

1937

Kenya

No. 38005/3

SUBJECT

CO 533/476

Sand Commission Report

The White Highlands

Boundaries

Previous

1936

Subsequent

1938

C.I.

LAND.

1. GOV. KENYA..... CONF. 132..... 8.12.36.
Encs. 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 26.3.36 (10) on 38005/3/36.

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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 have been agreed upon in principle. But the 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 view.

In addition to these two draft Orders in Council there is the new Native Lands Trust Bill and the Crown Lands Amendment Bill to be considered. All except the Highlands Order in Council are discussed in the Governor's despatch in 38005/6/35 below, of 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 to fix a convenient time and date for the first talk.

The matter referred to in No. 2 on the file might also be dealt with in conference with the legal adviser.

C.H. Ross

11.3.37.

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- 4. To Gen. Kenya — Tel. Message — 9.8.37
- 5. To Gen. Kenya — Cont. No. 110 — 13.8.37

State that definition has been completed & description prepared
covering whole of Highlands Area, which will be put to Gen. Kenya
in mail & file of plans illustrating it will follow by post
mail.

a preliminary draft of the
Highlands Order has now been
prepared, & is to be discussed
with Mr. Harragan (Att. Gen., Kenya)
at the beginning of Sept., when he
will be available.

In the meantime
? see No 5 as in 3h.

J.J. Damin
24/8.

6. To Kenya Govt (5 lines) — 1 SEP 1937
(27 maps)

Henry
for above

Mr. J. J. Damin

7. Pks see below. The usual
correspondence will have regard
help to illustrate the position. I
have known of the word of S. P.
Lumley later with with Sir
J. Harvie in 1934 or so - 37, available

W.D.S. 25.9.37

Sir J. Harvie

The slip attached of Harvie
Mr. Harvie. Sir J. Harvie when
saw the S. P. on Saturday - mainly
about 2000 ft., but he also noted
that there might be an increase
of 1000 ft. in order that the
S. P. of India might not get to
just north of officers from Congress
sources. No complaint of
"immigration"

We must be prepared to
hear these people speak with
two voices.

W.D.S. 7.6.37

Dear Harvie,

J. J. Damin
7/6

8. Extract from 1914 Lands Ordinance 75-8-37
9. Extract from letter from S. R. Brindley to S. J. S. dated 17-8-37

This situation has arisen because of the recommendation in the Land Commission Report that all native rights outside the reserves should be extinguished. This does not relate to what are known as "Squatters", i.e. resident native labourers, who are allowed to occupy land on European-owned estates and farm it in return for giving their labour as required, and subject to the terms of the Ordinance, to the European owner. (The situation is ^{rather} very complicated because there are a certain number of right holders who have taken on Squatter functions.)

The right holders have arisen from the provisions of the old Crown Lands Ordinance, enshrined in Section 86 of the present Crown Lands Ordinance, which allowed Government to grant leases of Crown Land, irrespective of the fact that there might be native communities residing in it. The rights of these native communities were preserved.

The presence of some of these natives is annoying to some of the white owners, and their desire is to get rid of them. Accordingly, when the Carter Commission reported and the recommendation therein was accepted by His Majesty's Government, it was hoped that the next thing to do would be to order all natives at once out of the Highlands, subject only to the condition that they should be allowed to reap any crops that they had.

This would not have been practicable, because part of the underlying assumption is that there shall be ample land for the natives to go to, and until the native reserves have been expanded and the adjustments made by the Commission, carried out, there would not have been that land.

It was not considered practicable to issue a Native Lands Order-in-Council without the Highlands one, nor to issue the Highlands one without the Native one, lest there be accusations of bad faith on either side.

Further, to promulgate an Ordinance without the Order-in-Council would have been somewhat difficult, since the eventual provisions of the Order-in-Council might have been held to conflict with the Ordinance. Therefore, all things have to be done together: the Highlands, the Native Lands Trust Ordinance and the new Native Lands Order-in-Council required by the Carter Commission.

The delay is regretted. It now appears that, in some cases, the natives are getting obstreperous. I must take on myself the responsibility for a good deal of the delay. The questions involved are complicated, and reading and re-reading the despatches and memorandum do not seem to get one anywhere. Objections can be urged to almost anything, and the difficulty has been to see where to begin. The Instruments, Ordinance, etc. have now been gone through with the Legal Advisers and will be ready for discussion with the Attorney-General of Kenya at the beginning of September. It may very well be that the resulting Instruments, especially the Highlands Order-in-Council, will not satisfy everybody, but it would be almost too much to expect that they would. The India Office may find objections, though I don't think they reasonably can, since there will

will be nothing in the Orders, as drafted, to impose a disability on any Indian on grounds of race, matters being left to administrative practice as hitherto.

I submit a draft despatch

22.8.37

25.8.37

Sec. of State

You will see from his minutes on the draft S.O. letter that Sir C. Parkinson left the draft despatches for my opinion. I have no comment on it & it may issue?

29/9/37

10. To Sir R. Brinkley-Phillips (16) - Draft on 26.8.37 (17) A - 31.8.37

11. Kenya (Draft on 30.8.37) - 3.9.37

P.Q. for oral reply on 3.11.37 (17) (Kenya)

(Regulation 10 A (1))

P.Q. for oral reply on 3.11.37 (17) (Kenya) (Regulation 10 A (1))

P.Q. for oral reply on 16.10.37 (17) (Kenya) (Regulation 10 A (1))

has a copy
been taken

12. }
13. } MEMORANDA REGARDING HIGHLANDS O-11-C
14. }

15. DRAFT HIGHLANDS O-11-C

16. REVISED DRAFT HIGHLANDS O-11-C

17. To Kenya Conf. (K) (4/6/37) Com. 25.10.37

18. To India Office. (4/6/37) 27.10.37

19. INDIA OFFICE (P. & T. 5033/37) 10.11.37
Tide of letter being draft O-11-C. to Govt. of India & Govt. that a copy of draft Kenya Memorandum will be furnished to India Office.

20. KENYA TEL. 96 CONT. 17.11.37
Propose alternative to clause 5 (c) of draft O-11-C and request to be informed by telegram whether S. of S. sees any objection thereto.

When we were drafting the Order in Council (final version NO 16 (proposed)) the difficulty was to put it out a bit so as to give it some sort of shape. The telegram needs a bit of elucidation. Clause 5 as drafted runs
5. It shall be the function of the Board

(a) To protect the interests of the inhabitants of the Highlands in the land situated in the Highlands and in particular to make representations to the Governor when in the opinion of the Board anything relating to the administration, management, development or control of the land in the Highlands is not in the best interests of the inhabitants of the Highlands;

(b) To give or withhold its consent in all matters in which its consent is required by any Ordinance for the time being in force in the Colony;

(c) To advise the Governor in all other matters relating to the disposition of land within the Highlands;

and the Governor shall consult the Board in all such matters as aforesaid.

The words "administration, management, development and control" are taken from the Native Lands Act in Council and were adopted so as to resemble as far as possible the functions of the Highlands Board to those of the Native Lands Board. This was in accord with the Commission's proposals since they advised that the same safeguards should be provided for the Highlands as the Native Lands.

The Commission's difficulty is over the words at the end and the Governor shall consult the Board in all other matters as aforesaid which can be read as extending to sub-clause (a). This was not intended. Sub-clause (a) gives the Board "wider" powers, and obviously the Govt. could not be required to consult the Board on matters which he would not know the Board was considering.

Sub-clause (b) also cannot import consultation, as the words really relate only to (c).

The trouble is of course inter-racial transfer, but all agree that the Board should be consulted, but it would be very dangerous politically to make any direct reference to that point in the Order and would be regarded as a breach of faith with the Indians. It can be done by administrative practice.

The Governor's proposal is accordingly in order to make things clear to alter sub-clause (c) by adding the word "other" and adding to it the general words at the end. The proposed will then read

(c) to advise the Governor in all matters relating to the disposition of land within the Highlands and the Governor shall consult the Board in all such matters.

This is an improvement, and is indeed the intention since, as I have said above, the last words need not be and should not be taken as referring to sub-clause (a) or (b).

I have consulted Mr. Dale who agrees. Draft telegram herewith. Sub-clauses (a) & (b) will not be altered.

J. E. O'Flaherty

On receipt of the draft 18.11.37
lowest rank handwriting (initials) and Paul was in rather line

use shall have to be
continuous down
the bank

drafting slightly when the owner is concerned
comes home. I don't know what you
to be published in Kenya anyway.

Agree with the Board that an exhibit they
Kenya transfer ^{with} important over intention

Sir Robinson

I agree that we can accept
the Government's wording.

Wed 18.11.57

and
18.11.57

21 To Gov. Tel No 195 — 18.11.57

22. INDIAN OFFICE (P. J. S. 28/11/57) — 22.11.57
Ind. Off. for Gov. of India and states that subject to
consensus of C.O. they intend to agree to action proposed in the
context of an interpellation in the Council of States.

I submit, for comment, of
reply 6.19 & 22.

J. J. Pascoe
23/11

what the I.O. have to do with a statement of
business. I don't know. I would just read the
the description, saying the words European Highlands
will not be used and ask for it back after period.

Perhaps they will ask
the numerous farmers
Question

15/11/57

22A

11/25/57 No 225 I attend a press meeting. The meeting related
to the Board of Council - asked to understand how about
but to establish in August about meeting the Highlands.
So I have added a page to copy so.

1.10.57

22B

Sir Robinson

You should see the copy reply

6/10/57. It is absolutely true that
the D.W.C. will not include
any provision involving racial
discrimination, and I do not
think that any reasonable person
could take that assurance as
meaning that it will terminate the
discriminatory practice of 30 years.
The offering was

but are
people
Nairobi?
see my
suggested
the
of 1/11

Wed 23.11.57

and
23.11.57
above

23

To India Office (21/11/57) re 6 in 19/11/57 — 19/11/57
com.

