which is one of the things they profess to want, and it could only serve to raise very serious doubts as to the tenure of land by Europeans. The arrangement proposed in the Order-in-Council, coupled with the provision in the Native Lands Ordinance, that exchanges between native lands and the Highlands are to be subject to the consent of the Highlands Board, gives all the security that can be produced from legal documents.

I might perhaps point out that until the boundaries have been settled, which has hardly yet been completed in the case of the native reserves,

would

7 flags in 15000/15

would not have been possible to take any action which would have been final.

19.10.1937

*Have no comment beyond that
attached to the legal opinion etc.*

Secretary of State,

At long last we are able to send forward for your consideration drafts for carrying out the recommendations of the Morris Carter Land Commission Report. There have been many memoranda and minutes written, but I have detached most of these, and I think the only way in which you can tackle this appalling file is to read the five drafts which are now submitted together with the two draft Orders-in-Council attached respectively to the drafts numbered 1 and 2: there is no occasion, I think, for you to read Mr. Dale's memorandum attached to draft numbered 3.

It has been a colossal work getting this straight. Mr. Parkin has helped greatly: he inherited the file from Mr. Preston. But the brunt has fallen on Mr. Flood and Mr. Dale who are, I think, to be congratulated on the work which they have done. Sir Gratian Busha has been brought into consultation by Mr. Dale as

necessary.

The difficulty about Clause 11 of the draft Native Lands Order-in-Council is referred to by the Commission in paragraph 1643 of their report. In paragraph 1644 they said that it was essential that Government should have the power to control, direct, and modify the system of land tenure, not only in regard to alienation of land, but in respect of land between the natives themselves. Paragraph 1645 called attention to the fact that the natives in Kenya appear to be unable to understand the distinction between tribal ownership of land and tribal sovereignty. This was explained to me by Sir A. Wade. It is typically a Kikuyu performance. The Kikuyu comes up to the Commissioner and asks "Whose is the land?" If he is told that the land is Crown land, i.e. belongs to the King, that the King has given orders that he, the native, is to go on living on it as long as he behaves himself, then that is all right. If, however, it is called 'native lands', the Kikuyu fastens upon this and says, "Oh, it isn't the King's land at all, he has said it is native land, and it can't be both". That leads to confusion, which I suspect is deliberately fostered and probably doesn't really exist, because the mentality of the Kikuyu sometimes gets very near that of a smart and cheeky school boy. All the same it is, I think, very desirable to carry out the Commission's recommendation since they say that they believe the apprehension of misunderstanding is well founded.

J. H. Flood

Sir C. Parkin

19.10.1937

*The draft clause § 11 of the
reason for including it) have mentioned in
Mr. J. H. Flood's no(2) - para. 13 - I understand*

That Mr. Flood has explained to
Sir G. Brooke as in his memorandum
today but that Sir G. Brooke still
doubted like the claims of the
Commissioner wants something
to be done. I would have it in
mind.

W.B.
19.10

necessary,

I think you may find it useful, as I have, to
have Mr. Flood and Mr. Dale with you when going
through the drafts.

Sir Robert Brooke-Popham has kept pressing
for all this: as you know, he even telephoned to me
from Nairobi on the subject in August. I suspect
that on receipt of the four despatches which will reach
him he will realize what an undertaking all this has
been. It will, at any rate, be a great relief to my
mind to think that the ball is at the other side of
the net.

W.B.
26.10.37

I cannot go into detail
as to how I am going to
try to get all the samples
material to be prepared in
possible. According to the
drafts of the first of the
"read" I had better be
informed.

W.B. 26.10.37

2470 Kanga (G) (7)

29.10.37

30.11.37

3. Gov. Kenya - Conf. 156 - 30.10.37

Three 2 copies of galley proofs of Report of Leg. Com. proceedings for August 11th, 12th, & 13th, 1937

Charge on 3809/37

4. Sir R. Brooke-Pollock (S/O) - 18.10.37
Requests definite information of progress regarding issue of the Order-in-Council.

4A. To Kenya TEL. P. P.
5. To Sir R. Brooke-Pollock (4. Am.) (Draft on 3809/37) 28.10.37
16.11.37
(Draft on 3809/37)

The debate in No 3 is of interest - but not only of academic interest. The ball is now with Kenya.

? Part 3.

J. J. Paine
16/11/37

MS
Received for delivery
005/13/37 today
Dr. 297
27.11.38

6. Gov. Kenya - 27 - 15.1.38
To further report for period ended 31.12.37

? Put by - Clarke White - 28/1

A line
at base
28.1

KENYA

No. 27



16
6
GOVERNMENT HOUSE
NAIROBI
KENYA

RECEIVED

JAN 16 1938

G. O. REGY

15 JANUARY, 1938.

Sir,

23034/34
I have the honour to refer to paragraph 4 of Sir Philip Cunliffe-Lister's (now Viscount Swinton) despatch Kenya No. 575 of the 15th May, 1934, in which he asked for half-yearly Progress Reports on the administrative action taken to give effect to the recommendations of the Kenya Land Commission to be furnished.

Reports covering the period up to the 30th June, 1937, have already been supplied. I now forward a further report for the period ending the 31st December, 1937.

I have the honour to be,

Sir,

Your most obedient, humble servant,

GOVERNOR'S DEPUTY.

THE RIGHT HONOURABLE
W. ORMSBY-GORE, P.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON, S.W.1.

KENYA LAND COMMISSION.

7TH PROGRESS REPORT FOR PERIOD ENDING
31ST DECEMBER, 1957.

B. G. G. G.
AG: COMMISSIONER FOR LOCAL GOVERNMENT,
LANDS AND SETTLEMENT.

NAIROBI.

13th JANUARY, 1958.

SUMMARY OF ACTION TAKEN ON COMMISSION'S RECOMMENDATIONS.

SECTION.	SUBJECT.	RECOMMENDATION.	ACTION TAKEN.
<u>KIKUYU PROVINCE.</u>			
485 Schedule on pages 152 and 158.	Addition to Kikuyu Native Reserve.	21,000 acres to be added to Kikuyu Native Reserve.	
<u>Items.</u>			
10 also 594-598.	Portion of L.R. 825/R Saba Saba. Portions of Forest Reserve. Tigoni Move.	Natives to be removed and accommo- dated in Bathi Forest. (Part of 21,000 acres).	Surrender completed. Compensation paid and removal to approved new area completed in respect of majority of residents. Others decline at present to move.
567.	Cash Compensation of £2,000.	To be paid to the Kikuyu Local Native Councils, for distribu- tion to right holders.	Further action awaits the promulgation of the Native Lands Order in Council.
445.	Portion of L.R. 825/R Saba Saba (22 acres).	To be purchased and added to Native Reserve.	Surrender completed.
<u>NAIROBI MUNICIPALITY.</u>			
591 & 622.	Pangani.	Natives to be removed by sections to Punwani. Compensation to be paid.	Removal delayed pending completion of alternative accommodation in new Native Village.
<u>MASAI DISTRICT.</u>			
680-682.	Mile Railway Zone and Chyulu Triangle.	Not to be included in Masai Reserve but either of the following courses to be followed :-	Proposals for including these areas in the Masai Reserve in exchange for other lands are still under consideration.

SUMMARY OF ACTION TAKEN ON COMMISSION'S RECOMMENDATIONS.

SECTION.	SUBJECT.	RECOMMENDATION.	ACTION TAKEN.
<u>KIKUYU PROVINCE.</u>			
488 Schedule on pages 152 and 155.	Addition to Kikuyu Native Reserve.	21,000 acres to be added to Kikuyu Native Reserve.	
<u>Items.</u>	Portion of L.R. 525/R Saba Saba.		Surrender completed.
10 also 594-598.	Portions of Forest Reserve. Tigoni Move.	Natives to be removed and accommo- dated in Bathi Forest, (Part of 21,000 acres).	Compensation paid and removal to approved new area completed in respect of majority of residents. Others decline at present to move.
367	Cash Compensation of £2,000.	To be paid to the Kikuyu Local Native Councils, for distribu- tion to right holders.	Further action awaits the promulgation of the Native Lands Order in Council.
445.	Portion of L.R. 525/R Saba Saba (22 acres).	To be purchased and added to Native Reserve.	Surrender completed.
<u>NAIROBI MUNICIPALITY.</u>			
591 & 622.	Pangani.	Natives to be removed by sections to Pumwani. Compensation to be paid.	Removal delayed pending completion of alternative accommodation in new Native Village.
<u>MASAI DISTRICT.</u>			
880-882.	Mile Railway Zone and Chyulu Triangle.	Not to be included in Masai Reserve but either of the following courses to be followed :-	Proposals for including these areas/in exchange for other lands are still under consideration. in the Masai Reserve

SECTION.	SUBJECT.	RECOMMENDATION.	ACTION TAKEN.
757-9	Yatta Plateau. Land near Makindu.	<p><u>MASAI DISTRICT (CONTD.)</u></p> <p>(1) Masai to take out annual lease until alternative watering places are available in the Reserve; or</p> <p>(2) Agricultural land in the Reserve to be ceded in exchange for Chyulu Triangle or other desired land.</p> <p><u>UKAMBA PROVINCE.</u></p> <p>500 sq. miles to be added to Machakos Native Reserve as B1.</p>	<p>19</p> <p>Proposals for adding "C" area to the Akamba Reserve B2 for a period of ten years subject to confirmation by Secretary of State.</p> <p>Purchase of L.R. No. 4940 (304 acres) for the sum of Shs. 1520/- from Local Native Council funds completed. Land to be included in Native Reserve.</p>
<u>NORTHERN FRONTIER AND TURKANA DISTRICTS.</u>			
810	Mukogodo.	<p>(1) Mukogodo area to be detached from Central Province and added to Northern Frontier District for purposes of Administration. Boundaries to be decided by Government after consulting the North Nyeri District Committee and the natives concerned.</p>	<p>Proposals for corridor of access to Uaso Nyiro River approved. Survey proceeding.</p>

SECTION.	SUBJECT.	RECOMMENDATION.	ACTION TAKEN.
<u>NORTHERN FRONTIER AND TURKANA DISTRICTS. (CONTD.)</u>			
		<p>(2) Area to be occupied by this section and the water supply for the area to be specially considered by the Provincial Commissioner.</p> <p>(3) Mukogodo area when added to Northern Frontier District to be Class D land with priority for native rights.</p>	
<u>RIFT VALLEY PROVINCE.</u>			
977-979.	Dorobo Mau Section.	To be removed to Reserves of Tribes with which they have affinities. Remainder to go to Chepalungu. Natives to be given choice.	Large numbers of Dorobo have already removed to the Native Reserves with which they have affinities. Further sections were removed during the half year.
<u>NZOIA PROVINCE.</u> <u>ELGEYO AND MARAKWET.</u>			
	Purchase of land for Kendurr Salt Lick, Elgeyo Boundary.		Purchase of 42 acres of L.R. No. 5771 for Shs. 1280/- from Local Native Council funds completed. Land to be added to Elgeyo Native Reserve.
<u>NYANZA PROVINCE.</u> <u>SOUTH LUMBWA.</u>			
1176 and 1185	Chepalungu (Lumbwa and Dorobo). Chemagel Township.	(1) Chepalungu area (except 10,000 acres for European Settlement) to be added to Lumbwa Native Reserve Class A.	Revised proposals provide for :- (a) the excision of 640 acres from Native Reserve for Chemagel Township.

SECTION.	SUBJECT.	RECOMMENDATION.	ACTION TAKEN.
		<p align="center"><u>NYANZA PROVINCE.</u></p> <p align="center"><u>SOUTH LUMBWA (CONTD.)</u></p> <p>(2) Locations to be reserved for Dorobo (Sections 978 & 982).</p> <p>(5) Timber to be protected and Forest at head waters of Mgor River to be conserved.</p> <p>(4) European Area of 10,000 acres to be selected by administrative authorities in consultation with European community.</p> <p>1200 acres to be "set apart" as a Township.</p> <p align="center"><u>COAST PROVINCE.</u></p> <p align="center">(a) <u>Hinterland.</u></p> <p>Special enquiry to be undertaken by Provincial Commissioner.</p>	<p align="right">21</p> <p>(b) the addition to the Native Reserve of Sotik Post (640 acres) and 1200 acres from the 10,000 acres at Chepalungu reserved for European occupation.</p> <p>Survey completed.</p>
1209	Durumu (Mwachi Valley Claim).	Special enquiry to be undertaken by Provincial Commissioner.	Proposals were submitted to the Secretary of State providing for all Crown Land farms in the Mwachi Valley block to be made available for Native occupation, those on the generally southern side of the Mwachi River as Class A and those on the northerly side on lease as Class B2. The Secretary of State rejected these proposals and it was ultimately decided that all Crown Land farms be included in Class A Native Lands, and that other farms be purchased if practicable and similarly added to Native Lands.

SECTION.	SUBJECT.	RECOMMENDATION.	ACTION TAKEN.
<u>COAST PROVINCE.</u>			
<u>(a) Hinterland (Contd.)</u>			
1215-8	Durumu.	Mwachi Forest Exchange to be carried out.	On investigation it transpired that a large Native Village existed on the area that was to remain Forest Reserve. A revised proposal satisfactory to the natives and the Forest Department has been approved subject to confirmation by the Secretary of State.
1234-5	Taveta Reserve Irrigation.	<u>TEITA RESERVES.</u> Government to consider inviting the Kilindini Harbour Wharfs & Estate Co. Ltd. to cooperate in irrigation works in the Native Reserve.	The Company has undertaken to carry out this irrigation scheme.
1262. (map on page 324).	Teita Concessions Ltd. (L.R.5880)	<p>(1) Area W (5 sq. miles) to be surrendered by the Company.</p> <p>(2) Area X to be surrendered (11 sq. miles) to be surrendered by the Company.</p> <p>(3) 200 acres north of area X to be surrendered.</p> <p style="text-align: center;">All of the above to be added to Native Reserve as Class A.</p> <p>(4) Kasigau to be at liberty to barter land, area X for other land if they so desire.</p>	Removal of Natives to Kasigau Mountain completed. Boundaries of Reserve surveyed. Negotiations with the Company for boundaries of Area W completed and survey carried out.

16th November, 1937.

Sir Robert Brooke-Popham,

Thank you very much for your letter of the 18th of October. I telegraphed on the 28th to say that the despatches about the Carter Report and the Dairy Bill were going by the mail of the 29th. You will have received these, and I think you will agree that they are quite enough to go on with and you will not want any further comment from me on those particular matters in this letter.

It is about the labour circular that I want now to write. Frankly I do not like its being reissued, especially at the present juncture, on the top of new Ordinances dealing with resident native labourers, employment of natives, and native registration. As you know, the Kenya Government is thoroughly suspect in many quarters

Air Chief Marshal
Sir Robert Brooke Popham, G.C.V.O.,
K.C.B., C.M.G., D.S.O.

quarters as regards its dealings with the native population, and I have to face a good deal of criticism at times in the House in connection with Kenya. Anything which could possibly be interpreted, even by a stretch of the imagination, as suggesting that it was the policy of Government to compel natives to work for Europeans would be used immediately as the ground for a strong political attack which can do no good to anyone, least of all the settlers. This circular was originally issued in 1927, when Grigg was Governor, and that alone is enough to arouse suspicion in many quarters, and not only by the official Opposition.

But, in any case, things have gone a long way since that circular was issued, and I have very grave doubts whether it could have received approval here if it had been put forward now. It urges, in brief, that natives should develop the reserves or go and work for the Europeans in order to learn how to work better in their reserves. It also stresses the ample areas of rich land which are said to be in the reserves, and talks about the natives being encouraged to develop the large estates in

in their possession which are at present only cultivated in scattered patches or not cultivated at all. It is very doubtful whether this can be accepted as a true statement of the case to-day, and it is also doubtful whether it ever was really true. There is, of course, some good land in the native reserves, but excess of cultivation is not always the best thing in tropical climates, and European methods of agriculture require certain modifications for conditions such as those which prevail in Kenya. Stockdale, in his report, has referred to the risk of soil erosion or exhaustion of fertility resulting from over-cultivation, and he thinks that in order to deal with that question, one of the most important things to be done will be so to reorganise agricultural operations, both in the reserves and on the European farms, as to ensure that the land is not being exhausted of its fertility maintaining properties and that there is sufficient land being re-conditioned, kept under forest, grass, and so on. He also feels that it is essential that what is allowed to be under cultivation should be farmed better than it is at present, and mixed farming or the making of composts and green manuring introduced

introduced wherever practicable. Another difficulty will be that if a cattle industry is to be built up for export, and if a guarantee against rinderpest is necessary, then strict control of stock owned by the "resident native labourer" will have to be taken in hand. In fact, in order to deal with the soil problem comprehensively, a great deal more regulation by Government will be required than hitherto.