Office via
diag/23/11/57
25/11/57

To India Office (21/11/57) re 6 in 19/11/57 — 19/11/57
com.

Kenya Conf. (7.19, 22, 23 & 24) - A/1. 30 NOV 1957

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Charles Water (1/2 to 5/5) 22.11.37
Request to be published
L.F.A. + London in London 1937

DESTROYED UNDER STATUTE

Charles Water (1/2 to 1/4) 23.11.37

DESTROYED UNDER STATUTE

Charles Water (1/2 to 1/4) 24.11.37
Request to be published

DESTROYED UNDER STATUTE

Charles Water (1/2 to 1/4) 25.11.37
Returns description of boundaries with comment

No 29 2 part by

No 28 I understand that the O.C. will be

published first in London, but that arrangements may
be made later for simultaneous publication in
Kenya. Submit a draft net to Mr Watering
immediately

Charles Water
G. 1/2

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30 Charles Water (80) 6 Dec 37

DESTROYED UNDER STATUTE

31 To: E Watering (attend to 29a in) (28 and) 30 9.12.37
orig

R 299: 26, 29, 30, 32

R 299: 27, 31

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32 Charles Water (1/2) 19.12.37
Acts (2) with thanks

Publy
(See note on envelope)

D. 297
16.12.37

33 India Office (P.O. 5432/37) 9.12.37

To: of telegram received from the Govt. of India and
request information on points indicated

34 Gov. Kenya 729 30.11.37

The, with comments, letter from the Hon. Sec. Indian
Affs., Nairobi, forwarding a resolution on subject of the
Highlands passed by public meeting held on 14th November:

As regards the limitation of the area to be
included in the Highlands; & in particular, as
regards the inclusion of the Mukroni farms, the Govt. of
India in its report (the representation in
India in its report No 37) on 30.06/37
was. We found the area to be included
was the view that the total area to be included
should be no more (that at 2 notes) to which the white
Paper of 1903 applied, was also urged at some
length by the Indian member in the Debate in the
Kenya Leg. Co. on the 11th-13th Aug.

(No 3 on
39005/37)

In cl. 12 of Part III of this report, the
Kenya Land Commission reviewed at some length
the progressive restriction of the area which
Europeans were regarded as having a privileged
position, and pointed out that this area had
never been substantially defined. In these
circumstances, they concluded (para 138) that
they were disposed to recommend within the
boundaries of the Highlands, ought to be
by your note suitable reasons for the extension
which they resulted.

No. 42 on
38005/37/35

In para 9 of the white Paper of 1934 (and
4580) it was stated that H.O.G. intended to
accept the recommendations of the Commission
as regards the boundaries. At the end of his
discussion with Mr Mac Donald on 30/7/35, Mr. Zetland
said that he recognized the position created by the
issue of the white Paper.

As regards the mukroni farms, & as to whether
they should be included or excluded from the Highlands

(58) 584
on 38005/3/35

was discussed between Sir C. Bottomley & Sir F. Stewart (3.0) in Dec (1931) without a separate motion being recorded.

The matter was fully considered when the Bill was being prepared and the conclusion was reached that the effect of the Bill was to be given to the Commission, as set out in para. 1957 of their report, which was simply to include the area within the Highlands but on the understanding that this was not to affect the tenure of their farms. By Decisions or their liberty to dispose of their farms as they fit.

This must, I think, be regarded by the Govt. of Kenya as a "gentleman's understanding", so that if the Highlands Board shd. tender any advice wh. wd. be contrary to this understanding, he ought clearly to disregard it. If this is properly understood (I think we reason for thinking that it is not), then the Decisions clearly have no grounds for appeal as a result of the functions wh. it is proposed to invest the Highlands Bd.

As regards the objection of the Govt. of India to the purely European membership of the Bd, I have deliberately refrained, in the off. reply submitted herewith, to point out, as was done in para 8 of No. 17, that it is open to the Govt. if he so wishes, to appoint an Indian member. In practice, it seems certain that no such member will ever be appointed.

A copy of the comm. shd. be sent to Kenya (? if will be sufficient)

No. 34 does not call for any comment & can be put by.

J.P. Paskin
17.11.35

P.S.

It is desirable to point out that there are still a few outstanding questions on these points:

(No. 14/10 on 38005/3/36)

1) (a) whether the veto on inter-race transfers of land is to operate only in regard to land used for agricultural (or distinct from industrial, commercial or residential) purposes.

(b) whether any steps shd. be taken to prevent the evasion of the veto by the expedient of taking transfers of land in the name of limited liability companies. (In one case, at the date of transfer, the directors consisted of 3 Europeans; & soon thereafter two of the directors were substituted for two of the Europeans & two additional Indian directors were appointed).

The Govt. is that the statement that the "existing practice" will be continued is to be interpreted in dealing with such transfers as the decision to set up a Highlands Bd, wh. is to be consulted in regard to the disposal of land within the Highlands, it becomes more important that an authoritative interpretation of the "existing practice" shd. be laid down.

2) No reply has yet been sent to No. 1 on 38005/3B/36, as to wh. I have written on 38005/3B/37, wh. I have sent on separately.

J.P. Paskin
17/11

I discussed this with Mr. Paskin before he proceeded to draft. First of all, from No. 34 it is, I think, clear that the Indian resolution passed in Nairobi on the 14th of November had no

reference

reference to the new Order-in-Council as sent out to Kenya. It will be noted that the Governor said that steps are being taken to follow our suggestion that a memorandum should be produced setting out the draft proposals. It follows therefore that this has not been done, and that the Indian resolution simply referred to the thing as it was. It was intended, no doubt, as a counterpart to the European resolution urging that the White Highlands policy be implemented.

I don't want to say very much about this. The fact remains that the Indians object to White Highlands and the Europeans object to the Indians. That fact is known. It has been the policy for years that there shall be an area in Kenya in which Europeans are to be allowed to settle, and by administrative practice that area is kept for Europeans. In deference to the susceptibilities of the Indians there is nothing legal about it, but it is well understood, and has been well understood; that this is the policy of Government. The usual old nonsense is trotted out about the policy favouring non-British Europeans as against British Indians, who have played the most important part in the development and defence of Kenya (defence, ~~as~~ ^{found} ~~is~~ when one remembers that out of the Indians in Kenya in the Great War the total number of casualties sustained is said to have been ~~200~~ ²⁰⁰⁰ ~~and that not in action - 2000 is number from the enemy - and~~ ^{as they were (approximately) the casualties}). There is no need to do anything more than to acknowledge receipt.

Now

Now we come to the letter from the India Office of the 9th of December. On this it was somewhat difficult to keep one's temper. The area called the Highlands had never been defined and the Kenya Land Commission was consequently invited to define the area within which persons of European descent are to have a privileged position in accordance with the White Paper of 1923. The early definitions were naturally very vague and in 1906 the only idea was that the area east of ~~Kim~~ ^{Kim} and west of Fort ~~...~~ should be regarded as available for European settlement. As the Commission pointed out, this was quite good enough at the time, since settlement was confined to the line of the Railway and there was no occasion for anything more accurate. In the White Paper of 1923 it was stated that the existing practice of preventing Indians holding land must be maintained and no reference to boundaries was made in the White Paper. The Commission discussed the matter at great length. They pointed out that they could not accept the view that any land suitable for Europeans must be regarded as European Highlands. They said it was fair and reasonable in the particular circumstances that agricultural land in the higher and cooler areas should be reserved for Europeans, while allowing the Indians and Asiatics to take up land in the lower and warmer climes, but they thought it would not be fair to obtain for Europeans all available land on which they could maintain themselves. They pointed out that even drawing a contour line at five thousand feet would not work, since climatic conditions would not be uniform along it, and it

would

It is only fair to say that Indians allege that they are given a share in the land that they are not entitled to.

would not be logical. In 1928 there was a Committee of the Executive Council which put up proposals for the boundary of the Highlands. The Carter Commission discussed various points of this boundary and said that on the whole it was a fair and reasonable one. The area involved was some 15,500 square miles (see section 1964 of the Report). From this was to be deducted 715 square miles (section 1966), and some forest reserves totalling 911 square miles (including a few other small areas) were added (section 1969). The total area was placed at 15,700 square miles, including 3,950 square miles of forest reserve (section 1971). As regards forest reserves, they pointed out that these areas, if entirely surrounded by European lands, could be regarded as potentially subject to European privilege if ever a change of user took place and the land became available. In regard to reserves which were partly bounded by the Highlands and partly by native reserves, then any change of user would have to be decided on its merits.

Now the effect of establishing the Highlands as a special area will be almost altogether administrative. The boundary will be defined and the European in Kenya will know whether he is in the Highlands or not. The only difference it will make to him is that if he is in the Highlands, the transfer of his farm, if he wants to sell it, will have to be subject to the approval of the Highlands Land Board, while if he is outside the boundary line, it won't be. Inside the boundary the position

of the Indian will remain exactly the same as hitherto from the legal and from the administrative point of view, with the difference that the Highlands Board will be available to operate still more as a brake on the possible transfer of land to Indians.

In view of all this it is quite useless for people in India to start arguing as to the amount of land included in the Highlands. As has been pointed out, Lord Elgin did not define any area in particular and indeed, could not have attempted to do so, and if the Government of India and the India Office would only read the Carter Report they would have seen that this was the case. The Government of India has no right whatever to object to "any extension of the area" to which Lord Elgin's decision applied, having regard to the fact that the time of Lord Elgin's decision there was not very much known about Kenya as a whole.

As regards the farms at Muharuni, whether they are inside the boundary of the Highlands or not can make no earthly difference, so long as what Mr. Paskin mentions as a "gentleman's agreement" is maintained. That can be done by administrative practice and I have no doubt will be done. It would be perfectly impossible to exclude from the area of the Highlands the few farms which will be affected. The Commission's recommendation was, very complicated and was that the block should be deemed, for the present, to be excluded, that if any bit of it came into the market either a European or Asiatic could buy and that if bought by a European it should thereafter be included in the European

European Highlands (section 1937). It would have been quite impossible to enshrine this in any kind of legislative document and the only way to do it is the way which has been adopted, namely, to say that that is to be the policy. The farms in question will not fall within the jurisdiction of the Highlands Board unless and until they are sold to Europeans and the legitimate fear of the Indians is simply a fear that the Government will not be able to keep its word. The farms in question are down near the edge of the area and I can see no reason for thinking that the Highlands Board or the Government would be in any way obstructive or that the Indians have any cause for alarm on that score.

The Government of India also object to the Highlands Board having power to advise in regard to the disposition of land within the Highlands. After this it is only necessary to say that if the Board is to exist at all, and it has to exist, then it must have something to do and it is obvious that advising the Government on such matters is one of the most essential things which could be entrusted to it. It is all very well for India to talk about politics, but we have got our own political crisis in Kenya and there will be trouble enough in getting the Europeans to agree to what is now proposed. To attempt to go back on the land settlement now put up by the Carter Commission and formally approved by H.M.G. in the 1934 White Paper would create

a political row in Kenya with which it would be almost impossible to deal, and we must always remember that while we owe a duty to the natives and perhaps to the Indian, we certainly owe a duty also to the European settler in Kenya. He is, at times, unreasonable in our opinion, and I have said hard things about him from time to time, but he is surely as much entitled to consideration as the low down Indians who crawled into the country after the Uganda Railway.

In a matter of this kind it is not possible to satisfy everybody. We have three conflicting incompatibles - the Europeans, the Indians, and the natives, and if we are to be pulled this way and that by representations from India or from the European settlers, or from the natives, no kind of finality can ever be reached. The aim of the Commission was to reach a final settlement. They recognized that it could not satisfy everybody, they recognized that some disturbance of existing interests was bound to take place, and they faced it. So did H.M.G.

I do not much like paragraph 4 of Mr. Paskin's draft, and would substitute the words on the attached sheet.

The points raised in Mr. Paskin's postscript are all of importance, but it is probably best to get the main questions out of the way before deciding upon them. In particular the question of companies is very difficult and it is beginning to be realized in Kenya that it is so. Whether a company can be said to be racial as distinct from national is extremely doubtful, and it is just in regard to a matter like that that

*The first point
will have to
be tackled soon
- it is a live
question*

the advice and opinion of the Highlands Board will be of value. We do not want the Highlands 'Indianized', not a bit of it, because the Indian is, as a rule, a bad landlord, and in the conditions in Kenya, he is likely to be a very bad agriculturist. If the Highlands go out of European occupation, then I think everyone who has studied the question at all will say that they ought to be made available for native occupation, the boundaries of the native reserves being extended accordingly, if necessary (it would not really be necessary in practice).

S. S. O. Flord

30.12.1937

34A
Map of Boundary
to in Dept. It is
unavailable.

I annex a map - from the Report - showing the
Machame farms. There are 21 of them in the area
in the S.E. corner of the map. Reference to plan 6
in the map of the boundary shows that the boundary
will include these but not the other Indian farms
over to the west. The area covered by the 21 farms
is a rough rectangle of about 5000 yards by 1200
is the whole policy of Govt to be left up by itself?

only 2 square miles.

Sir C. Parkinson
I agree both drafts with
Mr. Wood's para: 4.
I have made one slight
alteration - at the end of para: 3
as it are inconsistent on the
credibility of the Report in other
respects.

respects, it is important that we
should make it clear that our own
departure from it is not one which
will affect administration
The Commission themselves
contemplated a map which would
include the farms, and in the
Highlands & the other occupied
is possible unless the map is to
be made any time one of 21 farms
from the East.

Web.
30.12.37

35 To I.O. (33 area) 12.1.38
36 To Kenya Com. (7, 18, 19, 23 (farms), 28 & 38) 14 JAN 1938
37 To Kenya 20 - 34 (farms)

DESTROYED UNDER STATUTE

Secure for copy
of papers raised in
Machame P.S. of 17/1/38
R. 27, 27, 81.

C. O.

38005/3/37

14
3

Mr. Paskin 4/1/38

Mr.

Mr.

Sir H. Moore.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

Downing Street,

14th January, 1938.

Sir,

With reference to my

(17)

Confidential (4) despatch of the 28th
of October, I have the honour to
transmit to you for your information,
the accompanying copies of correspon-
dence with the India Office in regard
to the proposals for the definition
of the Kenya Highlands, and the
functions with which it is proposed
to invest the Highlands Board. I
would invite your particular reference
to the assurance given in Colonial
Office letter of the 12th of
January in regard to the tenure and
disposition of the farms near
Uhoroni at present occupied by
Indians.

I have, etc.,

(Signed) W. OHMSBY GORE.

3 DRAFTS:

KENYA.

CONFIDENTIAL

GOVERNOR.

To India Office 29/10/37 (No. 18) ✓

India Office 10/11/37 (No. 19) ✓

To India Office 24/11/37 without
enclosure (No. 23) ✓

India Office 9/12/37 (No. 33) ✓

To India Office (draft herewith)

FURTHER ACTION.

Revised draft

38005/3/37.

35 15

C.O.

Mr. Paskin 17/12/37. 2 4/1138

Mr. Flood. See aa to para: 4.

Dawning Street,
12th January, 1938.

Mr.

Sir H. Moore.

Sir G. Tomlinson.

Sir C. Bottomley. 30. 12.

Sir J. Shuckburgh.

Perms. U.S. of S.

Parly. U.S. of S.

Secretary of State

C. D.
R 5-JAN 38
D. H.

S to

I am, etc. to acknowledge the

receipt of your letter No. P. & J. 5432/3
of the 9th of December in regard to

the proposed Order-in-Council
relating to the Kenya Highlands, and
to request you to inform the

Marquess of Zetland that he has
carefully considered the

representations in the telegram of
the 29th of November from the
Government of India.

2. As regards the first point
mentioned by the Government of India,

I am to state that the area included
within the proposed definition is
that recommended by the Kenya Land
Commission, with the exception that
the small block of farms, immediately
east of Muhoroni, to which reference

3 DRAFTS

THE UNDER SECRETARY OF STATE,
INDIA OFFICE,
(Public and Judicial Dept.)

copy to Kenya

FURTHER ACTION.

Copies 18, 19 and
encl., 27, 33 and
encl. and this to
Kenya. Conf. with
S. H.

Recirculate for
points raised at end
of Mr. Paskin's
minute.

is made in paragraph 1957 of the report of the Commission, is being included within the Highlands.

3. As indicated in the letter from this Department of the 29th of October, the inclusion of these farms in the Highlands area is not intended in any manner to affect the tenure of these farms by Indians, or their liberty to dispose of them as they may think fit. The only reason why it is proposed to include them forthwith in the Highlands, instead of following the procedure recommended in paragraph 1957 of the report of the Commission, is that it is considered that that procedure would involve wholly unnecessary complications, without achieving any compensating advantages. Mr. Ormsby Gore sees no grounds for apprehension on the part of the Indian owners of these farms as a result of the purely advisory functions which it is proposed to confer on the Board by Clauses 5(a) and (c) of the draft Order-in-Council. The Commission's recommendation that these farms shall be freely disposable until acquired by a European will be observed.

C. O.

Mr.

Mr.

Mr.

Sir H. Moore

Sir G. Tomlinson

Sir C. Bottomley

Sir J. Shuckburgh

Permi. U.S. of S.

Parly. U.S. of S.

Secretary of State.

DRAFT.

FURTHER ACTION.

As regards the area of the land which it is proposed to include in the Highlands, I am to invite reference to the full discussion of the matter contained in Chapter IX of Part III of the Report of the Land Commission (sections 1937-1979). The Commission there discuss the various suggestions which have been made from time to time to define the area and give what, in Mr. Ormsby Gore's opinion, are conclusive reasons for the recommendation which they make. It will be noted especially that the area of 18,700 square miles includes approximately 3,950 square miles of forest reserve which will, in all probability, not be alienated at any time. It was stated in paragraph 9 of the White Paper of 1934 (Cmd.4580) that His Majesty's Government proposed to accept the recommendations of the Land Commission in regard to the boundaries

of the Highlands. It has repeatedly been stated that the decision of His Majesty's Government to adopt the recommendations of the Commission in regard to the interests of the Natives in the lands of the Colony is to be regarded as constituting a final settlement of all questions relating thereto, and it is important that nothing should be done to cast doubt on that finality. In Mr. Ormsby Gore's view therefore, not only could no conceivable ^{possibly} useful purpose now be served by attempting to re-open the question of the Highlands, but much harm might be done thereby.

5. It is noted that the Government of India object to Clause 5(c) of the draft Order-in-Council, on the ground that a Board composed entirely of Europeans would invariably advise that the power of veto should be used to prohibit inter-racial transfers of lands in the Highlands. The position is however that, quite irrespective of the proposal to appoint the Highlands Board, it has been publicly announced, on more than one occasion, that it is the intention that the administrative practice of not permitting inter-racial transfers of land within the

- C. O.
- Mr.
- Mr.
- Mr.
- Sir H. Moore
- Sir G. Tomlinson
- Sir C. Bottomley
- Sir J. Shuckburgh
- Perm. U.S. of S.
- Privy U.S. of S.
- Secretary of State.

DRAFT.

FURTHER ACTION.

the Highlands, which has been followed for the past ^{thirty} 30 years, shall be continued, and in the circumstances the advice of the Board would not be a determining factor.