I have tried to think of some constructive suggestions which I can put forward to help, but without much success. It must always be remembered (and the circular recognises the fact) that the first thing the native population has to do is to grow sufficient food to supply its own needs without any danger of a famine: otherwise, when there is a food shortage the result is always to throw the burden on the rest of the community. But, assuming that satisfactory arrangements can be made for this, the question is how to avoid a shortage of native labour on the European-owned farms, whether in the Highlands or outside them. One result of controlling agriculture in the native reserves with a view to the prevention

prevention of erosion will inevitably be to increase for the time the available supply of surplus labour, since there may not be so great an area under cultivation. Some of this labour will undoubtedly be required for the anti-erosion measures which are contemplated, but it may be expected that there will be a surplus which will be prepared to earn money by working for the European.

This possible increase in the labour force may, however, be offset if, owing to the necessity of restricting cattle, the resident native labourers are not so much attracted to farms as hitherto. If, however, they do not want to work on the farms, they will have to go back into the reserves, and probably the diminution of labour, from making squatting less attractive, will not be great; and looking to the future the more squatters and the longer they stay on European farms the more difficult the problem they create will become and the less the justification for regarding them as labourers on temporary contract.

It seems to me clear, however, that something more is required. The importation of labour from outside cannot

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cannot be considered for many reasons. I don't refer to labour drifting in from Uganda or Tanganyika, but anything in the nature of organized imported labour. There is also, from time to time, talk of a labour shortage in Uganda, and I understand that sometimes there is a real difficulty when the cotton harvest is on in that Territory. Might not increasing use be made by the Europeans of labour-saving machinery? Admittedly it is expensive to import, but it will displace a certain amount of native labour. As a matter of fact, the gospel of labour saving machines was consistently preached by Grigg, and some progress may have already been made, not only in their use but in the training of natives to work them.

I have not mentioned one of the most obvious methods of attracting labour and that is to improve the wages and conditions of employment. It will, perhaps, be argued that the native only wants to work in order to earn his tax and that if you make it possible to earn the tax in a short time, then the native will only work for that short time and thus will be worse than before, because he will have no inducement to go on working. That, however, is surely

surely short sighted, and I think that by this time it is true to say that as the earning capacity of the native goes up he will try to earn more in order to purchase various articles which he has not been able to afford hitherto.

For the good of the country we have, with a view to broadening the basis of production, been encouraging the development of native agriculture and of their growing economic crops, such as cotton, wattle, and so on, in the native reserves. We cannot go back on that policy, but if the natives are encouraged to go in for this kind of activity, it follows that they won't be able to go and work for the Europeans; and so far as I can see, the Europeans will only be able to meet this labour shortage by labour-saving appliances, by offering attractive conditions of labour, whether in the form of higher wages or otherwise, and (if it is possible) by getting labour from quarters where the home harvest does not exactly coincide with the European's greatest seasonal need.

In the past, there were always farmers who, in a time of labour scarcity, would say "I have no shortage; the

same

same men come back to me year after year." If there are any such men left, their methods might repay examination.

I am sorry that I cannot be more helpful, but I am sure that the reissue of the circular would seriously embarrass me, and make it more and more difficult to defend Kenya from attacks. I may say too that you personally have a wide measure of confidence in all parties and sections here, and have a reputation for impartial and independent judgment where the interests of settlers and natives may seem to conflict. Nothing would prejudice this more than the reissue of an old circular and particularly one which was regarded as controversial ten years ago. It may well be that in connection with the formulation of new agricultural policy designed to deal with Stockdale's points and covering desirable changes in European as well as native methods of dealing with the land something can be worked in about labour. But the phrasing will require very careful consideration.

Thank you so much for writing as you did and asking me what I felt about this most difficult matter.

Yours sincerely,

Original registered in 3809/37 Laban
31
Government House,

Nairobi,

Kenya.

18th October, 1937.

Dear Ormsby Gore,

The opening of the Budget session of our Legislative Council is on Friday the 29th October. There are sure to be questions asked regarding two points - first, the issue of the Orders-in-Council implementing the Carter Report, and secondly, the Dairy Bill. It would help us very much if we could give some definite information of progress regarding the issue of the Orders-in-Council. I feel that in view of what has already been said it is not necessary for me to stress the importance to us of the matter, but until we do get it settled there is always the possibility of some serious trouble in the Limuru area, and every week's delay brings that possibility nearer.

With regard to the Dairy Bill, the last thing that happened was a private letter from me dated the 8th September to Lord Dufferin. Although this was not the same type of urgency as the Orders-in-Council, the uncertainty as regards the Dairy Control Bill is making things difficult and it would help us very much if we could give some definite answer at the beginning of next session.

The problem of shortage of labour is becoming serious, and indeed acute, in one or two districts. A circular on Rural Policy of Development, of which I enclose two copies, was issued some ten years ago and has never been cancelled. It expresses very nearly what my views are on the subject and I have drawn the attention of one Provincial Commissioner to the circular. I should like to re-issue it, but before doing so would be grateful for your approval. I remember that some years ago there was a frightful outcry about natives being

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being forced to work in the European areas, but I cannot see how this circular could be interpreted as advocating any form of forced labour. One of the things that I have frequently preached out here is that Kenya is one, and I have drawn the settlers' attention occasionally to the fact that it is to their advantage that the Native Reserves should be prosperous. But this does apply both ways, and if the settlers' prosperity decreases because they cannot get enough labour to pick their coffee, then the native reserves are going to feel the result of it in a very short time.

Yours, etc.,

(sd) R. Brooke-Popham.

The Right Honourable,
W. Ormsby Gore, P.C., M.P.,
Colonial Office,
Downing Street,
London, S.W.1.

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GOVERNMENT HOUSE
NAIROBI
KENYA

CONFIDENTIAL

RECEIVED
- 9 NOV 1937
C. O. REGY

30 October, 1937

Sir,

on 38005/11/37

I have the honour to refer to paragraph 4 of Mr. Pilling's confidential despatch No. 126 of the 6th. September last on the subject of Kikuyu Land Claims in the Limuru area, and to forward two copies of the galley proofs of the Report of the Legislative Council proceedings for August 11th. 12th and 13th. 1937.

I have the honour to be,

Sir,

Your most obedient, humble servant,

R Brooke-Copple

AIR CHIEF MARSHAL.
GOVERNOR.

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

KENYA LAND COMMISSION
RECOMMENDATIONS

MAJOR GAVENDISH-BENTINCK
Your Excellency, I beg to move:—

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"That this Council recommends that an urgent dispatch be forwarded to the Secretary of State for the Colonies, pointing out that accepted recommendations of the Kenya Land Commission, whose Report was signed on the 7th July, 1933, still remain unimplemented, and urging early promulgation both of the Order in Council recommended in Sections 1854, 1858, 1979, 2144, and 2152, demarcating the boundaries of the White Highlands, and rendering section 86 of the Crown Lands Ordinance, 1915, and section 31 of the Crown Lands Ordinance, 1902, inoperative both in existing and future leases, and of the Native Order in Council as recommended in Sections 364, 485, 1441, 1469, 1717, and 1816. The dispatch further to stress—
owing to the delay in promulgating these Orders in Council, the position as regards claims based on an allegation of right which the Commission specifically came out to settle, is becoming daily more difficult, and the delay is handicapping development in many directions."

Before I speak to this motion, I would like to make an appeal, that this should not be treated as a purely racial issue. It is not put up in that sense. I feel personally that in this Colony we have to deal with certain things which affect various races. These matters must be made to fit into the general jig-saw puzzle as best they can, and there is nothing racial in this motion whatever.

I am afraid I am going to refer back to the history of the Carter Commission Report, and I must do that in order to substantiate the necessity which we allege there is for a motion of this kind now. I know that most members on both sides of the Council have heard a great deal of the Carter Commission Report. At the same time, I think in order to stress the present position, I shall have to refer to what is common knowledge to a great many members.

Wednesday
11 August 1934

The Carter Commission was appointed in order to deal with a number of long outstanding complications which were causing a great deal of inconvenience and a great deal of trouble to all concerned in this Colony. Its terms of reference were, shortly: "To consider the needs of the native population with respect to land; to consider the desirability of setting aside further areas of land for present or future occupancy of natives and detribalized natives; to determine the nature and extent of the claims asserted by natives over land alienated to non-natives"—I want particularly to lay stress on that—and to make recommendations for the adequate settlement of such claims, whether by legislation or otherwise"; to examine claims asserted by natives over land not yet alienated; "to consider the nature and extent of the rights held by natives under section 86 of the Crown Lands Ordinance, and whether better means could be adopted for dealing with such rights in respect of (a) land already alienated; and (b) land alienated in the future;" "to define the area, generally known as the Highlands, within which persons of European descent are to have a privileged position in accordance with the White Paper of 1923;" and, lastly, and to which I do not wish really to refer, to review the working of the Native Lands Trust Ordinance.

Those duties entailed a very complicated inquiry and a tremendous amount of work. The Commission was appointed by the Secretary of State in April, 1932, and notice of its appointment appeared in the Kenya Gazette in June, 1932. The Commission set to work, and sent its report in in 1933. It was an enormous report, and a very valuable report. Indeed, I think everybody joined in congratulating the members of the Commission on the very thorough manner in which they carried out an extremely difficult task.

That report was accepted by His Majesty's Government in England in May, 1933, in which month a White Paper was published at the same time at which the report was published. I would just stress incidentally that that acceptance took place before anybody in the Colony had seen, and I believe I am right in saying, before even the then Governor himself, had seen the report.

The White Paper lays particular stress on the reasons why His Majesty's Government were accepting the conclusions of the Carter Commission, and it also lays stress on some of the major points which that Commission was sent out to discuss. It mentions, incidentally, that "in Parts I and II of the report, covering 340 pages, an exhaustive review of all the claims (legal, equitable, and historical), of every native tribe, and of their economic conditions and requirements, present and prospective," was to be found. It mentions that "the Commission have been careful to consider the prospective needs, not only of natives living within the reserves, but of natives now living outside the reserves who may return to the reserves."

It mentions that "the Commission have defined the boundaries of the European Highlands and His Majesty's Government propose to accept their recommendations in regard to this." It mentions that "the Commission recommend that the boundaries of the reserves and of the Class C lands (native leasehold areas), and of the Highlands, should be declared by Order in Council," and adds that that recommendation was accepted in this White Paper. "This will give an added sense of security, in that these boundaries could not thereafter be altered by local ordin-

date. It mentions, incidentally, that "in Parts I and II of the report, covering 340 pages, an exhaustive review of all the claims legal, equitable, and historical, of every native tribe, and of their economic conditions and requirements, present and prospective," was to be found. It mentions that "the Commission have been careful to consider the prospective needs, not only of natives living within the reserves, but of natives now living outside the reserves who may return to the reserves."

It mentions that the Commission have defined the boundaries of the European Highlands and His Majesty's Government propose to accept their recommendations in regard to this. It mentions that "the Commission recommend that the boundaries of the reserves and of the Class C lands (native leasehold areas), and of the Highlands, should be declared by Order in Council", and adds that that recommendation was accepted in this White Paper. "This will give an added sense of security, in that these boundaries could not thereafter be altered by local ordinance. His Majesty's Government approve of this recommendation and propose that in due course these boundaries should be declared by Order in Council."

Lastly, one more extract from this White Paper:

"It will be seen that the recommendations contained in Parts I and II of the Commission's Report constitute a comprehensive settlement and satisfaction of all native claims which on careful inquiry they hold to be well founded on legal, equitable, or historical grounds. As already stated, His Majesty's Government propose that full effect should be given to these recommendations. It follows as a necessary counterpart that the Order in Council should declare that all claims have been satisfied and extinguished by the settlement which is now recommended and approved."

That merely refreshes—probably unnecessarily, but it is just as well—honourable members' minds as to what happened in the year 1934, the early part of it. Now I will turn for one moment to the report itself of the Carter Commission.

I will read first of all what they say in their summary of recommendations:

"Before closing our report, we wish to make a final recommendation. In regard to all claims based on an allegation of right, the public of Kenya, both native and non-native, is looking to us for recommendations which will secure finality. These we have striven to provide, and we hope that, if our recommendations in this regard are accepted by Government, steps will be taken to ensure that these claims will not be reopened. We consider that no other safeguard could be so effective as an Order in Council."

I will not weary the Council by quoting a great deal of the following sections, except part of No. 2146, in which they stress that—

"The essential point is that there should be no hang-over of further claims in the areas for which we have recommended a settlement on tribal lines."

They go on to recommend the protection by the Orders in Council as regards their various recommendations, and end by saying:—

"We consider that it would be invidious if the native reserves were to be protected in this manner and no similar security be given to the European Highlands."

I admit that both we and they did visualize that there would be a certain delay before these things could be implemented, but I did not believe that four years ago, if they happened to stand in this particular place and speak on a very similar motion to this, dealing with the report, and I did not believe that in four years' time we should still be in very much the same position as we were four years ago.

It happened at the time the report was debated our Chairman was absent, and I was acting Chairman. It fell to me, therefore, to make on behalf of elected members a rather lengthy speech on the Carter Commission recommendations, which we all felt at that time were of fundamental importance to everybody in the country, as indeed they were and still are.

In that speech I alluded to this question of the Order in Council. I said:—

"We now turn to that part of the report which deals with the definition of the European Highlands. . . . It is an accepted fact that although it has, at any rate since 1905, been agreed that there was an area within which European privilege obtained, nevertheless the exact boundaries of that area have never yet been defined. Various declarations on this question were made, both by the Land Commission which sat in 1905, by Sir Frederick Jackson, by Lord Elgin, as Secretary of State, and in the White Paper of 1923; and by the Commissioner of Lands in 1924 (proposals which were modified in 1925), by His Excellency the Governor in 1928, and by a special sub-committee of Executive Council which submitted two reports in 1928. In the opinion of the Commissioners the proposals as regards exact delineation of boundaries which give the fairest interpretation as to what might justifiably be regarded as European Highlands were the recommendations of the 1928 Sub-Committee of Executive Council. The Kenya Land Commissioners have, however, recommended considerable modifications to this sub-committee's proposals, notably by suggesting the exclusion of the Leroki Plateau, to which I have already referred; also by making specific recommendations with regard to a small block of farms to the east of Muhoroni,"

and others. I went on to say:—

"The Elected Members have studied these recommendations with great care and with the definite exception of the somewhat vague recommendation made with regard to Leroki we are prepared to accept the recommendations in their entirety, in spite of the fact, which is admitted by the Commissioners themselves in section 1978, that acceptance does entail very considerable sacrifices on the part of the European community."

I did say that our acceptance depended on one thing, and every single elected member who spoke in that debate and every single elected member repeated this: it depended on one thing, that we were going to get our Order in Council and at last going to get finality and security within a reasonable period of time.

Muhororo, 144
and others. I went on to say:—

The Elected Members have studied these recommendations with great care and with the definite exception of the somewhat vague recommendation made with regard to Lerok, we are prepared to accept the recommendations in their entirety, in spite of the fact, which is admitted by the Commissioners themselves in section 1978, that acceptance does entail very considerable sacrifices on the part of the European community.

I did say that our acceptance depended on one thing, and every single elected member who spoke in that debate and every single elected member repeated this: it depended on one thing, that we were going to get our Order in Council and at last going to get finality and security within a reasonable period of time.

After we had spoken in that debate, we were favoured with the intervention of only one member on the Government side, and that was by the hon. member who is now Acting Colonial Secretary. He made, with characteristic caution, a very very carefully prepared reply. I think he had to quite admit that he could not contain the Government.

In connexion with these Orders in Council, and more especially the Order in Council as regarded the European Highlands, he said, roughly—

“That, although he admitted a diminution of the area previously known as the White Highlands had been recommended in order to meet the needs of the native population, present and prospective, with regard to land, ample compensation for that diminution was made by the fact that we secured finality and security against further diminution from the same cause.”

My reply to that, Sir, was to repeat what I had said previously in my speech, that I had—

“to add that apprehension does still exist amongst Europeans that the extent of the Highlands may again be diminished, either by the Government of Kenya, or possibly, should another party come into power, by the Imperial Government in England. We have always understood—and our whole-hearted acceptance and support of the recommendations contained in the Report entirely hinges on this understanding—that the main object of the Commission has been to frame recommendations which would instil a sense of absolute and permanent security in the minds of both the natives and the Europeans, and we therefore demand—and I think on this occasion we have a right to demand—that the boundaries of the European Highlands should be finally safeguarded by a suitable Order in Council.”

I repeat that, because you will see from that that in the reply given by Government it was admitted that the recommendations made by the Carver Commission did very much curtail what we had always imagined was the area in which European settlement had a privileged position but that that was amply compensated for by the security which we were going to obtain.

We replied that we quite realized that, but wanted to see the security.