6. In this connection I am to observe that, in paragraph 1979 of their report, the Land Commission recommended that the European community should have the same measure of security in regard to land as they had recommended for the natives. In the case of the natives the Commission recommended not only that the boundaries of the Native Lands should be declared by Order-in-Council, but that those lands should be vested in a Trust Board, and that various matters relating to the administration of the Native Lands should only be dealt with on the advice and with the consent of the Trust Board.

7. In the case of the Highlands

Highlands it would be impracticable to vest the ownership of the lands in a Trust Board, but it is nevertheless considered that the recommendations of the Commission require the establishment of a Highlands Board with advisory powers in relation to the disposition and administration of land within the Highlands.

In Mr. Ormsby Gore's view, the functions with which it is proposed to invest the Highlands Board are the very minimum which would be acceptable to the European community in Kenya, and he accordingly regrets that he is unable to accede to the desire of the Government of India that Clause 5(c) of the draft Order-in-Council should be deleted. In order however to reflect more clearly the intended functions of the Board, the text of this clause is being amended, at the request of the Governor of Kenya, by the deletion of the words "and the Governor shall consult the Board in all such matters as aforesaid" which appear at the end of the clause, and by the amendment of paragraph (c) to read as follows:

"(c) to advise the Governor in all matters relating to the disposition of land within the Highlands; and the Governor shall consult the Board in

(20) and (21)

C. O.

Mr.

Mr.

Mr.

Sir H. Moore.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Perms. U.S. of S.

Party. U.S. of S.

Secretary of State.

DRAFT

FURTHER ACTION.

in all such matters."

9. As regards the enquiry in paragraph 4 of your letter, as to the purpose of clause 5 (b) of the draft Order-in-Council, I am to explain that the only matters on which it is proposed to confer on the Board a power of giving or withholding its assent ^{only} in relation to proposals for exchanges of areas of land between the Highlands and the Native Lands, of the kind contemplated in paragraphs 1474 to 1476 of the report of the Land Commission. The Commission recommended that such exchanges should be subject to the assent of the Native Lands Trust Board, and it is considered reasonable that, in this respect, the position of the Highlands Board should be assimilated to that of the Native Lands Trust Board. It will be apparent that these

these powers will not affect the interests
of the Indian Community in any way.

W. A. J. DAVE

C. O.

38005/3/37

Mr. Paskin

Mr. Flood

Mr.

Sir H. Moore

Sir G. Tomlinson

Sir C. Bottomley

Sir J. Shuckburgh

Parly. U.S. of S.

Parly. U.S. of S.

Secretary of State

Downing Street,

December 1937

Jan 1938

Sir,

DRAFT.

THE UNDER SECRETARY OF STATE,
INDIA OFFICE.

(Public Relations Dept.)

I am etc. to acknowledge the receipt of your letter No. P. & J. 5432/37 of the 9th of December in regard to the proposed Order-in-Council relating to the Kenya Highlands, and to request you to inform the Marquess of Zetland that he has carefully considered the representations in the telegram of the 29th of November from the Government of India.

2. As regards the first point mentioned by the Government of India I am to state that the area included within the proposed definition is that recommended by the Kenya Land Commission, with the exception that the small block of farms, immediately east of Muhoni, to which

FURTHER ACTION.

Copies 18, 19 and encl. 23, 33 and encl., and this to Kenya ~~Conf.~~

will do.

Received for
prints raised at
end of Mr.
Paskin's minute

reference

reference is made in paragraph 1957 of the report of the Commission is being included within the Highlands.

5. As indicated in the letter from this

Department of the 29th of October, the inclusion (18)

of these farms in the Highlands area is not intended

in any manner to affect the tenure of these farms

by Indians, or their liberty to dispose of them as

they may think fit. The only reason why it is

proposed to include them forthwith in the Highlands,

instead of following the procedure recommended in

paragraph 1957 of the report of the Commission, is

that it is considered that that procedure would involve

wholly unnecessary complications, without achieving any

compensating advantages. Mr. Ormsby Gora sees no

grounds for apprehension on the part of the Indian

owners of these farms as a result of the purely advisory

functions which it is proposed to confer on the Board by

Clauses 5(a) and (c) of the draft Order-in-Council.

4. As regards the area of lands which it is

proposed to include in the Highlands, I am to observe

that, for the reason indicated in paragraph 1943 of the

The Commission's recommendation that these farms shall be bought is to be made until agreed by a Committee. The latter is advised.
Substituted by Report 40 for this 4.

Substitute for paragraph 4 of draft herewith.

W.S.

4 As regards the area of the land which it is proposed to include in the Highlands, I am to invite reference to the full discussion of the matter contained in Chapter IX of Part III of the Commission Report (sections 1937-1979). The Commission there discusses the various suggestions which have been made from time to time to define the area and give what, in Mr. Ormsby Gore's opinion, are conclusive reasons for the recommendation which they make. It will be noted especially that the area of 16,700 square miles includes approximately 3,950 square miles of forest reserve which will, in all probability, not be alienated at any time in the future and in any event ^{it cannot} ~~could not~~ be contended that any importance need be attached to vague definitions of the area concerned pronounced many years ago when the information available was inadequate.

C. O.

Mr.

Mr.

Mr.

Sir H. Moore.

Sir G. Tomlinson.

Sir C. Biddisley.

Sir J. Shuckburgh.

Permt. U.S. of S.

Privy U.S. of S.

Secretary of State.

DRAFT.

It is regretted that the relevant records of this Draft are not readily available. It is however ascertained that the names enclosed are the 30. letters No. P. 4. 5. 2527/37 of the 14th of July 1935. It was stated that the area

(cf. 42 on 3800573/35)

omit E] as being of negligible importance.

Commission's report, it is not possible

to formulate any precise comparison

with the area to which Lord Elgin's

decision applied. (As regards remaining area)

1930 had been alienated, or was regarded

as available for alienation to

Europeans, amounted to 11,659 square miles,

as compared with the area of approximately

16,700 square miles which it is now

proposed to include within the

boundaries of the Highlands. As stated,

however, in paragraph 1971 of the

Commission's report, this area includes

approximately 3,350 square miles of

forest reserve, as well as considerable

areas occupied by townships, mission

stations etc.]

5. In any event, however,

Mr. Ormsby Gore considers that such

comparisons are of purely academic

interest. It was stated in paragraph 9

of the White Paper of 1934 (Cmd. 4560) that

His Majesty's Government proposed to

FURTHER ACTION.

accept the recommendations of the Land Commission in regard to the boundaries of the Highlands, and in Mr. Ormsby Gore's view ^{anyone not only could} no conceivable useful purpose could now be served by attempting to reopen ^{the} question of the Highlands, but much ^{has} ~~has~~ ^{might} be done hereby.

5. As regards the objection of the Government of India to Clause 5(c) of the draft Order-in-Council, on the ground that a Board composed entirely of Europeans would invariably advise that the power of veto should be used to prohibit inter-racial transfers of lands in the Highlands, I am to observe that, irrespective of the proposal to appoint the Highlands Board, it has been publicly announced, on more than one occasion, that it is the intention that the administrative practice of not permitting inter-racial transfers of land within the Highlands, which has been followed for the past 30 years, shall be continued. The fact that the Board would be likely always to advise against inter-racial transfers is therefore irrelevant.

6. In this connection I am to observe that, in paragraph 1979 of their report, the Land Commission recommended

It has repeatedly been stated in a decision of the Commission to adopt a recommendation of the Commission in regard to the interests of the natives in the Highlands of the Colony is to be regarded as constituting a final settlement of all questions relating thereto, and it is important that nothing should be done to cast doubt on that finality.

~~used~~
 The Board
 will not be a determining factor

- C.O.
- Mr.
- Mr.
- Mr.
- Sir H. Moore.
- Sir G. Tomlinson.
- Sir C. Bottomley.
- Sir J. Shuckburgh.
- Perms. U.S. of S.
- Parly. U.S. of S.
- Secretary of State.

DRAFT.

recommended that the European community should have the same measure of security in regard to land as they had recommended for the natives. In the case of the natives the Commission recommended not only that the boundaries of the Native Lands should be declared by Order-in-Council, but that those lands should be vested in a Trust Board, and that various matters relating to the administration of the Native Lands should only be dealt with on the advice and with the consent of the Trust Board.

7. In the case of the Highlands it would clearly be impracticable to vest the ownership of the lands in a Trust Board, but it is nevertheless considered that the recommendations of the Commission require the establishment of a Highlands Board with advisory powers in relation to the disposition and administration of land within the Highlands

FURTHER ACTION

Highlands. In Mr. Ormsby Gore's view, the functions with which it is proposed to invest the Highlands Board are the very minimum which would be acceptable to the European community in Kenya, and he accordingly regrets that he is unable to accede to the desire of the Government of India that Clause 5(c) of the draft Order-in-Council should be deleted.

In view however as some regard should be given to the functions of the Board and that of this clause is being amended, at the request of the Gov of Kenya, by the deletion of the words "and the Gov shall consult the Board in all such matters as aforesaid" which appear at the end of the clause, by the amendment of para (b) as follows: "(c) to advise the Gov. in all matters relating to the disposition of land within the Highlands; and the Gov. shall consult the Board in all such matters."