Now, Sir, what is the position to-day? The position to-day is, I maintain, far worse than it was four years ago. (Hear, hear.) We have not got that security nor, incidentally, does the African know exactly where he stands. I maintain that if any business house or large corporation had had to make adjustments similar to those which we were called on to make as a small Colony, that those adjustments would have been made certainly within a year, and here we are, four years, nearly five, since the Commission came out, no further forward than we were before!

You will see from the wording of my motion that I have suggested that with the delay in promulgating these Orders in Council the position as regards the claims which the Commission had specifically come out to settle was daily becoming more difficult and that the delay was handicapping development in many directions, and I propose on this occasion to substantiate that statement. It may be said that it is sometimes unwise in public to bring out these various difficulties, that it is wiser to go quietly to Government behind the scenes and see if we cannot get adjustments made and difficulties smoothed over. I have been personally, and most of us have been, on this particular question to Government on many occasions, and if we cannot get anything done within a reasonable period of time then I think that sometimes it is only fair to come out into the open so that everybody can see what the precise position is to-day.

I am not going to suggest, when I refer to these difficulties, that the natives concerned have not got legitimate claims or have. That, Sir, is not my business. My business to-day is merely to show what the existing position is, and when I have shown that I think everybody in this Council, if they have got a conscience, will agree it is the duty of Government to put the position straight and should have done so long ago.

I said just now that security to know where we were and exactly what the position was, was why we wanted these Orders in Council and these alterations in the Crown Lands Ordinance. What is the position to-day?

A gentleman in May of last year, who was, incidentally, a new settler whom I came in some contact with through the Kenya Association, came out here and decided that he liked the country. He therefore started negotiations for the purchase of the portion of an estate not very far from this town. The portion of the estate which he purchased was about 184 acres with 77 acres of bearing coffee. He went on to the estate and found there were a number of gentry we now call resident native labourers. He did not particularly want these gentlemen, and he therefore proceeded to give the bulk of them notice in due form.

He then discovered that there were a number who had a considerable quantity of cattle and goats who alleged that they had a right to this particular property which, incidentally, he had bought on a freehold title. He could hardly believe that, and he went to see the district commissioner. The district commissioner, in August of last year, informed him that there were, certainly in the case of six families, claims or alleged claims of right. He said, "You cannot turn them off, but in due course something will be done and, in the meantime, tell them to cultivate where you want them to."

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This gentleman did not want to make trouble, as none of us do, so he went back, and he sent notice to the natives to cultivate land where he told them, in order to keep the peace for some time. But he was now told by the natives that he could not even tell them where they should cultivate, and in one of the more recent laws is the most extraordinary proposition I have ever heard of, that if a native has established a prima facie claim of right and gets notice to move to another part of the farm, he is quite in order not to do so. The next thing suggested to him by the district commissioner was that, on the freehold farm which this wretched man had bought, "I suggest that you put a fence around that part of the land you require for your own use."

I ask you, is it fair to ask people to come to the country where that position has been allowed to persist for the last five years?

I have another case here of a similar nature, concerning land No. L.O. 237/2/7. I do not think it necessary to bring people's names into these things, but the farm was purchased by clients of the people who wrote this particular letter, in 1920. Of the eleven families said to be residing on it, three only were there when the owner took it over, and the remaining eight came on to the farm as labourers and also to reside and cultivate small areas while in the employ of the occupier. In the year 1936, and what I would draw your attention to is that this is two years after the adoption of the Commission's Report, most of the natives refused, either to work or to leave the farm and there are, in fact, only four individual natives working out of a total of thirty resident on the farm.

Apparently these people, it has been proved, have no right, and, as far as I can read, without going into the details of the case, which do not really matter, it was proposed to take legal or criminal action against them. But the position to-day is that the case has never been heard, the natives have been released and have now resumed occupation on the farm. On the 27th July several heifers were taken ill and subsequently died, due to arsenical poisoning. The attitude of the natives has been for some time intensely insolent, both towards the owner, the occupier of the farm, and even towards the police.

We think it must be admitted that settlers in this country have been most patient.

I am not going into the rights or wrongs of native claims, but what I think we have a right to ask is that the recommendations of this Commission, which came out to settle these claims—which, in fact, it did its best to—should be implemented, and we have a right to ask Government to see that these kind of instances do not persist in the future. (Hear, hear.)

If they do not, it is only Government's own fault if people take the law into their own hands, and I sincerely hope that will never happen in this Colony while I am alive.

I therefore suggest, without going into the rights and wrongs and the details, that you, Sir, perhaps would be good enough to write mentioning this debate to the Secretary of State for the Colonies and really see whether we cannot get this Order in Council.

What is really required is an Order in Council demarcating the White Highlands, the Order in Council demarcating the native reserves and the C and D areas, and to render the relevant sections of the Crown Lands Ordinances of 1902 and 1915 inoperative. That, we think, ought to be done within a very short space of time.

I know it will be argued, "Oh, yes, we have done the best we can, but it is very difficult; there are various readjustments, the maps were not right which the Commission gave us, and there are various interminable adjustments between tribes we have had to find some land here and there for those people who may or may not have rights." I know it is very difficult; I know it is a complicated business, but I do not believe we are anywhere near the final solution yet.

We had a meeting the other day at which I hoped all these outstanding questions were going to be settled, and now I discover that there is still some talk of trying to take away or buy somebody's farm. The longer this goes on the worse it becomes; the more we allow these people to imagine they have claims, the more difficult it will be to settle them. In that connexion I should like to draw Government's attention to a section in the Carter Commission Report, because I think it amply supports my contention that if all this had been settled with reasonable promptitude we should not be in this position to-day. In section 1857 it says:—

"The necessity for the recommendation has been sufficiently illustrated in the part of our Report which deals with the Kikuyu. It is not too much to say that relations between the races were becoming embittered because of the extravagant pretensions of this tribe."

(That was in 1932.)

"Our investigations have satisfied us that, as a tribe, they have certain legitimate grievances, which we have been at pains to rectify. But their claims and pretensions were exaggerated out of all proportion to the truth, and we find it essential to the future well-being, both of the tribe in particular and of the country at large, that the settlement now proposed should be definite and final, and therefore it was absolutely essential to be rid of such potential fruitful sources of trouble as section 86 of the Crown Lands Ordinance. Moreover, if we are to consider what facilities natives ought to have in respect of land outside the reserves, it is essential that we should start from a firm basis and not be encumbered by the existence of ill-defined and nebulous claims.

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"1858 We believe that the final settlement of this matter would preferably be effected by Order in Council."

That is what the Carter Commission said in 1933, and in 1937 I claim that by this ridiculous delay, which is grossly unfair both to natives and more especially to us, these ill-defined and nebulous claims have been increased a hundredfold. (Applause.)

MR. WRIGHT: Your Excellency, I beg formally to second, and claim the right to speak at a later stage.

The debate was adjourned.

ADJOURNMENT

Council adjourned till 10 a.m. on Thursday, the 12th August, 1937.

Council agreed to a further whitening away process, and it was not an inconsiderable one—it is always happening in the history of Kenya—whereby no less than 430,000 acres of land were given away, but we accepted it unanimously. That was quite apart from the area of the present Leroghi Plateau, and we agreed that it should be given away to a native tribe who, as the evidence well showed at the time, scarcely warranted it.

I want to emphasise that, because the debate on the Commission's report was probably one of the most remarkable that had ever taken place in recent times in this Council. Led by the same hon. mover of this motion, one by one the elected members dealt with the case affecting his own district, and all were unanimous that at least in respect of Leroghi Plateau the Carter Commission had reached a fatuous answer, and that it was the only indeterminate chapter in the whole of the report. A few days ago, in answer to a question put by the hon. Member for Kiambu, I saw recorded in the *E.A. Standard* next day that the Samburu had got Leroghi, or words to that effect, and to this I want to utter my solemn protest.

That was not the implication, and I hope Government will confirm it, that the Samburu are allowed yet a while to continue tenure of that grazing, under the recommendation of the Commission that they should be allowed to do so, for such time as may be necessary. I have good reason to believe that the time has come when, in respect of that tribe, their tenure is no longer necessary.

It is a well known fact that their cattle count is obviously less now than the figure given at the time of the discussion. It is also known that they are now well-disciplined to a degree that they have never been before, and in that respect I would pay tribute to the Provincial Commissioner of the Rift Valley Province. These natives, at one time truculent, are much more chastened. Their tendency is to go north, and in that respect a new question arises about the whole of Leroghi.

It is a most important strategic place, it is a healthy place, rich in grazing, once rich in timber and perhaps may be again, but, when the Abyssinians drove the natives down, and in turn the Turkana drove the Samburu further south, a pusillanimous Government urged them to go further south in spite of the decisions and findings of previous Governors, committees and commissions in respect of Leroghi Plateau.

Now that peace and prosperity reign in the north, now that the Italian people have taken charge of the Abyssinians, now accordingly that there is a tendency for less raiding into our own territory, the Samburu, finding things pleasant, are moving north into the vast areas they have held as of right for very many years. I do say that with so many landless applicants, as the hon. the Acting Colonial Secretary called them in the Council the other day, with so many people in this country, before we talk of new white settlement or more settlement there is great scope for putting some of the more virile of our race and other races, but most emphatically white, on these highlands as a place of tremendous future strategic importance, and that cannot be doubted by anyone who knows the country.

In this country to-day you have young men who, by virtue of the bad years that the country has gone through, have grown up in this country but have no positions

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In this country to-day you have young men who, by virtue of the bad years that the country has gone through, have grown up in this country but have no positions but do have a definite instinct for making good on the land. Farming is about the only thing they can do. The hon. the Acting Colonial Secretary referred to such as those yesterday, and with all seriousness I suggest that some of these young men with the pioneer instinct in their Dutchmen from South Africa, young colonial South Africans, who are shouting aloud for land, ought to get the chance they deserve.

Leroghi Plateau affords a certain measure of scope where they can be put wisely and well. Otherwise if something of this sort is not done it will be a bad thing for this country. In this connexion a scheme has been evolved by a body called the East Africa Farmers Union, comprising mostly young men, which was discussed and approved by the Convention of Associations when it last sat, young men who have very little capital but have the pioneer instinct, of the sort who would go in covered wagons from north to south, east to west and make a living, but they have no—

MR. LOGAN: On a point of order, we are discussing a report to send a despatch to the Secretary of State, and details of settlement do not arise in this connexion.

MR. WRIGHT: Am I to accept that as a ruling, Sir, that I am out of order? I acknowledge the soft impeachment but, a propos of the despatch, I wonder what despatches mean in any case? After the Commission report a despatch of some sort was sent home. I went to the Colonial Office last year, unofficially, and had the good fortune to meet two of the high Panjandrums of the Colonial Office. I asked for information about the Leroghi Plateau in respect of which we had long awaited an answer, and in regard to a Rongai land transfer. This is a propos of despatches. They seemed to know nothing about it, never seem even to have heard of it. I greatly fear that these despatches go into a pigeon hole or into the "Never-never" file and are never read.

I should like to feel that, on an occasion like this, in a matter very vital to the welfare of this country, this despatch notwithstanding, and in view of what Your Excellency said in regard to the new con-

situational advance, or a hint of it this morning, that the time has come when, in matters of this sort, decisions will be left to the man on the spot instead of despatches. In this Council hon. members opposite have grown up with the settlers and most of them know the ins and outs of the problems. It would be an advantage in settling these problems if they were allowed to throw off the shackles that bind them to the chariot wheels of Downing Street and allowed to exercise the dictates of their own conscience and vote freely on an issue of this sort.

I said I would try to be moderate, or I should be called to order, but the question of land does least one all over the place because it is very vital to us. As a supporter of this motion, I would press that if the despatch is sent, if Government will accept this motion (as I think they properly should), that an answer be pressed for, because it is a fatuous state of things that in three years we have no declared answer to one of the most important discussions affecting the highlands that took place some three years ago.

It is a grave matter, Sir. It seems incredible that in a debate occupying 190 pages of Hansard at that time, with one very clever reply by the present hon. Colonial Secretary on behalf of Government, with a case unassailable in its issue, with logic and reasoned argument in support, and presumably a despatch sent to the Colonial Office, that no response whatever at this late date should have been made. While supporting the suggestion that another despatch be sent, I would ask that a very urgent request be appended asking for an answer.

Your Excellency, we are always ready and very willing to co-operate with Government, but only so long as they give us a measure of their confidence.

MAJOR RIDDELL: Your Excellency, the hon. mover in his speech to this motion has covered the ground for elected members in a way which I do not propose to alter in any respect. I am entirely in agreement with him, and I do not wish to alter one word of what he said.

But I wish to make a few remarks supplementary to his, because in actual fact the questions that have been raised by hon. members come to a head in the constituency which I have the honour to represent. Like him, I do not mean to go into the rights or wrongs of those questions in detail, because emphatically that is the job of Government, but I wish to point out to this Council that these questions have arisen from one cause, and one cause only, and that is the entirely unjustifiable and unwarrantable delay in the gazetting of our White Highlands.

All the way through the Commission, which the hon. mover has told us was inaugurated in 1932, reported in 1933, and was in our hands in 1934, at the start of the life of this Council, consistently through their report runs the question of urgency, urgency! It is the keynote to the report on the Kikuyu, which occupies a very large part of that report. Time after time it is stressed that it is necessary to act at once, that the position admits of no delay.

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When a settler in Limuru or any other area comes up against what we know as a native *shauri*, what is his procedure? He goes off to the district commissioner. He goes to the district commissioner as he would go to a friend. He is never in that respect wrong. He goes to him as he would go to his own family physician: he goes to him as a friend, and expects that friend to cure his complaint. That is the procedure that is always adopted.

The district commissioner in this particular instance, or in all these instances that are cropping up throughout the country, although his attitude to a settler is that, of course, of a physician and a friend, finds himself under this most unwarrantable delay not in a position to cure the disease. Therefore he is driven to expedients such as were read out to you by the hon. mover yesterday, expedients which really are extremely undignified in an administrative officer.

I would say in passing that I do not know who the administrative officer is by name at Limuru, and I have been particularly careful not to find out so as to be able to make my remarks impersonally.

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The settler, having failed to get any satisfaction from the local administrative officers, usually the next step he takes is to ask for a meeting of his local farmers association; generally that is in conjunction with the member, or he is invited to attend and state a case on the position as he sees it.

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That, Your Excellency, is the procedure adopted throughout Limuru, and so far as I am concerned—I am the member for the district—I have been at pains to explain to my constituents that the worst thing that could happen was any form of direct action, because direct action in these respects in a country of mixed races and the state of development we are in at the present moment is, as both sides of this Council must agree, nothing but a ghastly tragedy. At the same time, I should like to say that I am in sympathy with these people, and I think, as far as the Limuru people are concerned, that they deserve the respect of the whole community, unofficial and official, for the tremendous moderation they have shown under these three years of tremendous stress. It cannot, of course, continue indefinitely, and that is one of the reasons why this motion is tabled and one of the reasons why I am speaking to it.

Another aspect of the delay in the formulation of this White Highlands is the aspect raised by the hon. member of the motion. That is with regard to Leroghi Plateau. In the Carter Commission debate three years ago at the start of the life of this Council, we fought the question of the Leroghi Plateau as a reasoned argument. So far as I am aware, we were making this argument not to the Government here but to the Secretary of State, inasmuch as the report was issued to us in conjunction, as the hon. mover told us yesterday, with a White Paper which accepted these findings before ever Government here or we on this side of Council had heard actually what the report contained.

Therefore we were using our reasoned argument, and we understood—I did, and all elected members—that there was a promise from the then Governor that the arguments we adduced with regard to Leroghi Plateau should be submitted to the Secretary of State and a due answer given us in due course. That was the reason lying behind the question I asked two days ago, and the answer came to me as a complete surprise, because we were told that the answer was that Government had no reason to recede from the findings of the Carter Commission. Of course they have not, because the White Paper had, and we had accepted it.

I suppose the decision for that was arrived at. A despatch was sent home to the Secretary of State in Executive Council, but Executive Council meets in secret and we know nothing about that, and for three whole years we were under the delusion—I certainly was—that we were awaiting a ruling from the Secretary of State as to the ultimate destination of Leroghi, in the terms of our reasoned argument put up while at the same time accepting gratefully, although doubtfully in certain respects, the rulings of the Carter Commission report. Surely that is the position as I see it and all elected members see it.

I myself gave reasoned argument in this Council as to the retention of Leroghi, because I happen to be one of the people who were directly concerned in the movement of the Masai at that time. It must be remembered that this was a long time ago; to give you some idea, our present Acting Colonial Secretary was not even in this country on his first appointment! But promises made by a Governor, even though long ago, still stand, and I produced evidence that I was myself moved from the Southern Masai Reserve, and Sir Percy Glouard, our then Governor, made a direct promise to us. I myself could have taken up land on Leroghi as an integral part of the White Highlands, there is no question about it, and that evidence was produced and it is Hansard.

Our acceptance of the Carter Commission report as a whole took from us a very large area of the country which we considered at that time to be in the White Highlands, and our acceptance of that, as the hon. mover has told you, qualified our acceptance of that and made it conditional on our receiving the security that the Order in Council was to give us in the White Highlands. I beg that the Council will allow me to read the final sentence in my speech at that time:—

"I have only one further point. Everything I have said and the evidence I have offered to this Council is meaningless to me and I cancel it, unless we are given under the report the full security of the White Highlands in a form which is acceptable to ourselves."

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We still await it. So far as I am concerned and Leroghi is concerned, after waiting three years I hold myself free from the reasoned argument that I used in that debate, and I await further developments accordingly.

Council adjourned for the usual interval.

On resuming.

MR. LONG: Your Excellency, I wish to express my entire agreement with the opinions voiced by the three hon. members who have already spoken, and, in particular, with the hon. mover.

I put it that way, as it appears to me, that the main issue regarding this motion is the delineation of the White Highlands, and that the question of Leroghi is a subsidiary one but, as Leroghi has been introduced into the debate, I should like to give my views on it.

The first thing I wish to emphasise is the right of the white community of this country to the Leroghi Plateau and the surrounding country. In order to illustrate my point of view, I will not take a very long time, I must go back to the early history when the Masai, before the Masai move, occupied the Laikipia Plateau. Laikipia Plateau did not mean the country between the Aberdares and Rumuruti as commonly accepted to-day, but the whole of the country from Aberdare to Karissia, including Leroghi, Kissima, Kelele, Marmar, Mugie, Gerimuin, and all that country.

Government, for a very good reason, considered that it would be preferable to have the Masai in one block instead of two blocks, with a white area between them. Eventually, a covenant or treaty was come to with the Masai by Government, whereby the Masai agreed to move from the Laikipia Plateau, which includes Leroghi, to what is now known as the Southern Masai Reserve. In order to accommodate all the Masai from what I would call the Northern Masai Reserve—that is, the people on the Laikipia side of the reserve, the northern side of the country—it was necessary to turn out quite a number of white settlers who occupied land in the southern area already referred to by the hon. Member for Kiambu (Major Riddell).

In particular, and I think he will agree with me, there was the Lorian Valley area and South Uaso-Nyero, and the people there were told they must clear out of that area and that they would be allowed to take up land anywhere on the Laikipia Escarpment, which was thrown upon to white settlement. R

That was all right, the Masai started off, and it took about 5 or 6 years to move them. I forget exactly how many years, but the movement finished at the beginning of 1912. After that came the war, and after that came the Soldier-Settlement scheme. With the latter, farms were drawn on the map, and for some reason or other which I have never discovered there was a hiatus of 50 miles left between the northern boundary of the soldier-settlement farms and the northern tribes such as the Turkana, Samburu, and all raiding tribes from the north. W

That occurred in 1919 or 1920. Before 3 or 4 years had gone, this 50 miles buffer was turned into a buffet by the Samburu for the grazing and watering of their cattle, etc., in the dry weather, when grazing and watering were scarce. There was an inquiry, objections were made by the white community, and eventually a commission was appointed to go into it. That was in 1924.

I was not a member of that commission, but was asked to go with it as interpreter, because I happened to know the country and Masai and Samburu languages fairly well. The Director of Agriculture was a member, the Commissioner of Lands, and Chief Native Commissioner, and I think there were three or four other people. I remember perfectly well every detail.

We went through by motor cars and arrived at Kissima, and encamped at the bottom of the Leroghi plains. The next day the Samburu came in and asked what we wanted, and we explained to them that Government had come to make an inquiry. They were full of apologies for being there. They said they quite realized they ought not to be there, that the land did not belong to them, and they would pack up next day and go away sooner than get into trouble. As far as the actual number of cattle and sheep were concerned, I can remember particulars perfectly well. I went with the Director of Agriculture myself in one car the whole length of the Leroghi Plateau: there was not one sheep, goat, or cow or Samburu on the whole place. There were quite a number of bomas and quite a number of sheep underneath the Leroghi Plateau, on the country of Olmorogio. There were a few sheep at Kelele, and three or four herds of cattle at Kissima. When the people were asked what they were doing there they said they were coming back from inoculations done by the Veterinary Department at Gerimkin, and were going back into their own country; never for one moment did they suggest the country belonging to them or that they ever had any right to it. a/

We stayed four or five days going into the business of interrogating chiefs and all the Samburu available, and eventually a report was got out. That report was signed, I think, by everybody, and was handed to Sir Robert Coryndon, then Governor. Suddenly, and regrettably, he died, just at the time of this report. I do not know what happened to it, or where it is now. It disappeared, and the subject was not brought up again until Sir Edward Grigg came out. W

He went into the matter, and later on went up the to the Samburu country as it is now called. In actual fact, it was Masai country, as I will prove to you. He went up there, and either by accident or by design, I cannot say which, I understand the whole of it.

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We stayed four or five days going into the business of interrogating chiefs and all the Samburu available, and eventually a report was got out. That report was signed, I think, by everybody, and was handed to Sir Robert Coryndon, then Governor. Suddenly, and regrettably, he died, just at the time of this report. I do not know what happened to it, or where it is now. It disappeared, and the subject was not brought up again until Sir Edward Grigg came out.

He went into the matter, and later on went up the ~~to~~ the Samburu country as it is now called. In actual fact, it was Masai country, as I will prove to you. He went up there, and either by accident or by design, I cannot say which, I understand the whole place was covered in Samburu. I saw him when he came back, and asked him what his impressions were, and he said that, having asked the Samburu various questions, he was quite satisfied that the country did not belong to them, but that it was quite obvious there were so many of them there that somewhere must be found to put them before the white settlers could be allowed in there, and that he was looking for a place to put them. I think Isiolo was suggested, but objections were made on account of fly, etc., with the result that nothing really happened at all.

A point of interest as far as proving what I say that it was always Masai country, was that I had for years working for me Masai boys who were born on the Leroghi and were recruited from Narok. They were moved from Leroghi to Narok as children, and came back to work on Soysambu Estate as moran. These same people to-day are living where they were born, on Leroghi with the Samburu, although in actual fact Government gave the Masai land in what is called the Southern Masai Reserve to replace what was the Northern Masai Reserve, and, I must again point out, took away land from the white community in the southern area to enable them to do so.

COL. KIRKWOOD: Your Excellency, I rise to support this motion before Council, and I should also like to pay a tribute to the hon. mover for the concise and precise manner in which he has put up this motion.

I personally regret that many details in connexion with the Leroghi Plateau have entered into this debate. The essence of the motion is:—

"That this Council recommends that an urgent despatch be forwarded to the Secretary of State pointing out that accepted recommendations of the Kenya Land Commission . . . still remain unimplemented," and so on.

Now, Sir, I would point out that in 1934, when the debate on the report took place, the whole of the European elected members accepted the Commission's report in toto. It was accepted with the White Paper which the hon. member quoted, and we also accepted the demarcation of the White Highlands, which was one of the recommendations. The report was also accepted by the House of Commons which, I presume, means that it had previously been accepted by the Privy Council at Home, or otherwise by the British Cabinet.

Three years have passed, much water has flown under the bridge since then, and nothing has been done regarding the demarcation of the European White Highlands of the Colony, and that is the only point I wish to emphasise in this debate. I spoke at some length in 1934, and I propose to quote one paragraph, on page 613 of Hansard, 19th October, 1934, that is the last paragraph of my speech on which I finished:—

"It is also appropriate if I quote the terms of reference:—

(6) To define the area, generally known as the Highlands, within which persons of European descent are to have a privileged position in accordance with the White Paper of 1923.

They propose in paragraph 1979 that the European Highlands shall be demarcated, and that Europeans should have the same security there as the natives in the reserves. I am agreeing to the implementation of these recommendations on the understanding that that paragraph will be implemented also and that it will not be a one-sided affair as has been the case on many occasions in the past. There would be very serious opposition to this report if such a recommendation had not been included."

That is the essence of this motion and, as I stated before, I regret that the debate has been carried somewhat beyond it. I do hope that the motion will be accepted, that the despatch will be sent, and that the time that has elapsed in implementing the promise will be drawn to the attention of the Secretary of State in the very near future.

MAJOR GROGAN: Sir, the purpose of the motion is a perfectly clear one. It is to point out to the Secretary of State the urgency of immediate action in order to avoid ever increasing complications that are derived from the inaction of the last few years.

My own excuse for intervening in this debate is that I believe I can add a certain amount of historical fact to clarify the really vital issue which has been raised during this debate. Much the most important matter to my mind is, what is going on in the Kikuyu and Limuru districts? Those people there were some of the earliest people in this country, and their holdings were known at that time as freehold homesteads. They were specially designed in order to provide homes for the small man as distinguished from the large areas which were being given out in other parts of the Colony.

They were all issued under the Land Ordinance of 1902, which includes a provision protecting native interests in respect of land being dealt with at the time the titles were issued. There was no mention of a specific payment to natives, of course, in the titles, but those titles can only be interpreted to-day in conjunction with the procedure that was imposed upon people, who took this land, by Government at that time. I forget whether it was prescribed in the form of rules or whether it was merely a practice enforced or devised or defined by administrative officers of the day; but what, in effect, happened was this.

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When you took one of these holdings—and I am speaking with knowledge because I had two of them—every native who had a hut on one of those properties was deemed to be entitled to compensation at the rate of Rs. 4 per hut. As far as I know, in every case Rs. 4 per hut was paid to natives at that time. It certainly was in respect of the areas of which I have any particular knowledge.

Therefore, quite clearly, the recognized native interest in the land at that time was assessed at Rs. 4 per hut, and if it was not paid at the time it presumably would now be due to the successors in inheritance from those who were on the land at the time. I think I am correct in saying that nearly all these old homesteads at that time were forest and were not occupied by the Kikuyu. There might have been a village here and there or an odd hut of natives who were not closely connected with the tribe, hidden away possibly in the clear parts, but I should think it extremely unlikely, because I remember the logging and fuel process that went on to clear that land before those large quantities of wattle, still a conspicuous feature of the country, were planted.

I think I am safe in assuming that the vast proportion of the land was at that time in no sense of the word Kikuyu country. It was Dorobo country, covered with forest, and no cattle of any description were there. Therefore, no native could have held grazing rights because there was no cattle to graze. It seems, therefore, quite clear, that none of those people to-day have any right in law or equity in respect of these areas, unless they can prove they are the direct inheritors of a right of Rs. 4 for any hut there was at that time.

The simple facts of the position are—I want to be very careful how I put it because I am liable to be misunderstood sometimes and misinterpreted, therefore, with your permission, Sir, to depart from the proper procedure, I will read exactly what words I want to use in this matter:

The simple fact are: Certain sections of the natives have usurped the authority of Government with the admitted connivance of administrative officers. The central Government's intervention in respect of this open and insolent defiance of law and order consists of begging us to assist in the pretence that nothing of any significance is afoot. Surely, if the orthodox regime of law and order ceases to function, it becomes incumbent upon law-respecting citizens to provide their own adequate substitute to combat the direct action of the defiant parties.

If orthodox protection is not promptly provided, the traditional reaction is inevitable. We trust, therefore, that Your Excellency will urge the Secretary of State to recognize the loss of prestige amounting to contempt of authority which has long since derived from this pitiful failure to govern, and to take immediate action to remedy it.

MR. SHAMSUD-DEEN: Your Excellency, the debate on this motion is extremely interesting, and instead of there being explained any good reasons for an immediate despatch being sent to the Secretary of State, we have been treated to the past history of the colonization of this Colony. I almost fancied that one hon. member was going to give us something of what happened in the last Russo-Japanese war because all that we have been told is quite as irrelevant to this motion as the history of the last few wars. I will try my best to remain within the wording of the motion.

We have got to consider as to why the Colonial Office did not express their intention of promulgating an Order in Council as far back as 1935 and why they have not been able to do it up to this moment. Before I do that, I wish to remind Council that this small Colony is not watertight in itself: it is part and parcel of a very vast Empire, called the British Empire, and before the British Government takes any such action as to issue or promulgate an Order in Council it has got to take into consideration the views of other important parts of the British Empire. I believe I shall be able to explain to a certain extent the reasons why this Order in Council has been delayed up to now.

The whole method in which this Land Commission, or at any rate certain parts of it, have been handled by the chairman of that commission gave rise to certain misgivings as far back as December, 1932. On December 12th Mr. Morgan Jones, in the House of Commons (I am quoting from the *Manchester Guardian*), asked "whether Sir Morris Carter's announcement had the approval of Government here." That shows that as far back as December, 1932, there was a member of the British Government who knew that all was not right that was happening in this Colony regarding this commission.

Then, Sir, the "Summary of Conclusions reached by His Majesty's Government," Cmd. 4580, appeared on May, 14th, 1934. Before there had been any public access to this report in England, His Majesty's Government issued this command paper, before even the Governor of this Colony knew anything about it or the British public had any knowledge of it. That is one of the reasons why the British public became quite alarmed as regards the conclusions of this report.

Therefore, since there have been quotations and references to debates, although I think most hon. members of this Council must be quite aware of what happened in the House of Commons it is just as well to enlighten some of my hon. friends who have not had the opportunity of reading the House of Commons' Hansard.

On the 14th February, 1935, the following questions were asked as regards this

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On the 14th February, 1935, the following questions were asked as regards this very Order in Council which is now being pressed for:—

"Major Milner asked the Secretary of State for the Colonies whether the correspondence which passed with the Government of Kenya and/or the chairman of the Morris Carter Land Commission in December, 1932, with reference *inter alia* to the right of natives to acquire or occupy certain lands in Kenya, may be published as a White Paper?"

The Secretary of State for the Colonies (Sir Philip Cunliffe-Lister): It would be contrary to well established practice to publish confidential correspondence between the Secretary of State and Governors. But the facts are as stated in my answer to the hon. member on the 18th of December.

The sixth term of reference to the Land Commission was as follows: "To define the area generally known as the Highlands, within which persons of European descent are to have a privileged position in accordance with the White Paper of 1932."

In December, 1932, the Governor informed me that the chairman of the commission had experienced some difficulty in interpreting the term of reference, owing to the absence of any definition of the 'privileged position' which persons of European descent are to enjoy within the area of the 'Highlands'. The chairman had requested that in order to enable the commission fully to consider this sixth term of reference in all its bearings a definition of the 'privileged position' might be supplied.

I authorized the Governor in reply to inform the chairman that the 'privileged position' in question involved

- (1) the right of Europeans to acquire by grant or transfer agricultural land in an area now to be defined and to occupy land therein;
- (2) that 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.

In communicating this decision to the Governor I stated that the area as defined by the commission would no doubt need reconsideration and possibly adjustment by Government in the light of their recommendations under paragraphs 2, 3 and 4 of the commission's terms of reference. This statement was also communicated to the commission by the Governor.

Major Milner: Does not the right hon. gentleman appreciate that his instruction completely vitiates the report of the commission and, in these circumstances, does he not think that the correspondence might be placed in the library for the information of members?

Sir P. Cunliffe-Lister: There are two perfectly distinct points. The first is, as the whole House will agree, that confidential correspondence between the Secretary of State and Governors should obviously be treated as confidential; otherwise, no Governor and no Secretary of State could have any correspondence at all. As regards the second allegation, there is not a vestige of truth in it. The definition of the White Highlands, which is the same definition which has been accepted for 30 years in practice, can no more be held to be prejudicing the issue before the commission than if somebody said how many horses there ought to be in a field and you were asked to define a horse, and you gave an accurate definition of a horse.

Before I go further I want to point out that this statement by the Secretary of State of the definition of the White Highlands being the same which has been accepted for the last 30 years is absolutely wrong, because if hon. members will follow the report of the Commission, they say that as late as 1928 and 1929 there was a sub-committee of Executive Council appointed to recommend the boundaries of the Highlands. More than one sub-committee was appointed. At one time a committee recommended that the definition should be a line between Kiu and Kibigori. Another committee said that was much too far, that it should be to Mulhroni station. Another committee said it should be fixed to Chemagel. So far up to 1929 the areas, even on the minds of Government, were absolutely uncertain matters.

It must be on the records of the Hansard of this Council that, as far back as 1903, I asked Government again and again to define what the Highlands was, and I had no answer, because they told me they were not in a position to define it. For the Secretary of State to say that the definition of the Highlands was the same as had been accepted for the last 30 years was obviously wrong, because there had been changes up to 1929 as regards boundaries. Not only that, but the commission itself included in its definition of the boundaries of the Highlands certain farms that were already in possession of Indians, and said although those farms were in the lowlands and in possession of Indians, they recommended that as soon as they came into the possession of Europeans those farms should be put into the Highlands, so that it was not true that the definition had been the practice for 30 years as the Secretary of State wanted to inform the British Government.