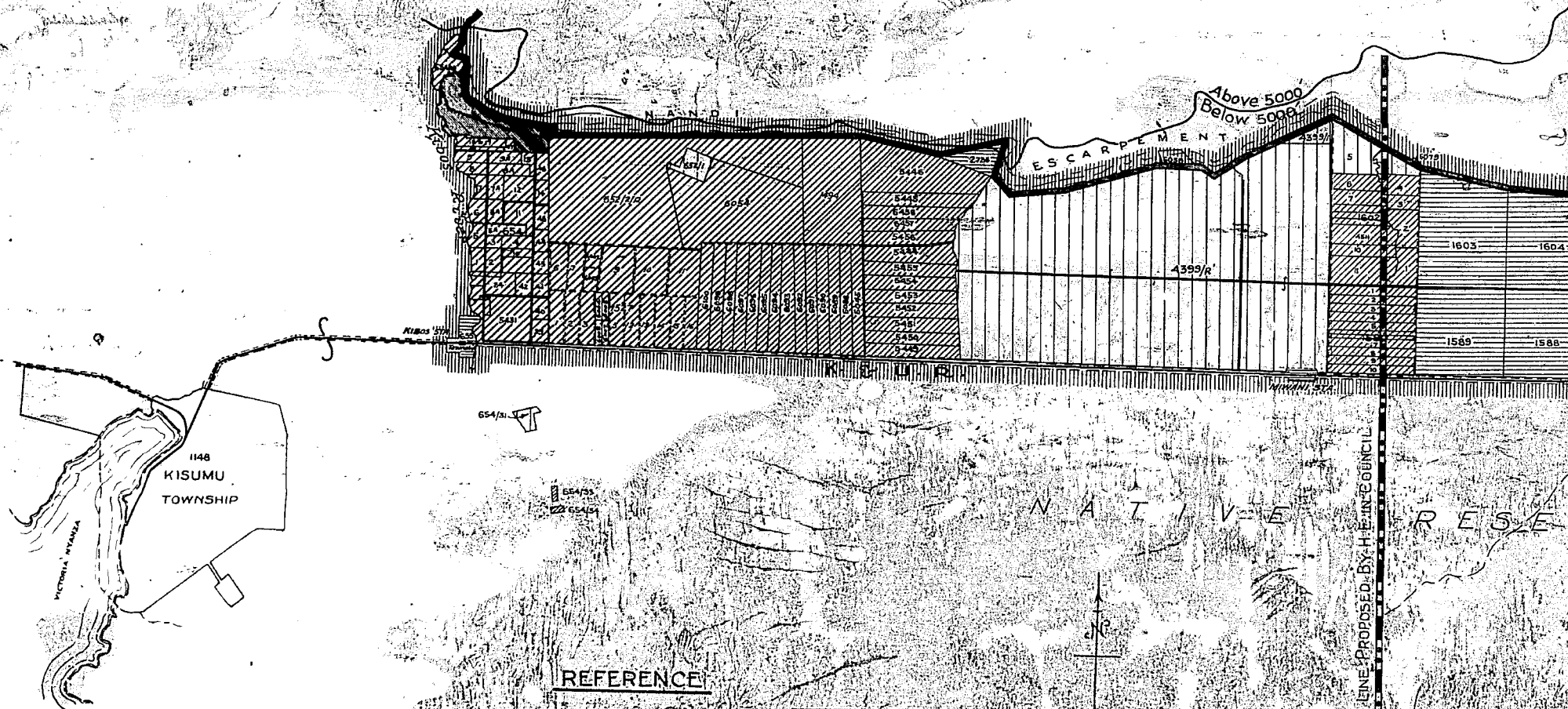
9. As regards the enquiry in paragraph 4 of your letter, as to the purpose of paragraph 5(b) of the draft Order-in-Council, I am to explain that the only matters on which it is proposed to confer on the Board a power of giving or withholding its assent are in relation to proposals for exchanges of areas of land between the Highlands and the Native Lands, of the kind contemplated in paragraphs 1474 to 1476

of the report of the Land Commission. ^{The Commission} It is proposed recommended that such exchanges should be subject to the assent to confer similar powers of the Native Lands Trust

Board. It will therefore be apparent that these powers will not affect the Indian Community in any way.

and it is considered reasonable that, in this respect, the Highlands Board should be assimilated to that of the Native Lands Trust Board.

NATIVE RESERVE



REFERENCE

- Land owned by Europeans [Hatched pattern]
- Asians [Hatched pattern]
- Transfer to Asians approved [Hatched pattern]
- Request for permission to sell to Asians [Hatched pattern]
- Unalienated Crown Lands [Hatched pattern]
- Government Reserves [Hatched pattern]
- Allotted to Asians under the Scheme of Land Grants to Civil Servants in lieu of Pension [Hatched pattern]
- Sold by Auction or Tender irrespective of race [Hatched pattern]
- "Highlands" Line recommended by The Commissioner of Lands March 1924 [Hatched pattern]
- Amended recommendation of The Commissioner of Lands September 1925 [Hatched pattern]



LONGITUDINAL LINE PROPOSED BY H.H. IN COUNCIL

R E S E R V E

Above 5000
Below 5000



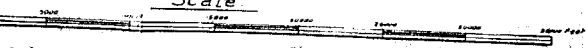
LONGITUDINAL LINE PROPOSED BY H.E. IN COUNCIL

DIVISION LINE BETWEEN TOWNSHIPS

R E S E R V E

Below 5000
Above 5000

Scale



AIR MAIL

KENYA
No. 729



15
34
GOVERNMENT HOUSE
NAIROBI
KENYA

RECEIVED

11 DEC 1937

G. O. REGD.

30 November, 1937.

Sir,

I have the honour to transmit, for your information, a copy of a letter received from the honorary Secretary, the Indian Association, Nairobi, forwarding a resolution on the subject of the Highlands passed by a public meeting held at the Playhouse Theatre, Nairobi, on Sunday the 14th November, under the auspices of the Indian Association.

Handwritten: 27

The resolution contains no new features, and it is perhaps unnecessary to make any comment upon it except to say that steps are being taken to follow the suggestion made in separate correspondence that a memorandum should be laid on the table of Legislative Council setting out the draft proposals in this connection.

I have the honour to be,

Sir,

Your most obedient,
humble servant,

Brooke-Popham

AIR CHIEF MARSHAL
GOVERNOR.

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

COPY.

26

THE INDIAN ASSOCIATION,
NAIROBI.

P.O. BOX 186,

NAIROBI.

16th November, 1937.

The Honourable,
The Ag. Colonial Secretary,
Secretariat,
NAIROBI.

Sir,

I am directed by the President of my Association to forward resolutions in triplicate passed by a public meeting held at the Play House Theatre on Sunday the 14th inst, under his chairmanship for favour of your placing them before H.E. the Governor for His Excellency's consideration.

I have the honour to be,

Sir,

Your most obedient servant,

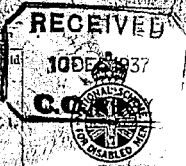
Sd: S.G. Amin.

Hon. Secretary,
INDIAN ASSOCIATION, NAIROBI.

27

This Public meeting of the Indian Citizens of Nairobi wishes to convey to the Imperial Government through His Excellency the Governor that the entire Indian Community of Kenya is definitely opposed to the policy of reservation of Kenya Highlands for the Europeans and reminds the Government that the community has emphatically disapproved of such reservation from time of its inception under the pretext of administrative convenience as the said policy is injurious to the harmonious and peaceful development of the Colony and entirely unjustifiable as it does not only introduce racial discrimination as between His Majesty's subjects but also favours non-British Europeans in preference to British Indians who have played the most important part in the development and defence of this territory.

And, as such reservation has always been considered by the Indian Community as most unjust and un-British, the proposed Order-in-Council and the contemplated Advisory Board in connection therewith re-affirming the administrative practice should be dropped in the interests of Imperial Solidarity.



INDIA OFFICE,
WHITEHALL,
LONDON, S.W. 1.

6003A W/10328/P 35 10,000 3.57 10
Any further communication on this subject should be addressed to:
The Under Secretary of State for India, Department of Public and Judicial Affairs, India Office, London, S.W. 1.
and the following reference quoted:
P. & J. 5432/37.

Telephone:—
Whitehall 8140. I.O. Ext. No.
Telegrams:—
Retaxandun, London.

9th December, 1937.

Sir,

With reference to the correspondence ending with your letter No. 38005/3/37 dated 24th November, 1937, regarding the proposed Order in Council relating to the Kenya Highlands, I am directed to transmit for the information of the Secretary of State for the Colonies, copy of a telegram from the Government of India.

23

2. With regard to the first point mentioned by the Government of India, Lord Zetland would be glad to know whether the area to be defined under the proposed Order in Council is, in fact, that recommended by the Carter Commission and, if so, how this area compares with that to which Lord Elgin's decision applied, or with the area which in 1920 had been alienated, or was regarded as available for alienation, to Europeans. In this connexion a reference is invited to paragraphs 2 and 5(1) of the Memorandum enclosed with the India Office letter of 1st July 1935, P. & J. 2327/35.

*copy of 35
copy to Kenya*

(37) on 38005/3/35

3. In regard to the particular question of the Muhoroni farms, Lord Zetland feels that there is considerable strength in the Government of India's contention that these farms should be excluded from the Highlands area, and he hopes that this will receive careful consideration from Mr. Ormsby-Gore.

38005/3/35

Muhoroni

4. Lord Zetland would draw the attention of Mr. Ormsby-Gore to the objections of the Government of India to paragraph 5(c) of the draft Order in Council. He would further be glad to be informed of the purpose of paragraph 5(d) which appears to contemplate that in some matters a power of veto may be given to the Board by Ordinance. If this interpretation is correct, he would be glad to receive some

The Under Secretary of State,
Colonial Office,

indication of the class of matters in respect of which it is thought necessary to provide that the Board's consent may be required.

I am, Sir,

Your obedient Servant,

Asiel

SD/JRL/A.

(119 groups)

P & J

5137
5229.

DECYPHER OF TELEGRAM 1937

(COPIES
CIRCULATED)

From Government of India, Department
of Education, Health and Lands,
to Secretary of State for India.

Dated Delhi, 29th November, 1937.

Received 29th November, 1937, 6.15 p.m.

X

2338. First of Three Parts.

Department of Education, Health and Lands.

Your letter dated November 5th, No. P. & J. 4969/37.

General views of the Government of India were stated in note which was forwarded by you to the Colonial Office with your letter No. P. & J. 2327/35, July 1st, 1935. Subject to those views they wish to offer following comments.

(1) Extension of area. Colonial Office letter No. 38005/3/37, 29th October, 1937, gives no indication of what area will be included in highlands. In House of Commons debate in committee on Colonial Office vote dated 9th July, 1936, Colonial Secretary stated that area would be 16,700 square miles. Government of India therefore assume that except as regards Muhoroni Farms, area will be that recommended by Carter Commission. For reasons given in note already referred to in paragraph No. 1 above, Government of India maintain their objection to any extension of area to which Lord Elgin's decision applied.

DECRYPTER OF TELEGRAM.(COPIES
CIRCULATED)From Government of India, Department
of Education, Health and Lands,
to Secretary of State for
India.

Dated New Delhi, 29th November, 1937.

Received 29th November, 1937, 6-30 P.m.

2538. Second Part.(2) Muhoroi Farms. Government of India

understand that, though the Colonial Office proposal to include them involves further extension of highland area than that recommended by Carter Commission, in practice Indian holders will be undisturbed in possession and will have the right to transfer to person of any nationality. Only when any European purchases a farm will it become subject to administrative veto. Apart from objections to the extension of the area stated in (1), proposal is open to serious objection on other grounds. Farms will fall within the jurisdiction of the Highlands Board.

In view of powers given to the Board under Clause 5(a), and provision in Clause 5(c) that the Governor shall consult the Board regarding the disposition of property, there will be the legitimate fear amongst Indians that the liberty of Indian owners to remain in possession and to dispose of their property as they think fit, may in practice be restricted by reason of representations which the Board may make to the Governor, especially as the intention seems to be that the Board should be entirely European.

DECYPHER OF TELEGRAM

From Government of India, Department of
Education, Health and Lands, to
Secretary of State for India.

(COPIES
CIRCULATED)

Dated New Delhi, 29th November, 1937.

Received 29th November, 1937, 7 p.m.

X

2838. Third and Last Part.

Government of India are therefore strongly of opinion that Muhoroni Farms should be excluded from highland area.

(3) Highland Board. Under 5 (c) Board will have to advise Governor inter alia in matters in relation to disposition of land. If Board is composed entirely of Europeans, presumption will be that Board will invariably advise that power of veto on transfer, etc., of land (Section 23 Crown Lands Ordinance) shall be used to prohibit inter racial transfers. Further requirement that Governor shall consult Board in such matters is open to the criticism that administrative discretion of Governor-in-Council in matters of veto may not hereafter be exercised without first consulting a body composed of members of only one race. Government of India, therefore, strongly urge that 5(c) of draft Order-in-Council be omitted.

G. O.

38006/3/37

W
24 Nov 1937

Mr. Paine 23/11

Mr. Flood 23/11

Mr.

Sir H. Moore.

Sir G. Tomlinson.

X Sir C. Bottomley 23/11

Sir J. Shuckburgh.

+ Perms. U.S. of S

Parly. U.S. of S.

Secretary of State.

Important

C. D.
R 24 NOV
D 24

Sir,

I am re. to ask the receipt of your letter No. P & J. 5284/37 of the 22nd of Nov. and to request you to inform the Hon. the Member for ~~the~~ Zealand that he sees no objection to the course proposed by the Govt. of India in the event of an interpellation in the Council of State regard to the proposed Order in Council relating to the Kungu Highlands.

2. On the other hand, if a statement to the effect that it is just proposed that the Order should include any

DRAFT.

The U.S. of S.

L.O.

(22)

10/6 in 38006/37
copy

copy to Kinga

FURTHER ACTION.

copy sent for. U.S.

~~... annually for report
 a question of Mr. ...
 procedure involving inter-racial
 discrimination ...
 opinion of the Govt. of Kenya, to
 accept to be a means of
 lessening hostility towards his
 presence in Kenya. Govt.
 and can no objection to such
 a statement being made~~

(copy of
 which is
 enclosed
 for ref.),
 and in the
 opinion of the
 Govt. of Kenya
 is desirable,

In this connection I
 am to write referred to the
 by the Kenya Govt.
 reply given to a question by
 Mr. Cecil Jones in the House
 on 10th Nov. copy of the
 proceedings referred

(No. 6 on
 38005 P.O.)

The meeting at Nairobi to which reference
 is made appears from Press reports - the
 only info at Mr. ... disposal - to have
 referred to resolutions passed by the Kenya Legislative
 Council in August and not to relate to the
 provisions of the draft Order with which the meeting
 could not have been acquainted.

I wd. omit
 this - as
 substance
 of O in C. may
 be known - &
 in any case
 it is hardly
 worth commenting
 when we have
 no official
 info and

(Enclosure) E. W. P. 1937

38005/3/37 13

C. O.
 Mr. Pass 23/21
 Mrs. Flood 23/21
 Mr.
 Sir H. Moore
 Sir G. Tomlinson
 Sir C. Bottomley 23. 11/2
 Sir J. Shackburgh
 Perm. U.S. of S.
 Part. U.S. of S.
 Secretary of State

and (29)
 Sir
 I am to write the
 receipt of your letter
 P. J. 5035/37 of the 10th
 of Nov. in regard to
 the proposed Order in
 Council relating to
 the Kenya Highlands

DRAFT.

The U.S. of S.

10

Description of Boundaries
 (Encl. to No 5. - orig)
 (annexed below in file)

copy to Kenya
 this to Kenya (38)

to be inserted to you
 for the information of
 the Members of Parliament
 a copy of a description
 of the boundaries of
 the Highlands which
 has been received from
 the Govt. of Kenya, and

FURTHER ACTION.

copy sent to
 Kenya Govt. L.P.

will be published as the
 Gazette notice in question.
 I am to request that it may be
 returned to this office as no
 other copy is available.
 The notice will not refer to the
 Highlands as
 proposed

[As the proposed
 Gazette notice will
 be on the lines of

This document it is not clear
that any useful purpose can
be served by communicating it
in advance to your Dept.
Moreover, having regard to
the length of time which has already
elapsed since the publication of
the Report of the Anglo-Siam
Commission, Mr. Dunsley-Gore will
not feel justified in incurring
the further delay which might
be involved in communicating
the copy of the proposed Gazette
notice to the Govt. of Siam for
consideration prior to its issue.
I am to request that
the enclosed document may be
returned to this Dept. in due
course.

and any
consideration that
is proposed
it will be
desirable to
issue this
Gazette notice
as soon as
possible.

(SIGNED) E. W. PLE...

this document, it is not clear
that any useful purpose will
be served by communicating it
in advance to your Dept. @
Moreover, ~~the~~ having regard to
the length of time which has already
elapsed since the publication of
the Report of the Congo Land
Commission, Mr. Osvaldo Gore and
not feel justified in incurring
the further delay which might
be involved in communicating
the copy of the proposed Gazette
notice to the Govt. of Sierra Leone
consideration prior to its issue
I am to request that
the enclosed document may be
returned to this Dept. in due
course.

and any
consideration that
is proposed
it will be
desirable to
insert this
Gazette notice
as soon as
possible -
and if
possible
less

W. J. E. W. F. 1900

Daily Telegraph 18. 11. 17

Indians in Kenya.—A mass meeting of Indians at Nairobi, Kenya, has passed a resolution opposing the land reservation scheme adopted by the Legislature in August. The scheme recommends the demarcation of the boundaries of the Kenya highlands within which land will be reserved for white settlement.

22

INDIA OFFICE

WHITEHALL,

LONDON, S.W. 1.

Any further communication on this subject should be addressed to—
 The Under Secretary of State for India,
 Public & Judicial Department,
 India Office, London, S.W. 1.
 and the following reference quoted:—
 P. & J. 5284/37.



RECEIVED
 23 NOV 1937
 C. O. REGY

2928

November, 1937.

3c

Telephone—
 Whitehall 8140. L.O. Ext. No.
 Telegrams—
 Ratsasadam, London.

Sir,

19.

With reference to the correspondence ending with the letter from this Office No. P. & J. 5033/37 dated the 10th November, 1937, regarding the Kenya Highlands, I am directed to forward copy of a telegram from the Government of India.

Lord Zetland proposes, subject to the concurrence of Mr. Ormsby-Gore, to inform the Government of India that he agrees to the action they propose to take in the event of an interpellation in the Council of State.

I am, Sir,
 Your obedient Servant,

Handwritten signature

The Under Secretary of State,
 Colonial Office,
 S.W. 1.

Copy to Kenya

Handwritten mark

P & J
5281
1937

IT/VH.

(60 groups.)

5062.

DECYPHER OF TELEGRAM.

(COPIES
CIRCULATED)

From Government of India, Department of
Education, Health and Lands, to
Secretary of State for India.

Dated New Delhi, 19th November, 1937.

Received 10 a.m., 19th November, 1937.

X

IMPORTANT.

2276. Department of Education, Health and Lands.

Your P. and J. 4969/37, November 5th. Kenya highlands
Report of severe Indian opposition to proposed Order in
Council at mass meeting in Nairobi on 17th instant
published here. As Council of State sitting, short
notice question on the subject likely. We propose to say,
in the event of interpellation, that matter subject of
confidential correspondence and no statement can be made
this stage. Our views on draft order will be telegraphed
as soon as possible.

38005/5/57

21 38

C. O.

Mr. ~~Flood~~ 18.11

Mr. Dale 18.

Mr.

Sir H. Moore.

Sir G. Tomlinson.

Sir C. Bottomley 18.11.

Sir J. Shuckburgh

Perms. U.S. of S.

Parly. U.S. of S.

Secretary of State.