MIR. HOBY: On a point of order, is it not a fact that Sir Philip Cunliffe-Lister

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MR. HOEY: On a point of order, is it not a fact that Sir Philip Cunliffe-Lister when Secretary of State accepted the findings of this commission and also stated that the Cabinet were in agreement? I think that was a fact, so that I think the hon. member is entirely wrong in suggesting anything indefinite at all concerning the Secretary of State.

MR. SHAMSUD-DEEN: That is my point. The House of Commons was extremely dissatisfied with the high-handed action of Sir Philip Cunliffe-Lister in accepting the recommendations of the commission without giving an opportunity to the British public to express an opinion, or the House of Commons. I think one hon. member said the report was accepted by the House of Commons; I do not think that is correct, but this at any rate certain that members were extremely dissatisfied with the Secretary of State who dealt with the matter.

MR. HOEY: I suggest that the hon. member refer to the House of Commons Hansard which he has been quoting.

MR. SHAMSUD-DEEN: I have not finished. I only wanted to give an explanation of what the Secretary of State said was a definition of the Highlands accepted for 30 years. It was not; it was in the melting pot up to 1929. To continue:—

"Mr. Paling: Is it not a fact that by the terms of reference Europeans should be in a privileged position, and that now, owing to the right hon. gentleman's interpretation, no one but Europeans has any right to land at all?"

Sir P. Cunliffe-Lister: The position is perfectly simple. For 30 years the White Highlands have been an area in which Europeans have had a privileged position. The case is perfectly fair, and since it was re-stated in the White Paper of 1923 every Government has always accepted it, and there has been no change in that position."

In 1923 the Highlands was not what the commission recommended.

Major Milner: Will the right hon. gentleman say why it was that these secret instructions were either not mentioned in the report or communicated to the House until they were extracted a month ago?

Sir P. Cunliffe-Lister: The hon and gallant gentleman is very suspicious. If I had been asked any questions about it I should have been perfectly willing to state it at any time. There is nothing in the least secret about the matter. The chairman of the commission asked for a simple definition of the privileged position. He was given a definition, which anyone in the House acquainted with the situation for the last 30 years will agree is a perfectly correct statement of what the position has been. I do not know what else could be wanted.

Before I go further with the debate in the House of Commons, I wish to point out that the commission themselves were perfectly clear in their own mind what that definition was. Such an eminent lawyer as Sir Morris Carter would possibly require no more instruction on the subject. The terms of reference were perfectly clear, and even a man with an elementary knowledge of the English language would understand it:

The sixth term of reference says:—

"To define the area, generally known as the Highlands, within which persons of European descent are to have a privileged position in accordance with the White Paper of 1923."

That White Paper is perfectly clear, but if there is any doubt—

COL. KIRKWOOD. On a point of order, what the hon. member has quoted is a term of reference, it was not an expression of the opinion of Sir Morris Carter.

MR. SHAMSUD-DEEN: What I was trying to show was that the terms of reference were explicit, they did not require any explanation or guidance from the Colonial Office at all; as I can show from their own recommendations later on, they were clear in their own minds as to what the position was.

They say in section 1945:—

"The White Paper of 1923 dealt with an objection raised by the Indian community that, whereas Lord Elgin's decision only related to the initial grant of Government land in the Highlands, it has since been stretched so as to preclude the transfer of land from Europeans to Indians. The White Paper ruled that the existing practice must be maintained as regards both initial grants and transfers."

The term of reference was the "privileged position in accordance with the White Paper of 1923," and they themselves give a very good explanation of what that position was. Not only that, but in section 1956 they again say what their meaning of privilege is:—

"On the one hand, it is possible to point to several Europeans in the area who have sold or have asked sanction to sell to Indians. On the other hand, if the Europeans of the area are regarded corporately rather than individually, it is clear that their corporate opinion would condemn such action and regard it as an infringement of privilege."

That is one place where they make reference to what was in their mind and what that privilege meant.

They go on further, without making any reference to the subsequent instructions received from the Secretary of State as regards the definition of privileged position, in section 1970 (say):—

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"We are now in a position to define the Highlands. We first took as our basis the map illustrating the proposals of the 1929 sub-committee of Executive Council. Although the map did not agree at all points with the resolution which it purported to illustrate, we found it generally preferable, as showing a closer correspondence with existing facts."

They go on to define the Highlands. Again, in 1973, they say:—

"The land in which the Kipkarren and Kaimosi farm blocks are situated is native reserve, and therefore in a territorial sense cannot be said to be European Highlands. But we are asked to define the area within which persons of European descent are to have a privileged position, and since we hold that Europeans should have the same privileges in respect of initial grants and transfers of land in these two blocks as they have in the Highlands proper, we include them in the area."

There was no doubt in the minds of the members of the Commission as to what that privilege was. The request to the Secretary of State for a definition of privileged position was not necessary. If there was the slightest mention in this report or in the House of Commons or Press that the Secretary of State for the Colonies had given any subsequent instructions to the Commission as regards this so-called privileged position, I am quite certain that this Council, when we were discussing this very report, and the public in general would have taken a very different stand.

Hon. members seem to be impatient. I have never interrupted anyone when speaking of the irrelevant past history of the colonization of the land to the time of Sir Robert Coryndon, but if members are getting bored I will not keep them long. I think, however, it is very important that I should carry on and quote what happened in the House of Commons from where I left off:—

"Dr. Addison: The second term in the right hon. gentleman's explanation does in fact constitute a serious alteration in policy in that it prevents natives from continuing in occupation of land of which they may before have been in occupation?"

Sir P. Cunliffe-Lister: It does not do so in the least. If the right hon. gentleman will make himself acquainted with the policy followed out by his own Government, and will compare the definition given with the White Paper of 1923, he will see that the statement I made is merely a statement of the position which has existed for thirty years."

That also is not true, because the Commission made some drastic recognition as regards the rights of natives, so that it could not be said to have existed for thirty years. The Commission recognized that whereas in the Land Ordinances of 1902 and 1915 Government in the first instance could not sell and subsequently they altered that and said, "All right, you can sell the land, but we will exclude the areas occupied by natives," so that there was no one consistent policy for the last thirty years as stated here.

"Major Milner asked the Secretary of State for the Colonies whether he has asked, or intends to ask, for the comments of the Government of India on the text of the proposed Order in Council defining native reserves and European Highlands in Kenya?"

Sir P. Cunliffe-Lister: I shall, of course, be prepared to consider any representations which may be received from the Government of India, but I think it well to point out that the effects of the proposed Order in Council, so far as the White Highlands are concerned, will be merely to confirm what has been an administrative practice for the past quarter of a century. This practice was formally reconfirmed by His Majesty's Government on the White Paper of 1923, Cmd. 1922, and has not been challenged by any successive Government."

I submit that this is one of the most important points as to why the Imperial Government are reluctant to rush into this Order in Council which they are now being asked for. Briefly, the history of all this privileged position is given in the report of the Commission itself, which says:—

"The history of the matter is as follows: In May, 1905, a Land Commission, consisting of Mr. Justice (now Sir Robert) Hamilton, Mr. J. W. Barth (now Sir Jacob Barth), Lord Delamere, and Mr. Frank Watkins, reported in favour of the maintenance of a European Reserve"—

(They did not call it Highlands)—

"and accepted Kiu to Fort Ternan as a suitable definition 'without wishing to bind themselves too closely to that area or to restrict its limits.'"

That was the recommendation of the committee of 1905.

The Indians had nothing to say about that, and I make it clear now that the Indians here and elsewhere had more or less acquiesced in this extended definition of the Highlands and were watching the development with great interest for some time to come, but it is an entirely different thing. If Indians were denied the privilege of holding land in these Highlands, it would be an entirely different matter if they were statutorily prohibited. Even the hon. Member for Kiambu (Major Riddell) said he wanted the boundaries of the Highlands to exist. There would be no objection to that, but if you ask for an Order in Council I hope I shall be able to prove to the Council that it would be an absolute breach of faith

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I have shown what was the idea of a commission which sat in 1905. Section 1942 says:—

"In September of the same year, Sir F. J. Jackson (then Commissioner) wrote: 'I am not aware if a definite ruling was laid down or not, but it has always been understood that no large grants of lands between Kibwezi and Fort Ternan could be taken up by Indians, and you can act on this understanding.'"

The Commissioner of the Colony then said: Do not give any large grants to Indians. I hope hon. members will follow closely the metamorphosis that has taken place since 1905. The Commissioner said in September that the policy was that no large grants of land could be given to Indians. That left still remaining the larger areas of 40,000 or 50,000 acres held by European farmers uncultivated and undeveloped which must not be given away.

In section 1943 is the first most important pledge given to Indians by Lord Elgin and is the most important point which you are now trying to violate:—

"In July, 1906, Lord Elgin, as Secretary of State for the Colonies, expressed his approval of the practice then in force of limiting land-holding by Indians (outside townships) to the areas east of Kiu and west of Fort Ternan. Since settlement at that time was still confined to the general vicinity of the railway, there was perhaps no great occasion for a more precise definition at that date."

This was, of course, broken, because it was extended not only to Fort Ternan, a station just below Lumbwa, but goes almost as far as the Lake; in other words, the definition of the Highlands given by this Commission is wherever a European holds land is Highlands.

Section 1944 says:—

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

It is still there, the process of metamorphosis.

Even if there were nothing wrong in that, although it was an injustice to some of His Majesty's subjects, it was an administrative convenience.

That principle should be borne in mind, that it was as regards first of all said that no large grants should be given; it was then said, do not give any grants; then, in 1923:—

"The White Paper of 1923 dealt with an objection raised by the Indian community that, whereas Lord Elgin's decision only related to the initial grant of Government land in the Highlands, it has since been stretched so as to preclude the transfer of land from Europeans to Indians. The White Paper ruled that the existing practice must be maintained as regards both initial grants and transfers."

That is to say, all the land in the Colony was to be had for the asking and had been taken up by Europeans, but was not even to be transferred.

We acquiesced very reluctantly in that decision also, and that was the final one, in 1923. We said, "All right, we will submit and subject ourselves to this humiliation, that we shall not be able to get any grant or transfer in the Highlands." But now it is being asked that that shall be got the law, in contradiction to the solemn pledge given by Lord Elgin, when he said, "It was not consonant with the views of His Majesty's Government to impose any legal restrictions." An Order in Council has statutory power, as everyone knows.

If I may be permitted to go on:—

"Major Milner: Will not the proposed Order in Council abrogate the gentleman's agreement of 1923, and should not the Government of India be consulted?"

Sir P. Cunliffe-Lister: Surely, the simple question is: What is the practice? The practice for over twenty-five years has been that the allocation of agricultural land in the White Highlands should be confined to Europeans. Every Government, including two Labour Governments, have been pledged to that practice, and to alter it would be a breach of faith."

That is exactly the point. We say: Don't alter it, continue the practice, but do not make it law.

Then Mr. Paling said:—

"Is it not a fact that, however favourably the right hon. gentleman promises to consider any Indian suggestions, the Order in Council definitely excludes Indians from having any rights in the White Highlands?"

Sir P. Cunliffe-Lister: Certainly, and that is the policy which the hon. gentleman's two Government constantly carried out.

Mr. Paling rose.

Mr. Speaker: The House cannot debate this matter at question time."

Later on:—

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"Major Milner asked the Secretary of State for the Colonies whether his action in giving secret instructions to the Morris Carter Commission additional to those contained in the report and published at the time, was taken with the knowledge and approval of His Majesty's Government?"

Captain Peter MacDonald: On a point of order. Before this question is answered, may I ask if it is in order for an hon. member to make allegations against a Minister such as are contained in this question without having the statement confirmed beforehand?

Mr. Speaker: I do not see any particular allegation in the question.

Captain MacDonald: The question contains a statement, "whether his action in giving secret instructions to the Morris Carter Commission". Does not that presuppose that he has taken such action, and my point of order is to ask if an hon. member is allowed to make allegations of this kind, which may have serious consequences in Kenya as well as in India, without having them first confirmed?

Mr. Speaker: I do not see what is the allegation.

Sir P. Cunliffe-Lister: As the hon. member was informed in reply to his question on the 18th December, no supplementary instruction, secret or other, was issued to the Land Commission. If he is referring to the definition of the term "privileged position" of Europeans, the answer which I have just given shows that in complying with the chairman's request for a definition, I was studiously careful to avoid anything which could possibly be construed into an instruction to the Commission regarding the recommendations which they were charged to make."

I want to say to the Council that the Secretary of State said he never gave any further instructions, although we know very well his definition of privileged position was construed in an entirely different light, but he consistently says he gave no further instructions to the Commission at all. Therefore, we come back to the same position: Had the Commission in its terms of reference any right to suggest the promulgation of an Order in Council which was not included in the terms of reference at all? That is the whole point.

If anybody reads this sixth term of reference they will come to that conclusion. In the case of natives I will say, "Yes, they were asked." For instance, the fifth term of reference is:—

"To consider the nature and extent of the rights held by natives under section 86 of the Crown Lands Ordinance (Chapter 140 of the Revised Edition), and whether better means could be adopted for dealing with such rights in respect of—

(a) land already alienated; and

(b) land alienated in the future."

There the Commission were asked definitely to suggest if there were any other recommendations as far as natives were concerned. As far as the definition of the Highlands was concerned, they were never asked for anything of the kind at all, but it can be shown that this last paragraph in their recommendations about the European Highlands, and clearly shown, that it is merely an afterthought. That is contained in paragraph 1979:—

"These recommendations may perhaps give rise to a natural apprehension among Europeans that the extent of the Highlands may again be diminished. One of the main objects of our report has been to frame recommendations which would instil a feeling of security in the minds of the natives with regard to their lands. If, in doing so, we had only transferred the feeling of insecurity from the natives to the Europeans we could not feel that we had succeeded in our task. We therefore recommend that the boundaries of the European Highlands should be safeguarded by Order in Council, so that the European community may have the same measure of security in regard to land as we have recommended for the natives."

It is an entirely different thing to safeguard the interests of the natives and to extend the same principle to Europeans.

What we are being asked this morning is, in the case of Europeans, to believe that the major portion of the European population of the Colony are strictly intellectual and intelligent people. They have government by their own kith and kin; they have nothing to fear. On my left-hand side in this Council are the heads of departments of Government, their own kith and kin as I have said. There is not a single native or Indian sitting on the Government benches. The head of Government is of their own blood, and the people in England who are administering this Colony are also of their own kin.

It simply comes to this: They have no trust in the local Government, in the Colonial Office, or their own fellow settlers. That is what they are asking, that you, by their own hands restrict their liberty in such a manner as not to be able to dispose of their property! Certainly that is not to the advancement of the natives.

It is the duty of Government and the Commission and all the authorities that they must do all they possibly can to help people who are not able to help themselves, but certainly this Commission has recommended that the Europeans are also in the same stage and want similar protection. I submit that that is a poor compliment to their own people.

If I may be permitted to finish, and to show why the Colonial Office are in a very difficult position. They cannot go on with this Order in Council as presumed by hon. members in this Council; it is not

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If I may be permitted to finish, and to show why the Colonial Office are in a very difficult position. They cannot go on with this Order in Council as presumed by hon. members in this Council; it is not an easy matter.

Major Milner asked: Is not this an instruction? I caused the chairman to be informed that no person other than a European shall be entitled to acquire by grant or transfer agricultural land in such areas or to occupy land therein.

Sir P. Cunliffe-Lister: No, Sir. If the hon. and gallant member, instead of making careful selections from my answer, will read to the House the whole of the answer that I gave on the 18th December, and the answer that I have given to-day, it will be seen that what was given to the chairman of the Commission was a simple definition in view of thirty years' practice, and that there was no sort of instruction given.

Major Milner: Are we to understand that it is the practice of this Government to lay down terms of reference, or to give a definition in regard thereto without making them public?"

This is a most important question, and that is really what is troubling the minds of people in England and also in India, as I will show presently.

Sir P. Cunliffe-Lister: There was no possible question of altering the terms of reference, and it is a gross misrepresentation to continue to allege that, in view of the statements that I have made.

Major Milner: Will the right hon. gentleman say why it was that nothing was made public about this instruction, or this definition, if the right hon. gentleman prefers that term, for over two years after it had been given?

Sir P. Cunliffe-Lister: There was no question about it. If the chairman of the commission asks for a definition of a particular privileged position and the definition which was given, as must be perfectly plain to the House, is simply a repetition of what has been the thirty years' practice, how on earth can there be any question of giving secret instructions?

Mr. Speaker: We cannot debate this matter further."

That is briefly the debate that took place in the House of Commons in one week. Then again, this is not all. On the 21st and 27th February, 1935, Sir Robert Hamilton, who was, I believe, the chairman of the commission appointed as early as 1905, asked again in the House of Commons—

“Whether the Secretary of State for the Colonies was satisfied that what he proposed to do by Order in Council was in conformity with the reasons for Lord Elgin’s ruling in 1908?”

Sir P. Cunliffe-Lister replied: that the Order in Council would merely confirm a policy which had not been challenged by any Government in this country since its inception in 1906.

Sir R. Hamilton: “Is the right hon. gentleman aware that the ruling of Lord Elgin was based on the undesirability of excluding British subjects from access to any area within a British Colony, and that therefore he made an administrative order vis-a-vis Indians who were then British subjects, but now that Kenya has become a British Colony the natives of this Colony are also British subjects?”

So that the matter was not quite so simple as some seemed to think it was.

Now, if I may be permitted to refer to the feelings in my own part of the British Empire equally as in Kenya Colony—

I will try to show as briefly as possible, again quoting from Hansard, what the feeling on the question in India is.

On the 25th March, 1935, the following question was asked in the Legislative Assembly of India—If the hon. members will bear with me it will also show them the reality of the accusation that the Government of India often interferes in Kenya matters, and shows them what the position of the Government of India is when faced with persistent questions. But—

HIS EXCELLENCY: I do not want to restrict the hon. member in any way, but I would point out that I cannot see that the opinion of the Government of India regarding proceedings in Kenya has any direct bearing on this motion which are discussing. (Members: Hear, hear.) If the hon. member is going to bring it up he will have to proceed, but there are limits to the extent the debate can range.

MR SHAMSUD-DEEN: Your Excellency, I was trying to show that the Imperial Government has taken stock of the repercussions this Order in Council will have on other parts of the British Empire, and especially India, and India is a country with 360 millions of British subjects. This being a British Colony, the pledges of previous Ministers such as Lord Elgin are broken, and instead of practice is turned into law, which is an injustice to the whole of India.

Therefore I wanted to show the debate that took place, and the difficult position Government is put in. However, if Your Excellency thinks it is rather stretching the thing I will refrain. But I may say that the same year after the issue of this commission’s report, a motion was brought in the Legislative Assembly at Delhi—where I happened to be present—and I think for the first time in history of India a unanimous feeling was expressed condemning the attitude of the commission in going out of their terms of reference and recommending an Order in Council. It was the unanimous opinion not only of the Government of India but the whole population of India, including the Congress, the Hindus, Mohammedans, and also the European group in the Legislative Assembly. Even the European group said it was a definite injustice.

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I should like to quote a very small part of the opinion expressed by one of the semi-official members, as regards this debate in the Legislative Assembly of India concerning this particular Order in Council. The quotation is from the "Civil and Military Gazette" of Lahore of the 29th March, 1935:—

"The fact has to be recognized, indeed, that where racial interests clash owing to economic antagonism due to different standards of living—and that is the fundamental cause of the objection to Asiatic immigration in countries under Western rule—it is the most difficult thing in the world to arrive at a satisfactory adjustment. The Government of India has achieved more by the method of argument and persuasion than it could have done by flourishing the big stick or indulging in provocative language. In the case of the Highlands of Kenya, which provided the subject-matter of the debate in the Assembly on Wednesday, the Government of India has a strong case in objecting to the extension and permanent legislation of a restriction which has hitherto been only a matter of administrative arrangement. The grievance of Indian settlers in being barred from the Highlands is, no doubt, sentimental in the main, since in practice the great majority of Indian residents would prefer to stay in the coast regions where their trade interests lie, but their objection to the proposal to give statutory force to the ban is perfectly legitimate. No dissentient voice was raised in the Assembly on this issue and Mr. James gave the blessing of the European group to the Indian demand."

This quotation is from a European owned semi-official paper and shows the feeling on this particular question in India.

I am trying to show that it would be very impractical on the part of the local Government to send any despatch whatever. It would embarrass the Imperial Government by a demand of this sort. They have not a small body called Kenya Colony but so many other interests, and have got to look at the feelings of the British people themselves.

I have carefully listened to the speeches of hon. members, who give no good real reason for such an Order in Council being asked for. I thought there were cases which, for the lack of an Order in Council, made Europeans nervous of consideration of the present practice. All I could hear was that there were certain cases where somebody got a piece of land and found natives on it.

The law on that matter is perfectly clear. We passed the other day the Resident Labourers' Bill, making it perfectly clear that if there are any squatters or resident native labourers they have no right to the land at all, and the commission itself makes it clear. The law itself says that if there were any natives on the land prior to the Crown lease, then certainly they cannot be removed, only by agreement of Government.

I fail to see where any disquiet comes in at all. If there are natives on European land where they have no right, Government is showing weakness in not removing them. I say that they do not need any extra law to do that. If they are weak and afraid of the natives, though satisfied they have no right to be there, it is the weakness of Government, and I am in full sympathy with the European settlers in that position.

I hope I am wrong, and I shall be glad to be corrected if so, but this racial madness has passed all reasonable limitations. Only recently a plot of land was acquired by an Asiatic in a place near Nairobi, about 12 miles away, on the Karen Estate, Ngong, and the person who bought was no less a person than the Aga Khan, who is of Asiatic origin but, so far as British citizenship is concerned, is next to none either in this Colony or England. His services are too well known and his personality too to refer to in detail. Here is what I was going to say, and I hope somebody will contradict me.

I am told that strong representations were made to Government against the sale of these 25 acres of land on the Karen Estate, Ngong, to His Highness the Aga Khan. This sort of racial madness, as I call it, is causing a great deal of perturbation. It is often said that the Indian population of the Colony comes only from coolies, karais, and fundis of the Uganda Railway. That cannot be said of the Aga Khan.

MAJOR RIDDELL: On a point of order, Sir, as the hon. member has asked for contradiction, the land, as far as I understand, was not bought by the Aga Khan at all but by the Begum Aga Khan, who is a lady of European extraction.

MR. SHAMSUD-DEEN: I beg the hon. member's pardon, but he does not know the law. Where a European wife marries an Asiatic husband she has the status of the husband and is no longer a European.

MAJOR RIDDELL: The statement made I do not agree with. The definition of the status of a European cannot be altered by the fact of marriage.

HIS EXCELLENCY: I do not think this discussion on the status of a certain lady is really relevant to this discussion.

MR. SHAMSUD-DEEN: What I was trying to elaborate was that if there was an Order in Council or definite law Government would not have sanctioned the transfer of this particular piece of land, but if a free hand is given to Government as at present and they can use their discretion, there is no reason why a transfer could not take place in certain cases where Government is satisfied the privileged position of Europeans does not suffer.

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One of the reasons which has been given all along for a reservation of these European Highlands was the close proximity of various races such as Asiatics and that Europeans were likely to catch all sorts of physical and other troubles. That argument was advanced before the 1923 White Paper removed the restrictions; even in the towns they wanted to have them, even in this town as far as the Parklands and Hill areas were concerned. Fourteen years have now elapsed, and I am proud to say that not a single case of any untoward happening of this kind so much talked about by Europeans has come to the knowledge of anybody. Europeans and Indians are living together perfectly happily, and there is no cause for alarm.

There are cases quite close to Nairobi where a European was in a very straitened position by the exhaustion of all his money in the development of his land, and he wanted to sell. His European neighbours would not buy, or wanted it for next to nothing. He could not sell to an Indian, but Government saw the hardship and gave their sanction. The result was that that particular settler received quite a good price from the Indian purchaser. I am referring to Dondora Estate, about 8 miles from Nairobi. The Indian settler is getting on quite well and making use of his land.

I submit, Sir, that by insisting upon making this present practice a law it will be a very great hardship for Europeans themselves, and they will find in the long run that their own liberty has been restricted, and they will have done a great deal of harm to themselves.

I think I have taken up enough time, and will conclude by saying this: that you cannot ask the Imperial Government to perpetuate a disability that has been suffered merely as an administrative practice by turning it into law. It is decidedly a matter in which the commission exceeded their terms of reference, though the Secretary of State said he did not alter the terms of reference and did not entitle the commission to make any such recommendation as regards the Order in Council.

The debate was adjourned.

ADJOURNMENT

Council adjourned till 9.30 a.m. on

Friday, 13th August, 1937

Council assembled at the Memorial Hall, Nairobi, at 9.30 a.m. on Friday, 13th August, 1937, His Excellency the Governor (Sir Robert Brooke-Popham, G.C.V.O., K.C.B., C.M.G., D.S.O., A.F.C.) presiding.

His Excellency opened the Council with prayer.

KENYA LAND COMMISSION RECOMMENDATIONS

The debate was resumed.

MR. LOGAN: Your Excellency, the keynote of this motion is that there is an urgency in carrying out the recommendations of the Kenya Land Commission Report and, in its opening, the hon. mover (Major Cavendish-Bentinck) built up his case point by point in logical sequence, taking the general position of the Kenya Land Commission Report.

In a motion which comes before this Council dealing with the Land Commission Report, it follows inevitably that it opens up the way to a discussion of particular recommendations in that report. That way was followed by the three hon. members who followed in the debate, they each of them took the broad-road to Leroghi, and between them they recited to us a great many facts in regard to that position.

They were subsequently mildly rebuked by the hon. Member for Trans-Nzoia (Col. Kirkwood) for irrelevancy, but I submit that there was a definite incongruity between their support of the motion and their observations in regard to the Leroghi Plateau.

The terms of the motion are that representations should be made to the Secretary of State that an Order in Council should be issued without delay implementing the recommendations of the Land Commission in the sections dealing with the demarcation of the boundaries of the White Highlands, 1854, 1858, 1979, 2144, and 2152.

Reference to the report will show that in section 1954 the commission made the following statement:—

"The most controversial points in this definition—"

(and there they are referring to a definition made by a sub-committee of Executive Council in 1928)—

"are the northern boundary, which excludes Leroki, indisputably an upland area; and the western boundary in the neighbourhood of Muhoroni. We have already expressed our opinion in Chapter VI of Part II of the report that Leroki has been rightly excluded, because of the extent of the native interests involved."

In section 1971 of their report they say:—

"we therefore call the area, in round figures, 16,700 square miles; their position is shown on the map which we present at the end of this chapter as our definition of the European Highlands."

That map does not include the Leroghi Plateau.

I therefore assume, and I know hon. members feel deeply in this matter, and therefore I trust I shall not wound their susceptibilities if I say I assume that in this debate they have made a stand in the last ditch, because this motion is approved the motion is definitely to ask the Secretary of State to issue an Order in Council demarcating the Highlands in such a manner as to exclude Leroghi.

In his interesting speech, the hon. Member Mr. Shamsud-Deen made three points. His first point was that the term of

markation of the boundaries of the White Highlands, 1854, 1858, 1979, 2144, and 2152.

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That map does not include the Leroghi Plateau.

I therefore assume, and I know hon. members feel deeply in this matter, and therefore I trust I shall not wound their susceptibilities if I say I assume that in this debate they have made a stand in the last ditch, because if this motion is approved the motion is definitely to ask the Secretary of State to issue an Order in Council demarcating the Highlands in such a manner as to exclude Leroghi.

In his interesting speech, the hon. Member Mr. Shamsud-Deen made three points. His first point was that the term of reference in the commission's report dealing with the White Highlands had been altered. In that contention he is perfectly correct. It was altered. If hon. members will turn to the opening paragraph of Chapter IX where the term of reference is recited and compare that with the term of reference as recited on page 2 of the report, they will observe the extent of the alteration; to wit, that in the first recital there is one comma, and in the second recital there are two.

The art of punctuation, as many of my hon. friends will agree, is very much a subjective art. I for many years had thought that I was a master of the art of punctuation, but I have yet to find a single typist who agrees with me! Many even of our literary celebrities are inclined to splash commas over their pages; others are more sparing in their use of them. I might perhaps give a variation of a well known Latin tag and say: *Quot sententiae, commae.* (Laughter.)

Taking the passage as it appears with one comma, I feel that the commission might have expected to have found in the country a general body of opinion—because, as it then read, it was that they were to define the area generally known as the Highlands—so they might have expected to have found some generality of knowledge. But what they did find, with acknowledgment to my hon. friend the Member for the Coast (Major Grogan), was a high ratio of dissentient particularity of opinion on the subject.

It therefore appeared to them, and quite rightly, that they were not required to state what the area generally known was, but they were required to define the area within which a certain privileged position was to be exercised. They, therefore, without more ado, inserted a comma after the word "area" to make it perfectly clear that the words "generally known as the Highlands" were to be passed as an adjectival parenthesis to the word "area". They did that fully on their own responsibility. They referred the matter neither to this Government nor to the Secretary of State nor, as far as I know, to any other further or higher authority.

But, having done that, they wished to know what exactly the privileged position was in respect of which they were called on to define an area. They therefore asked the Secretary of State to give them an indication as to what that position was, and they received from the Secretary (of State a statement) as to the privileged position which, as a matter of administrative practice, had been in vogue in this Colony since the year 1905.

The hon. gentleman's second point was that the commission overstepped the bounds of their terms of reference by recommending an Order in Council which would create a legal disability against Asiatics in one part of this Colony. The hon. member has evidently studied the report carefully, but I am unable to find in that report any foundation at all for that statement. When they were dealing with this matter, in sections 1978 and 1979 what they said is as follows:—

"It has to be admitted that the provision which we have recommended for natives will entail some sacrifice on the part of the European community. Reluctance to make the concession would be natural, since it was generally believed that the gazettement of the native reserve boundaries in 1926 would settle the matter of native claims and requirements in respect of land for many years to come, and a certain exasperation will naturally be felt that substantial alterations have to be made so soon. But, exhaustive inquiry has satisfied us that these modifications are necessary, and we consider that, when the evidence has been studied, the need for them should be generally realized.

These recommendations may perhaps give rise to a natural apprehension among Europeans that the extent of the Highlands may be again diminished. One of the main objects of our report has been to frame recommendations which would instill a feeling of security in the minds of natives with regard to their lands. If, in doing so, we had only transferred the feeling of insecurity from the natives to the Europeans, we could not feel that we had succeeded in our task. We therefore recommend that the boundaries of the European Highlands should be safeguarded by Order in Council, so that the European community may have the same measure of security in regard to land as we have recommended for the natives.

It was clear yesterday that the hon. member has compiled a lengthy dossier of papers composed of extracts from debates of the House of Commons, the Legislative Assembly of India, and various newspapers circulating in India and elsewhere. I think he read us the great majority, the great bulk, of his dossier yesterday. I would therefore suggest to him that he might add to his dossier an extract from the *E.A. Standard* of July 17th, 1936, which contains a report of a debate on Colonial Office policy in Kenya in the House of Commons. In that extract he will find the following words given by Mr. Ormby-Gore, Secretary of State for the Colonies:—

"I want to make it clear that the existing administrative practice which was first laid down by Lord Elgin is to be continued. I wish that to be understood clearly both in India and elsewhere. The existing administrative practice of the Kenya Government which has been followed since 1908 will continue. In the area demarcated as the European area, not by law, not by anything in the Order in Council, but as a matter of administration, that practice will continue in the future as in the past."

His third point was that there was really no necessity for an Order in Council dealing with this matter of the European Highlands at all. I think that that point was probably based on his second point

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His third point was that there was really no necessity for an Order in Council dealing with this matter of the European Highlands at all. I think that that point was probably based on his second point in regard to the legal disability. The point generally will no doubt be taken up by the hon. mover in his reply, but so far as Government is concerned the necessity is to have a definite area clearly defined once and for all in which the administrative practice of the past will continue to be maintained in the future.

Coming, Sir, to the opening speech of the hon. mover, he accuses Government of inordinate delay in carrying into effect the recommendations of the Kenya Land Commission. He said that the people of Kenya had represented that these recommendations should be carried into effect with reasonable promptitude. He said that he imagined he would be told, and he already realized, that many variations had to be considered, many adjustments made, and there were difficulties to be overcome, but he considered that all that should have been done within the space of a year. Incidentally, by a slip of the tongue a year. Incidentally, by a slip of the tongue, the hon. member referred to a delay of four years when he must have meant three, since the last occasion when the commission's report was debated was October, 1934.

I would like to look for a few minutes, if I may be permitted to trespass on the time of the Council, at what had to be done in order to carry out the recommendations of the report.

There were three legislative measures which were in contemplation—two Orders in Council and one local ordinance.

For the Native Lands Trust Order in Council and Native Lands Trust Ordinance there had to be one and the same schedule, a schedule which would describe the land which, under the commission's recommendations, would for the future be known as the "Native Lands." The Order in Council dealing with the Highlands required to have another schedule specifying the lands to be de-

fined as European Highlands. These schedules are interdependent, because under the commission's recommendations certain lands now Highlands are to be "Native Lands", and certain lands now Native Lands or Reserves are to become Highlands. It is therefore necessary that all the negotiations to carry out the detailed land recommendations of the commission should be carried to their completion and enable the simultaneous issue of the schedules to these legislative measures.