Contd. & Sent
7 p.m.
18.11.57
1009

19 NOV 1957

18 actual

70 195 Confidential

Your telegram No. 194 Confidential

No objection to ~~present attention~~ ^{amendment}

of clause 5 (c) of Order in Council as you propose which indeed represents the intention more accurately.

DRAFT.

telegm

Governor
Nairobi

Direct reference to inter-racial transfer would be inadvisable

FURTHER ACTION.

39
20
COPY RECEIVED
FOR REGISTRATION
17/11/37
C. O. REG. CM

Telegram from the Governor of Kenya to the Secretary
of State for the Colonies.

Dated 17th November, 1937. Received 11.35am 17th November.

No. 196. Confidential

17
Your despatch of the 28th October confidential
(4). By Clause 5 (a) of draft Order in Council Governor
is obliged to consult the Board on the administration
management development and control of land as well as on
its disposition. This would be very cumbersome in
practice and unnecessary in many cases even from the
standpoint of the Board which is to have no powers of
delegation. I agree that the Board should have the
right to be consulted on matters affecting inter-racial
transfer and should prefer ^{that} the obligation to consult the
Board should be confined to these. But if direct
reference to inter-racial transfer is considered
inadvisable, I consider that Clause 5 (a) should read:
"to advise the Governor in all matters relating to
the disposition of land within the Highlands and the
Governor shall consult the Board in all such matters".
It would then be clear that "such matters" are those
mentioned in sub clause (a) only. I am prepared to
acquiesce in the inconveniences which may result from
the interpretation of "disposition" as covering the
initial disposal of Crown land by Government. Please
telegraph whether you see any objection to the proposed
amendment.

Any further communication on this subject should be addressed to—
 The Under Secretary of State for India,
 Public and Department,
 Judicial India Office,
 London,
 and the following reference quoted:—
 P & J. 5033/37.



INDIA OFFICE,
 WHITEHALL,
 LONDON, S.W. 1.

10 November 1937.

Telephone—
 Whitehall 28140. I.O. Ext. No.

Telegrams—
 Retaxandum, London.

Sir,

No Dup

10
30

18
 With reference to your letter No. 38005/3/37 dated the 29th October 1937 enclosing copy of a draft Order -in-Council to deal with the Kenya Highlands, I am directed to inform you that Lord Zetland notes that a Gazette Notice is to be issued by the Government of Kenya in due course setting out the boundaries of the area which will be defined on the Highlands. He trusts that it will be possible to arrange that he may be furnished with a copy of a draft of this notice well in advance of its issue.

Copy of a letter forwarding the draft Order-in-Council to the Government of India for their confidential information is enclosed.

I am, Sir,

Your obedient Servant,

Handwritten signature

The Under Secretary of State,
 Colonial Office,
 S.W.1.

13
 Copy to Kenya
 10/31/37

INDIA OFFICE,
WHITTHALL, S.W.1.
November 1937.

P & J. 4989/37.

33

*And (encl. to
with the letter of
28*

AIR MAIL.
CONFIDENTIAL.

5 - NOV 1937

Indians in Kenya.

Sir,

With reference to the correspondence ending with the telegram from this Office No. 2054 dated 11th July 1937, I am directed to forward for the confidential information of the Government of India copy of a letter from the Colonial Office enclosing copy of a draft Order-in-Council which has been prepared to deal with the Highlands in Kenya, and which is now being referred to the Government of Kenya for consideration. It will be observed that the draft Order-in-Council contains a provision conferring upon Europeans a privileged position but merely purports to delimit the area of the Highlands in accordance with a Gazette notice to be issued by the Government of Kenya, and also provides for the appointment of a Highlands Board to protect the interests of the inhabitants of the Highlands and to advise the Governor in matters relating to the disposition of land within that area. As regards the Muhoroni farms, it is the intention of the Colonial Office that they should be included in the Highlands but that the present Indian holders should remain in possession and should be at liberty to dispose of their holdings as they think fit.

Lord Zetland will be glad to receive any observations which the Government of India may wish to offer upon these proposals as soon as possible.

I am, Sir,
Your obedient servant,

(Sgd.) R. PEEL

The Secretary to the
Government of India,
Department of Education,
Health and Lands,

(5) TO L.O.

C. O.

28005/3/37

13

18

Mr. Flood. 19/10/37.

Mr.

Mr. Dale: 21

Sir H. Moore.

Sir G. Tomlinson.

Sir C. Bottomley. 19.10.

Sir J. Shuckburgh.

* Permi. U.S. of S. No. 6037

Sir,

Parly. U.S. of S.

* Secretary of State. 26-10-37

I am etc. to refer to the

Gonson.

letter from this Office of the 31st of

DRAFT.

December, 1935, and previous corresponden

THE UNDER SECRETARY OF STATE,

in regard to the Highlands of Kenya, and

INDIA OFFICE.

transmit to you, for the information of

the Marquess of Zetland, a copy of a

draft Order-in-Council which has been

prepared to deal with the Highlands.

*Draft Order in Council
referred to (16) (18)
Apr 1937*

2. It will be observed that

the draft in question merely purports

to define the area of the Highlands in

accordance with a Gazette notice issued

by the Government of Kenya. That notice

will be published in due course and will

simply set out the boundaries of the area

which will be classified as the "Highlands"

FURTHER ACTION.

3. It will be observed that nowhere in the Order-in-Council is there any reference to racial discrimination or to holding of land, although it is proposed to set up a board to be called the Highlands Board to protect the interests of the inhabitants of the Highlands and to advise the Governor in matters relating to the disposition of land within that area.

4. The effect of this will be that the present administrative practice as set out in the White Paper of 1925 will remain in force unchanged.

5. With regard to the specific question of the farms now owned by Indians in the Muhoroni area, the position will be that the farms will be left undisturbed. The present Indian holders will remain in possession as hitherto and will be at liberty to dispose of their holdings as they think fit in accordance with the recommendation of the Carter Commission Report. It is true that the Commission recommended that the block of land in question should be deemed to be excluded from the Highlands,

and

C. O.

Mr.

Mr.

Mr.

Sir H. Moore.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Perm. U.S. of S.

Privy U.S. of S.

Secretary of State.

and that if any plot was bought by a European it should thereafter be included in the Highlands. This, however, on examination appeared to be an unnecessary refinement, and no provision is made to deal with it.

DRAFT.

6. The Marquess of Zetland will understand that the proposals are being referred to the Government of Kenya for consideration, and I am to request that the draft Order-in-Council may be regarded as confidential.

I am, etc.

Signed J. E. W. FLOOD

FURTHER ACTION.

(1) Highlands.

C. O.

873

(R2a)

4

Mr. Flood 19.10.

Mr. Dale 21.

Mr.

Sir H. Moore.

Sir G. Tomlinson.

Sir G. Bottomley 19.10.

Sir J. Shackburgh.

O. D.
19 OCT
28

Downing Street

28 October, 1937.

X Perm. U.S. of S. 26.10.37

Partly U.S. of S.

X Secretary of State WJ 26.10.37

Sir,

In continuation of my conf.

London. 38005/3-
No.6

despatch of the 1st of Sept., I now have

DRAFT.

the honour to address you in regard to

the definition of the European

Highlands and the Report of the

Morris Carter Land Commission.

KENYA

CONFIDENTIAL (14)

GOVERNOR

2. As you are aware, Sir Joseph

Byrne, in his despatch of the 21st of

May, 1935, forwarded drafts of a Native

Land Trust Order-in-Council, a new

Native Land Trust Ordinance, and an

Amending Ordinance to reinsert Part VI

of the Crown Lands Ordinance. There

was, however, difficulty felt in

preparing locally any draft of an Order

to cover what the Morris Carter

Commission call the European Highlands.

Since then my predecessors and I have

been

Draft Highland Order-in-Council
(herewith) (16)

FURTHER ACTION.

*Copy of memo for
Under Secy*

been considering the most suitable course to adopt. Sir Joseph Byrne, in discussion at the Colonial Office, suggested that it would be well to defer any action for some time, until the proposals of the Commission had received further scrutiny, and in order to allow the various adjustments which have been proceeding to be carried out. There was also the difficulty of deciding whether any attempt should be made to reserve the Highlands for exclusive European occupation, as against Indians, Japanese or other persons of Asiatic race.

3. On this point acute difficulty at once arose. As you are aware, not only the Commercial Treaty with Japan (which is applicable to Kenya), but also the Convention of St. Germain give Japanese subjects equal rights with British subjects in certain matters within the Colony. It follows, therefore, that any attempt to enact a legislative measure which would, even in general terms, debar Japanese from acquiring land in Kenya, would be a formal breach of

Treaty

C. O.

Mr.

Mr.

Mr.

Sir H. Moore.

Sir G. Tomlinson.

Sir C. Bultmanley.

Sir J. Shackburgh.

Permi. U.S. of S.

Parly. U.S. of S.

Secretary of State.

DRAFT.

FURTHER ACTION

Treaty obligations, and as such would be certain to evoke strong protest from the Japanese Government.

4. Apart from this was the question of the attitude of the Government of India towards such proposals. It is not necessary for me to refer in detail to the old controversies which ended in the recognition of the White Paper in 1925 of the administrative practice relating to land in the Highlands. In discussions which took place between Lord Swinton and Sir Joseph Bhome of the Government of India, Sir Joseph Bhome protested strongly against any attempt to discriminate in legislation against Indians as such, but appeared satisfied that the Government of India would be ready to acquiesce in a continuation of the administrative practice.

5. Bearing this in mind, the conclusion was reached that the only possible method of dealing with the problem,

problem, so as to give to the European population of the Highlands that degree of security which they have a right to expect in accordance with the Morris Carter Commission's report, without at the same time stirring up difficult and very controversial issues, was to frame an Order-in-Council which would confine itself purely to definition of the boundary of the Highlands without mentioning Europeans as having particular rights therein. Accordingly I requested the Government of Kenya to prepare a definition of the boundary which you have now submitted to me in your conf. despatch No. 110 of the 15th of August. The definition, as you will agree, is of great length, as was inevitable, and from its very nature, is unsuitable for inclusion in an Order-in-Council, whether in the text or by way of a schedule.