Firstly, there were a number of land acquisitions to be put through. At one time it was thought, even by the commission themselves, that in order to get these acquisitions through on a fair and proper basis it might be necessary to have recourse to the provisions of the Land Acquisition Act. I cannot say how happy it makes me to be able to inform this Council that no occasion for the exercise of any compulsory powers has arisen, and I should like to make a generous acknowledgment of the way in which the individual land owners concerned have conducted their negotiations with Government.

But it must be clear that, in order to arrive at financial figures which one could advise Government were fair and reasonable as the cost of the acquisition of the various properties, extensive investigations had to be carried out by experts attached to the various Government departments in order to arrive at proper valuations, for it was not only a question in many cases of acquiring undeveloped land, as to which there might not have been very diverse opinion.

We had in the case of Wundanyi to acquire a fully going coffee concern. In the case of Njugu Estate we were required to take over a part of a fully going coffee concern, and that involved a good many difficulties as to the effect that the acquisition of such a part of that particular farm would have on the resultant value of the balance of the farm. In the case of the Saba Saba acquisition there were a number of points of difficulty, involving water and power questions and light. In the case of the Esageri farms there was first of all protracted negotiations with the owners of farms near Eldama Ravine which the commission recommended should be leased to Government. When those negotiations broke down, the next step was to negotiate with the owners of the Kisimani property.

I do not want to labour these points, but I am claiming that it is fair and reasonable that these negotiations should have taken a considerable amount of time on the part of the officers concerned, those who made valuations and conducted negotiations which required on both sides a considerable amount of tact.

That was one line we had to follow.

Secondly, there were a number of variations in the commission's report. It is not to be expected that, after a period and process when recommendations had been under discussion for some time, it would not have occurred to administrative officers and others that in some details the recommendations of the commission might be improved upon. That happened in the case of the removal of the natives from Tigoni, in the case of the Chepalungo forest area where a portion was cut out for white settlement and a portion reserved for native use. It happened in the case of the Kasigao where the commission recommended the establishment of a native reserve in the middle of alienated land, and it happened in the case of the Mukogodo, where a new boundary line had to be arranged between the area of North Nyeri and the future native reserve.

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The procedure we had to follow in dealing with all these situations was initial local discussions with the provincial administration. From that point, where native interests were concerned, there had to be discussions with local native councils and local land boards. Where European interests were concerned, there were local discussions with district councils and with accredited representatives of the Highlands.

Having reached that point in agreement, the next step was to put each proposition before the two resident members of the commission still in Kenya and obtain their approval. Then the matter was submitted home to the Secretary of State for his consideration and approval. It will therefore be realized that in the case of each of these operations a considerable period of time had necessarily to elapse.

The third point we had to deal with was the question of survey. A number of areas in various reserves were to be cut out of the reserves and added on to native lands; that involved a considerable amount of survey work. In the case of some native areas where they bounded on European areas and hitherto proper boundary lines had not been fixed or additions were proposed by the commission, extensive survey work had to be done in little known country. That applies to the survey of the Kittermaster Line and in the Churo area, and Njemps, some surveys in the Nandi area in regard to what is familiarly known as the Cogla Line. Also in the case of Kasigao, where a new reserve was created in preference to the recommendation of the Commission and considerable survey work had to be done.

to the Executive Council
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In 1931, when the Expenditure Advisory Committee sat, and in 1933, when the Select Committee on Economy sat, considerable roads were made by each of these committees on the staff of the Survey Department. When it became apparent that it was necessary to do a good deal of survey work initial to the preparation and completion of the schedules to which I have referred, we indented to the Secretary of State for two surveyors. One of these surveyors arrived in the country in April, 1935, and the other in September, 1935, and from that time onwards they have been employed on Land Commission survey work.

It might be said that the surveys could have been done with a great deal more expedition. I am prepared to agree that, if I had given instructions that all the survey staff had to be turned on to Land Commission work and that all the people who come in close contact with the Survey Department in their day to day business were to be given the reply that nothing could be done in their case because all the staff was engaged on the commission work, this work would have been done more quickly. If the fact that I did not give those instructions, because the general inconvenience and expense to the public had to be considered, is to be considered a fault of judgment, then the responsibility for that fault rests on my shoulders, and on my shoulders alone.

The fact, however, is that we have to have these schedules completed, because the whole basis on which the commission recommended that native rights to certain lands should be extinguished was that other lands were to be added to the tribe as compensation.

A further task that had to be undertaken was the preparation of a new Lands Trust Ordinance. The hon. mover, in the course of his opening speech, recited the terms of reference which were given to the commission but, when he came to the term No. 7—"to review the working of the Native Lands Trust Ordinance, 1930"—I understood him to say that he did not particularly wish to refer to that term of reference. Well, I wish particularly to refer to it, because it is a matter of considerable importance, and it is a matter which has involved a very great part of the alleged delay in dealing with the commission's report.

The importance of the commission's recommendations in regard to the new Ordinance cannot be lightly set aside, for in their recommendations they propounded an entirely new conception of the status of native lands. They propose a new administrative machinery to deal with the administration of the native lands. Their recommendations on the subject are to be found in many, many pages, and in many paragraphs, of the report, and without saying more than this, I might say that in some particulars their recommendations involved some intricacy, and certainly they did raise certain, and not a few, questions of importance and of general principle.

It is one thing to make recommendations in a report; it is an entirely different thing to translate those recommendations into legal clauses which will stand the test of time. It is easy to say that it is a simple matter to draft an ordinance or this or that and produce clauses or laws that will not involve amendments. I suggest to hon. members that they have only to look at that table to see the effects of what, in some quarters, might be considered as hasty and ill-digested legislation!

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From time to time in this Council we are invited to pass amending ordinances to ordinances which have not had many years life, and it is a common thing here for us, somewhat lightly, to enter into amending legislation. That position cannot for one moment be considered to apply to a document which is of the importance and status of an Order in Council.

The whole purpose of an Order in Council in this connexion is to get, as far as we humanly can devise, finality, and if an Order in Council were enacted which permitted of criticism and demanded amendments within a short period, then one of the great points of value in having an Order in Council at all—namely, finality—would be largely destroyed.

For that reason there has been a necessity for dealing with the legal side of this matter with great particularness and care, and Your Excellency has recently been informed from the Colonial Office that that aspect of the problem is engaging their close attention. The general conclusions of the commission have been accepted by the British Government and will be implemented, and we have an assurance from the Colonial Office that they will be in a position to produce drafts in this connexion in the autumn.

In his concluding remarks, the hon. mover referred to the state of affairs which exist on certain farms in Limuru, and I am bound to say that I was sorry to hear him give expression to one remark to which he did give expression. I think I can, with a full measure of responsibility, say that Government realizes to the full the difficulties under which a few farmers in the Limuru area have been placed and are placed owing to this question of the extinguishment of native rights on European farms.

These farmers have met the position with considerable forbearance and great patience, and I take this opportunity of expressing appreciation of the attitude which they have adopted. Equally, Sir, the administrative officers in the district have been faced with a position of considerable difficulty and they, too, deserve all the thanks we can give them for the way in which they have met that position and have endeavoured to assist the farmers in question.

If anything were to transpire owing to a breakdown of forbearance and patience, it would not only be a calamity to the farmers concerned, but would raise a question of considerable difficulty in regard to a settlement of this position, and one can only hope—and express that hope as fervently as possible—that the forbearance and patience which has been exercised in the past will continue to be exercised in the future until this matter comes to a successful conclusion.

These points have been realized by this Government and a number of despatches have been sent to the Secretary of State emphasising the difficulties with which certain people are faced. I think I am correct in saying that one of the first despatches Your Excellency was asked to sign on assuming office in this Colony, was a despatch on this subject. The Secretary of State is fully aware of our difficulties and the position generally.

I think I have Your Excellency's authority to say that a record of this debate will be sent to the Secretary of State with an urgent despatch as soon as the record can be conveniently transcribed and, as that indicates, Government have no objection to accepting the motion proposed. (Applause.)

ARCHDEACON BURNS: Your Excellency, it was not my intention yesterday to take part in the debate on this question, because I knew that there were those who were much better fitted to deal with this matter than I am. But the question was introduced by the hon. Member for Aberdare (Mr. Wright) of Leroghi, and I feel that I could not allow that to go without some word about it.

This morning my fears have been allayed by the words of the hon. the Acting Colonial Secretary with regard to that matter, and therefore my remarks in this debate will be very few indeed.

This thing was discussed at very great length and the position was definitely laid down by the commissioners, after most careful scrutiny and consideration and, on page 240 of their report what they recommend everybody can read for themselves. Therefore, having had the assurance from the hon. the Acting Colonial Secretary that in any question that is brought up before the Secretary of State, Leroghi does not come in for the present at any rate, it takes away practically all I had to say with regard to it.

There is just one other point that I should like briefly to mention, and that is the matter referred to by the hon. Member for the Coast (Major Grogan), with regard to the farm in Limuru. The hon. the Acting Colonial Secretary has also dealt with that from a certain point of view, but I would like to draw the attention of the Council to one statement which I think I am correct in saying my hon. friend made yesterday, and that was with regard to the matter of compensation.

He said that when the farms were taken over every hut was paid for at the rate of Rs. 4, I think that was his statement.

MAJOR GROGAN: On a point of explanation, the statement I intended to make was that Government at that time prescribed that the proper compensation due to the natives if in occupation of these farms was at the rate of Rs. 4 per hut. In the majority of cases, of course, it was paid.

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ARCHDEACON BURNS: Thank you. I did not understand the hon. member to say that Government had made that regulation, that it was prescribed by Government.

I do with all humility submit to this Council that natives cannot live on huts, and when you speak of Rs. 4 being paid for a hut to the occupier of that hut, if you want to send him about his business off your land, what is to happen? Take a farm of a 1,000 acres where there are 40 huts, with perhaps 200 people living in them. They would receive for each hut Rs. 4, and if the occupier wanted them they would have to leave. That would be about Sh. 160 or something like that for those huts as we count them now.

After they have left the huts or taken them down, if they are not burnt or taken away, they have to search about and find another place in which to erect their huts. The point I want to make particularly is this.

In this report it has been recommended that certain farms, as already explained by the hon. the Acting Colonial Secretary, are to be bought back and added to the native reserves. If one of those farms where there were 40 huts for which Sh. 200 or something like that had been paid in compensation, a farm of, say 1,000 acres, what would be the position to-day? The position would be—I am not criticising the occupier for trying to get as much as he could for the land—that the occupier in the Limuru District at the present time would want for his land at the rate of £10 to £12 per acre, so that in place of compensation paid to the natives of Sh. 160 or Sh. 200 at the most, the present occupier, if he wants to sell that land or Government was trying to negotiate with him for it to add it to the native reserve, would expect to get from £10 to £12 an acre, or £10,000 to £12,000.

If we are going to have finality, and I do long for it as much as any hon. member in this Council, with regard to the relationships existing as between Europeans, Africans and Indians, we must take all these factors into account.

I am not throwing bouquets or anything like that, but to expect Government to negotiate such a tremendous task as this is a year or two years is expecting more than can reasonably be required of them. We have not only the white settlement to think of but also the Africans as far as they can be satisfied to be made happy and contented with the arrangements that are made, and we have the Indians also to have their share in the matter.

If, therefore, this request is sent home, it must be sent home for an Order in Council not for the Europeans alone but also for the Africans, so that their share of the bargain may be finally settled and the Africans settled down in a contented way to do their work in their own country.

MAJOR CAVENDISH-BENTINCK:
Your Excellency, in view of the undertaking which the hon. the Acting Colonial Secretary gave at the end of his speech, I normally would have very little to reply to, but the debate has extended over a very wide range, a much wider range than I intended, and therefore one or two matters have been raised which I think I should comment upon.

The first one, of course, is the question which my hon. friend opposite (Mr. Logan) raised at the beginning of his remarks, Leroghi. I gather that he wished to hear from me a categorical statement as to whether the purpose of my motion was to include Leroghi within this Order in Council or not. Well, Sir, Leroghi, strictly speaking, did not come within the terms of my motion. On the other hand, I think I should make it quite clear what the majority of us think on that subject.

At the time of the Carter Commission debate I alluded to that vexed question on behalf of all elected members, and I believe our standpoint to-day is precisely the same as it was then. I said, in concluding my remarks three years ago:—

"In concluding my remarks regarding this question, I must therefore emphatically protest against any further action being taken towards inducing a further infiltration of Samburu into the area between the Kittermaster and the Coryndon Lines and on behalf of the European elected representatives I must, in no unmeasured terms, press our claim that the Leroki Plateau be regarded as land which in future will still be available for white settlement."

I said nothing about our non-acceptance of the boundaries proposed or of the inclusion of this area in the Order in Council at that time. The Carter Commission also left the question open, because you will find their recommendation is:—

"That the 'Kittermaster Line' be kept as one of the boundaries of the Northern Frontier Province subject to any minor adjustments which Government may consider necessary, and that all the land to the north and east of it, including the Leroki Plateau, be reserved for native use and occupation for such a time as may be necessary. We do not at present recommend that the area be declared native reserve for reasons which we state."

That, coupled with my remarks, which I now repeat, remains at any rate my attitude, and I believe is that attitude of most of us on this side of the Council. (Hear, hear.) I noticed that even my hon. friend Archdeacon Burns hoped that nothing more would be done for the present at any rate. Those were his words, and that is exactly what we feel. For the present, this subject remains in the air.

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Incidentally, before I leave that subject, I would just mention that it does rather look, if you read in between the lines of two answers given by Government on Monday last to two separate questions, as though possibly one has got to look a little bit more carefully into what is happening in that part of the world, because I gather that a number of Turkana are now in the Samburu country, and at the same time we are told that the Leroghi is required for the Samburu.

That is the beginning and cause of all these troubles, and one of the reasons why we want this Order in Council. The tribesmen are not controlled and keep moving and pushing other tribes south or north as the case may be, and back we come to the old trouble. It is a question of control.

The hon. member for Indian interests gave a very long and complicated argument, and I am afraid that I had some difficulty in following it. I do not wish to deal with many details. He quoted the views of two gentlemen whom I know personally on this particular question. I do not think their views are those of the majority of the House of Commons, but their ~~the~~ views, and we most of us know what they are.

But he did mention one reply of Sir Philip Cunliffe-Lister's, as he was then, who stressed that he had made the same ~~has~~ six or eight times, referring on each occasion to an Order in Council. We have again heard this morning from another hon. Indian member that last year Mr. Ormsby-Gore referred to what was being done by this Order in Council. I can only say that we are capable of reading those remarks also, and the fact remains that we are still waiting for the Order in Council, and that is one of the reasons why we brought forward this motion.

if necessary, & if it can be done.

reply

The hon. member also suggested that it would be unfair and unreasonable to rush such an Order in Council. Well, whether you take the date as from the first occasion on which people might have read this report, which would give us four years, or the date on which it was debated here, which is three years—I am referring now to the Colonial Office—I do not believe that even Colonial Office officials need have got very out of breath by having drawn up that Order in Council in that period of time. I think four years, or three years is ample time.

In general, my reply to the hon. member is this. I have never, I think, raised this as a question affecting European interests versus Indian interests. I certainly never intended to do so. If he reads my motion, he will see that I do not only ask for the Order in Council as regards the White Highlands area but I also ask simultaneously for the Order in Council to be made dealing with the native areas; the two had together and must be produced at the same time. He suggested that there was no real need for the latter, and the difficulties to which I have alluded could have been dealt with under the Resident Labourers Ordinance. Of course that cannot be done for, as I read out, actually in some cases due notice to quit has been given under the existing law dealing with resident labourers and nothing could be done.

For that reason, for the reason that the whole of one's security and title to land for which one has paid and being able to know where one is rests on having these Orders in Council, we are asking for the

Finally, I would like to refer to a few remarks made by my hon. friend opposite.

He, as usual, made an extremely capable apology for the delay that has taken place. He pointed out that the recommendations of the Carter Report entailed a tremendous amount of work in connexion with the acquisition of certain lands, that there were variations to the report which had to be dealt with, that surveys had to be made, and lastly, there was the preparation of the Native Lands Trust Ordinance.

With regard to the acquisition of land, I do not think that need have taken as long as it has. I admit the difficulties, and should like to pay tribute to the way in which those difficulties were faced and the negotiations carried through. At the same time, I do not think undue haste was noticeable.

As regards the variations in the report, it brings me to a rather important aspect of this whole question. Admittedly there have been numerous variations to the recommendations made by the commission, and a lot of them are owing to the fact that every time after they recommended a boundary there was—I will not say every time but on many occasions—a water hole or salt lick or something of the sort desirable from the native point of view on the European side of the boundary a variation was suggested.

I believe we have met many of these demands in a generous way. I myself have sat on inquiries on these re-adjustments again and again, and on nearly every occasion we have given in, but as we have gone on we have had more and more requests for alterations; unless we come to an end of these suggested alterations some day there will be no finality at all to the settlement of these boundaries.

I also noticed that the hon. member used the past tense with regard to everything he quoted regarding the removal of natives from certain places. I wonder whether it might not have been the future tense that should have been used in one or two cases which he quoted, because the natives are not yet moved.

As regards the preparation of the Lands Trust Ordinance, I purposely skimmed

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As regards the preparation of the Lands Trust Ordinance, I purposely skimmed over it at the beginning, not because I meant to minimize its importance but because I treated this more as a legal and administrative matter than as an executive matter. At the same time, I realize that it is a very complicated thing and has to be very carefully gone into, but I still think that three years should have enabled the necessary inquiries and examinations to be made.

The hon. member regretted a remark which I made in my opening speech, and he said it would be a calamity if the forbearance of certain farmers wore thin. I think he must not have understood or misheard what I did say, because what I said was precisely what he did, that I trusted in my lifetime I would never see people taking the law into their own hands, and that is practically the same thing.

Our forbearance, I think, is remarkable, and a just tribute has already been paid by two members of the Council. But I would point out that the forbearance has all been on one side. I have no doubt that it will continue, but at the same time, in common fairness, Government should take steps to put an end to this period of tension, and it is for that reason we have brought forward our motion on this subject.

All we ask for is what we consider fair play within reasonable time. The Carter Commission came out and made recommendations, many of which it was admitted by the commissioners themselves were to the disadvantage of those whom we represent. We accepted them, and we accepted this map. The map is altered considerably since we accepted it. We accepted all on the sole condition that

HANSARD—13th August—EIGHT.

the commission's recommendations concerning the native reserves and Class C Land and the Highlands would be declared by Orders in Council and that His Majesty's Government having approved the recommendations would see that in due course those boundaries should be so declared by Orders in Council.

The whole question is, what is meant by "in due course"? and that is the real reason for this motion. We maintain that the position is getting worse day by day, daily more and more claims are made, more and more variations suggested, and we think when the words "in due course" appeared in paragraph 10 of the White Paper dated May, 1934, the period of time suggested would be a reasonable period. The delay that has taken place since we consider to be unreasonable.

We therefore urge, and urge with all the strength we have got, that some real move be made now in order to try and get these Orders in Council and these innumerable re-adjustments finally settled within the next few months. (Hear, hear.)

The question was put and carried.

38005/37
4. General.

C. O.

Mr. Flood. 18/10/37.

Mr. Dale 21.

Mr.

Sir H. Moore.

Sir G. Tomlinson.

Sir C. Bottomley. 19.10

Sir J. Shuckburgh.

X Permi. U.S. of S. 26.10.37

Party, U.S. of S.

X Secretary of State. 26-10-37

38005
38005/37
Downing Street,
28. October, 1937.

Sir,

I am addressing separate despatches to you in connection with the Orders-in-Council and Ordinances which are required to implement the Report of the Kenya Land Commission, and in this despatch I proposed to discuss generally some of the principles involved and to suggest what I consider the most suitable course of procedure to follow.

2. The object of the Land Commission as set out in their Report may be stated as being to ensure finality in regard to Kenya land questions and, so far as might be possible, to prevent any alteration in the settlement which they recommended.

For

DRAFT. Conson.

KENYA.

CONFIDENTIAL. (7)

GOVERNOR.

FURTHER ACTION.

For that reason they advised that Orders-in-Council should be enacted which would have the effect of safeguarding the Highlands and the Native Lands and preserving intact the elaborate machinery which was to be set up for the control and disposal of those lands. It must, however, be admitted that no legal safeguard can be absolutely effective. The Commission themselves in their criticism of the existing Native Lands Trust Ordinance pointed out that the inclusion of the words "for ever" in that Ordinance did not give any ~~security~~ ^{security} against amendment. Similarly, though the boundaries and the method of control of land may be defined by Order-in-Council, it is always possible, should circumstances so require, to enact an amending Order-in-Council, while the Ordinances may be repealed or amended. The effect of the Commission's proposals as embodied in the Orders and Ordinances is undoubtedly to make alteration very difficult and to require much elaborate procedure involving the enactment of amending Orders-in-Council and to that extent does provide

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C. O.

- Mr.
- Mr.
- Mr.
- Str H. Moore.
- Str G. Tomlinson.
- Str G. Bottomley.
- Str J. Shuckburgh.
- Permt. U.S. of S.
- Parly. U.S. of S.
- Secretary of State.

DRAFT.

FURTHER ACTION.

ample security, if such were needed, against arbitrary interference by the legislature of Kenya with the land arrangements. You will also notice that it is prescribed in the draft Native Lands Order-in-Council that any Ordinance amending the Native Lands Trust or Crown Lands Ordinances must be reserved for the signification of His Majesty's pleasure.

3. I now come to consider the procedure which can best be followed in regard to the Orders-in-Council and the Kenya legislation. It had been originally suggested that it would be possible to issue two Orders-in-Council referring to Ordinances which had not actually been enacted. This would have had the merit of having the Orders-in-Council actually in force and thereby making clear the policy of Government, while the Ordinances could then have

followed. On further consideration, however,

it appeared that it would be most difficult to adopt such a procedure involving reference in Orders-in-Council to non-existent Ordinances and that it will be necessary to have the Native Lands Trust Ordinance and the amending Crown Lands Ordinance actually in being so that the Orders-in-Council can refer to them as may be required.

4. A further difficulty arises in regard to the definition of both the Highlands and the Native Lands, as also of the native leasehold areas. The boundaries of the Highlands must be declared by Order-in-Council, but it would be impossible to include in an Order-in-Council a definition of the boundary such as that with which you have supplied me, and I therefore consider that the only solution is, as stated in my other despatch on the subject, for Government to issue a Gazette Notice stating that it is proposed that the boundary of the Highlands shall be as therein laid down, and the Order-in-Council can proceed

by

C. O.

Mr.

Mr.

Mr.

Sir H. Moore.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shackburgh.

Parli. U.S. of S.

Parly. U.S. of S.

Secretary of State.

DRAFT.

FURTHER ACTION.

by making reference to that Gazette Notice. A similar procedure can be

followed in the case of the Native Lands Order-in-Council, Government Notices being issued to which

reference will be made in the Order.

5. As a result it follows that notices will have to be published in the Government Gazette defining the Highlands and the Native Lands,

separate Notices being required in the case of the "native leasehold areas" and the "temporary native reserves".

The new Native Lands Trust Ordinance and the amendment to the Crown Lands Ordinance should also be introduced and carried, but it is for consideration whether the Ordinances should be published for information before or after the Gazette notices. When the notices have been issued and the Ordinances passed the two Orders-in-Council can be issued without any further delay.

6. The question of making known the exact scope of the Orders-in-Council has also engaged my attention. It would be definitely unconstitutional to allow the terms of an Order-in-Council to be submitted in draft and discussed by a legislature and I have said so in Parliament. There is, however, no objection to your making known the substance of the draft Orders, and this might be done by laying on the table of the Legislative Council a note embodying the substance of the two Orders under some such heading as "draft proposals".

I have, etc.

(Signed) W. ORMSBY GORE

KENYA LAND COMMISSION.

6TH PROGRESS REPORT FOR PERIOD ENDING
30TH JUNE, 1987.

Mulogani

COMMISSIONER FOR LOCAL GOVERNMENT,
LANDS AND SETTLEMENT.

NAIROBI,
15TH JULY, 1987.

SUMMARY OF ACTION TAKEN ON COMMISSION'S RECOMMENDATIONS.

SECTION.	SUBJECT.	RECOMMENDATION.	ACTION TAKEN.
KIKUYU PROVINCE.			
463 Schedule on pages 132 and 133.	Addition to Kikuyu Native Reserve.	21,000 acres to be added to Kikuyu Native Reserve.	
<u>Items.</u> 7	Portion of L.R. 325/R Saba Saba.		Purchase price paid and surrender in progress.
10 also 394-398.	Portions of Forest Reserve. Tifoni Move.	Natives to be removed and accommodated in Bathi Forest. (Part of 21,000 acres).	Compensation paid and removal to approved new area completed in respect of majority of residents. Others decline at present to move.
867.	Cash compensation of £2,000.	To be paid to the Kikuyu Local Native Councils for distribution to right holders.	Further action awaits the promulgation of the Native Order in Council.
443.	Portion of L.R. 325/R Saba Saba (22 acres).	To be purchased and added to Native Reserve.	Purchase price paid and surrender in progress.
471-480.	Kikuyu 21,000 acres. Balance of 2199 acres to be made up.	2199 acres to be added to Native Reserve: (a) if possible from land adjoining the main Reserve, or (b) to be merged in large blocks addition to BI areas from Katta Plateau.	Shortage which had been reduced to be a net area of 1029 acres made up by addition to Native Reserve of 1188 acres near Fort Hall.

SECTION.	SUBJECT.	RECOMMENDATION.	ACTION TAKEN.
591 & 622.	Pangani.	<p align="center"><u>NAIROBI MUNICIPALITY.</u></p> <p>Natives to be removed by sections to Punwani. Compensation to be paid.</p>	Demolition of huts and removal of occupants commenced.
680-682.	Vile Railway Zone and Chyulu Triangle.	<p align="center"><u>KASAI DISTRICT.</u></p> <p>Not to be included in Masai Reserve but either of the following courses to be followed:-</p> <p>(1) Masai to take out annual lease until alternative watering places are available in the Reserve; or</p> <p>(2) Agricultural land in the Reserve to be ceded in exchange for Chyulu Triangle or other desired land.</p>	Proposals for including these areas in the Masai Reserve in exchange for other lands are under consideration.
697.	Colville Exchange.	To be ratified.	Revised proposals approved and survey completed. Awaits proclamation under new Native Lands Trust Ordinance when enacted.
757-9	Yatta Plateau.	<p align="center"><u>UKAMBA PROVINCE.</u></p> <p>300 sq. miles to be added to Machakos Native Reserve as "1."</p>	Proposals for adding "1" area to the Kamba Reserve postponed for further investigation.
<u>NORTHERN FRONTIER AND UGANDA DISTRICTS.</u>			
810.	Mukogodo.	(1) Mukogodo area to be detached from Central Province and added to Northern Frontier District for purposes of	Proposals for corridor of access to Maso Miro River approved.

SECTION.	SUBJECT.	RECOMMENDATION.	ACTION TAKEN.
		<p>Administration. Boundaries to be decided by Government after consulting the North Nyeri District Committee and the natives concerned.</p> <p>(2) Area to be occupied by this section and the water supply for the area to be specially considered by the Provincial Commissioner.</p> <p>(3) Mukogodo area when added to Northern Frontier District to be Class D land with priority for native rights.</p>	<p style="text-align: right;">b8</p>
RIFT VALLEY PROVINCE.			
968	Kamasia Native Reserve.	<p>L.R. Nos. 488, 489, 5249, 5276, 5262, 5641 and 491 to be leased from owners by Government for 10 years for Kamasia grazing.</p>	<p>Revised proposals approved and L.R. No. 5259 purchased for £5636; to be made available for occupation on lease by Kamasia as Class B2 in substitution for the areas recommended by the Commission. L.R. No. 1168 to be Crown Land and an equivalent area to be excised from L.R. No. 5259 as Class A Native Reserve.</p>
977-979	Dorobo Mau Section.	<p>To be removed to Reserves of Tribes with which they have affinities. Remainder to go to Chepalungu. Natives to be given choice.</p>	<p>Large numbers of Dorobo have already removed to the Native Reserves with which they have affinities..</p>

SECTION.	SUBJECT.	RECOMMENDATION.	ACTION TAKEN.
<u>NZOIA PROVINCE.</u>			
<u>ELGEYO AND MARAKWET.</u>			
1020.	Marakwet (Cherangani addition) Kaption Salt Lick.	12 sq. miles to be added as Class B1.	Survey of revised line completed.
<u>NANDI.</u>			
1068.	Kipkarren.	Cogle line to be modified to include in Native Reserve for native occupation - L.R. Nos. 4192, 5185, 5182, 4535, 5167, 6961, 6960 and other unnumbered portions. (3 of the farms mentioned are in private ownership).	Amended boundary line approved and surveyed.
1075.	Nandi L.R. No. 1971.	The possibility of an adjustment to make the Nukou River the Native Reserve boundary to be investigated.	Nandi Local Native Council rejects exchange of land proposals. <u>Negotiations abandoned.</u>
<u>ELGONYI.</u>			
1087.	Elgonyi - removal from farms.	(3) 40,000 acres of Mt. Elgon Moorlands to be Kavirondo Reserve Class A for Elgonyi. (Area to be gazetted as Forest Reserve).	Plan of proposed Native Reserve boundaries studied and accepted by Government.

SECTION.	SUBJECT.	RECOMMENDATION.	ACTION TAKEN.
1176 and 1183.	Chepalungu (Lumbwa and Dorobo). Chemagel Township.	<p style="text-align: center;"><u>NYANZA PROVINCE.</u></p> <p style="text-align: center;"><u>SOUTH LUMBWA.</u></p> <ol style="list-style-type: none"> (1) Chepalungu area (except 10,000 acres for European Settlement) to be added to Lumbwa Native Reserve Class A. (2) Locations to be reserved for Dorobo (Sections 978 & 982). (3) Timber to be protected and Forest at head waters of Mgor River to be conserved. (4) European Area of 10,000 acres to be selected by administrative authorities in consultation with European community. 1200 acres to be "set apart" as a Township. 	<p>Revised proposals approved, and survey proceeding. These provide for:-</p> <ol style="list-style-type: none"> (a) the excision of 640 acres from Native Reserve for Chemagel Township; (b) the addition to the Native Reserve of Sotik Post (640 acres) and 1200 acres from the 10,000 acres at Chepalungu reserved for European occupation.
1209.	Durumu (Mwachi Valley Claim).	<p style="text-align: center;"><u>COAST PROVINCE.</u></p> <p style="text-align: center;"><u>(a) Hinterland.</u></p> <p>Special enquiry to be undertaken by Provincial Commissioner.</p>	<p>Proposals submitted to the Secretary of State providing for all Crown Land farms in the Mwachi Valley block to be made available for Native occupation, those on the generally southern side of the Mwachi River as Class A and those on the northerly side of lease as Class B2.</p> <p style="text-align: right;"><i>Referred back to Gov. for further consideration</i></p>

SECTION.	SUBJECT.	RECOMMENDATION.	ACTION TAKEN. 71 END
1231.	L.R. No. 4881 -- Sedgwick & Goodwillie.	<p style="text-align: center;"><u>TEITA RESERVES.</u></p> <p>To be purchased for native use from Local Native Council Funds.</p>	Purchase by Local Native Council for £1,400 completed.
1261 (map on page 524).	Teita Concessions Ltd. (L.R. 3880).	<p>(1) Area V (5 sq. miles) to be surrendered by the Company.</p> <p>(2) Area X to be surrendered (11 sq. miles) to be surrendered by the Company.</p> <p>(3) 200 acres north of area X to be surrendered. All of the above to be added to Native Reserve as Class A.</p> <p>(4) Kasigau to be at liberty to barter land, area X for other land if they so desire.</p>	<p>Removal of Natives to Kasigau Mountain completed. Boundaries of Reserve being surveyed.</p> <p>Arrangements made for survey of area</p>

C.I.

LAND.

1. GOV. KENYA..... CONF. 132..... 8.12.36.
Fwds. folio of maps together with a copy of a schedule
containing a written description of boundaries (referred
to in 20 & 21 on 1936 file) and comments thereon
requesting S. of S's views on principal points raised in
(1) on 38005/6/35 be transmitted at an early date.
Requests return of folio in due course.

2. ACTING GOV. KENYA..... 14. CONF..... 20.1.37.
Enquires whether circumstances now permit of a reply
being sent to Kenya despatch No. 32, Conf. of 25.3.36
(10) on 38005/3/36.

DESTROYED UNDER STATUTE

Mr. Paskin.
Mr. Flood.

You have agreed that the best way of dealing
with the draft legislation to give effect to the
Land Commission recommendations would be for us to
sit round a table and discuss the drafts in
consultation with a legal adviser.

The terms of the Highlands Order in Council
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Government of Kenya has urged that the proposed Native
Lands Trust Order in Council should be issued
simultaneously with it. This is also the S. of S's
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In addition to these two draft Orders in Council
there is the new Native Lands Trust Bill and the
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which I have had several copies made and copies of
the Attorney General's memoranda. There are three
sets of the draft Bills available. It now remains
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The matter referred to in No. 2 on the file might
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C. H. Brown

11.3.37.

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C. H. G. [Signature]

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