6. It is, however, necessary to devise some means by which that boundary can be referred to in a formal document such as an Order-in-Council, and I have come to the

conclusion

C.O.

- Mr.
- Mr.
- Mr.
- Sir H. Moore.
- Sir G. Tomlinson.
- Sir C. Bottomley.
- Sir J. Shuckburgh
- Parlt. U.S. of S.
- Parly. U.S. of S.
- Secretary of State

DRAFT.

FURTHER ACTION.

conclusion that the best method of doing so will be to follow the procedure adopted in the case of the existing Native Lands Trust Ordinance. That Ordinance proceeds by referring to the definition of the boundaries of native reserves as published in a Gazette, and I suggest that steps should be taken to issue a Gazette Notice to the effect that "whereas it is convenient to publish the boundaries of the area which will be known as the Highlands for the purpose of the Land Commission's report, the boundaries are published" in accordance with the definition enclosed in your despatch. The Order-in-Council can then proceed by referring to that Notice and declaring that the lands in question are those Highlands.

7. I enclose, for your confidential information, the draft of an Order which I propose to submit to His Majesty in Council. It will be

seen that the Order adopts the idea mentioned above as to the definition of the area. Further, in order to give to the European inhabitants some degree of security it provides for the establishment of a Board, to be known as the Highlands Board, which is charged with the duty of protecting the interests of the inhabitants of the Highlands, of making representations to the Governor when (in the opinion of the Board) anything in relation to those lands is not in the best interests of the inhabitants, of giving or withholding its consent in all matters in which its consent is required by any Ordinance at the time in force, and of advising the Governor in all matters relating to the disposition of lands within the Highlands, and it also provides that the Board shall be consulted by the Governor in all such matters. The suggestion had been made, and is indeed stated in paragraph 1979 of the Commission's report, that the European community should have the same measure of security in regard to land as has been

recommended

G. O.

Mr.

Mr.

Mr.

Sir H. Myers

Sir G. Tomlinson

Sir C. Bottomley

Sir J. Shackburgh

Parly. U.S. of S.

Parly. U.S. of S.

Secretary of State

DRAFT.

FURTHER ACTION.

recommended for natives. This recommendation has received careful consideration. It clearly would be impracticable to create for the Highlands precisely similar machinery to that adopted for the native lands, since to do so would involve placing the control, and, to all intents and purposes, the ownership, of the lands under a Board of Trustees. Such a Board too, would have wide powers in regard to the control of the Highlands, and it seems unnecessary to set up any such organisation to deal with land which would ex hypothesi be held almost entirely by Europeans. Further I do not suppose that the European community would welcome provisions which would restrict their powers of alienating or mortgaging their land.

8. I therefore suggest the creation of a Board with general powers of supervision. You will notice that

it is suggested that the Board shall have an unofficial majority and that of the five unofficial members four shall be chosen by the European elected Members of Council, but not necessarily from among themselves, and the fifth nominated by yourself. The purpose of the last mentioned appointment is to allow you to appoint anyone whom you may wish to represent the interest of the natives still remaining in the Highlands area and it also serves a further purpose in that it provides an answer to the charge that Government has abandoned all control of the land in the Highlands to the European unofficials, since in theory it will still be open to the Governor to appoint an Indian or anyone else whom he chooses as the fifth unofficial member of the Board. Having regard to the Board's duty of supervision and making representations to Government, it is, I think, expedient that it should contain an unofficial majority.

9. It will be observed from the Native

Lands

C. O.

Mr.
Mr.
Mr.

Sir H. Moore.
Sir G. Tomlinson.
Sir C. Bottomley.
Sir J. Shackburgh.
Parry, U.S.G.S.
Parry, U.S.G.S.
Secretary of State.

DRAFT.

FURTHER ACTION.

Lands Trust Ordinance that in regard to exchanges between the Highlands and the native lands, where such may be proposed, the consent of the Board is necessary, and this provision, coupled with the provision made in the Order will give, I think, as full security against any arbitrary alteration of the Highlands as can be devised.

10. With regard to the farms at Muboroni which, though within the area of the Highlands, are at present occupied by Indians, I do not think it is necessary to make any special mention. In paragraph 1957 of the Commission's report, it is recommended that the block should be deemed to be excluded from the Highlands, and that if any plot in it comes into the market it should be permissible for anyone to buy it, and finally that if any plot is bought by a European, it should thereafter be included in the Highlands.

I think this is an over-elaboration, and that the situation will best be met by simply including the area within the Highlands on the understanding that it will be available for sale, if it comes into the market, to either Europeans or Asiatics in the future. There would be great difficulty in framing any clauses which would carry out precisely the Commission's recommendation.

11. I think that an Order-in-Council on these lines will be sufficient to carry out the Commission's proposal in the last paragraph of their report, that the external boundaries of the Highlands should be defined and be subject to analogous safeguards as to exclusions, additions, and exchanges. I do not expect that there will be any question of adopting provisions for 'exclusion' or 'setting apart' of land in the Highlands, since, if the land is required for Government purposes it can be secured in the usual way, while if required for private purposes,

C.O.

Mr.

Mr.

Mr.

Sir H. Moore.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shackburgh.

Permt. U.S. of S.

Party, U.S. of S.

Secretary of State.

DRAFT

FURTHER ACTION.

purposes it will be a matter for negotiation between the owner and the would-be lessor or purchaser, subject to the provisions of the Mining Ordinance if minerals are discovered within the area.

12. As in the case of the draft Native Lands Order-in-Council this draft has been discussed with Mr. Harragin, and I shall also be glad to consider any comments which you may wish to make upon this Order. In a separate despatch I am suggesting that a memorandum might be laid on the table of the Legislative Council showing what it is proposed to incorporate in the Order, though the text of it ought not to be published.

I have, etc.

(Signed) W. ORMSBY GORE.

16
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Draft Highlands Order in Council.

Whereas it is expedient to define the boundaries of the area in the Colony of Kenya known as the Highlands, and to make other provision in respect thereof:

Now, therefore, His Majesty, in pursuance of the powers vested in him by the British Settlements Act, 1887, and of all other powers enabling him in that behalf, is pleased by and with the advice of His Privy Council to order, and it is hereby ordered, as follows:-

1. This Order may be cited as the Kenya (Highlands) Order in Council, 1937.

2. (1) In this Order unless the context otherwise requires -

"Colony" means the Colony of Kenya;

"Governor" means the Governor and Commander-in-Chief for the time being of the Colony and includes every person for the time being administering the Government thereof;

"Commissioner for Lands and Settlement" includes any officer whom the Governor shall by Notice in the Gazette declare to be appointed in place of the Commissioner for Lands and Settlement;

"Gazette" means the Official Gazette of the Colony.

(2) The Interpretation Act, 1889, shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

3. The Highlands of Kenya shall consist of the areas of land described in Government Notice No. [] published in the Gazette dated []

Cop. 6/17
Cop. 6/10. (10)

4. (1) There shall be established in the Colony a Board, which shall be known as the Highlands Board.

(2) The Highlands Board shall consist of the following persons -

(a) the person for the time being lawfully discharging the functions of Colonial Secretary, who shall be President of the Board;

(b) the person for the time being lawfully discharging the functions of Commissioner for Lands and Settlement, who shall be Vice-President; and

(c) five persons not holding office in the public service of the Colony, four of whom shall be chosen from time to time at a meeting of the Legislative Council of the Colony by the European-Elected Members of the Legislative Council, and one of whom shall be nominated from time to time by the Governor.

(3) The Board shall not be disqualified from acting by reason of any vacancy or vacancies among the members.

(4) Four members of the Board shall form a quorum, and the Board may regulate its proceedings as it thinks fit.

5. It shall be the function of the Board -

(a) To protect the interests of the inhabitants of the Highlands in the land situate in the Highlands and in particular to make representations to the Governor when

in.

in the opinion of the Board anything in relation to the administration, management, development or control of the land in the Highlands is not in the best interests of the inhabitants of the Highlands;

(b) to give or withhold its consent in all matters in which its consent is required by any Ordinance for the time being in force in the Colony;

(c) to advise the Governor in all other matters relating to the disposition of land within the Highlands;

and the Governor shall consult the Board in all such matters as aforesaid.

6. This Order shall come into operation on a day to be appointed by the Governor by Proclamation published in the Gazette.

51
15

Draft Highlands Order in Council.

Whereas it is expedient to define the boundaries of the area in the Colony of Kenya known as the Highlands, and to make other provision in respect thereof:

Now, therefore, His Majesty in pursuance of the powers vested in him by the British Settlements Act, 1887, and of all other powers enabling him in that behalf, is pleased by and with the advice of His Privy Council to order, and it is hereby ordered as follows:-

1. This Order may be cited as the Kenya (Highlands) Order in Council, 1937.

2(1). In this Order unless the context otherwise requires -

"the Colony" means the Colony of Kenya;

"the Governor" means the Governor and Commander-in-Chief for the time being of the Colony and includes every person for the time being administering the Government thereof;

"the Gazette" means the ^{official} Gazette of the Colony.

(2) The Interpretation Act, 1889, shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

3. The Highlands of Kenya shall consist of the areas of land described in Government Notice No. published in the Gazette dated

4 (1) There is hereby established in the Colony a Board, which shall be known as the Highlands Board.

(2) The said Board shall consist of the following persons -

(a) the person for the time being lawfully discharging

Commissioner for land, and
the person who the Governor
may by Notice in the Gazette
order to be appointed as
a member of the Commission for
land settlement.

discharging the functions of Colonial Secretary, who shall be President of the Board;

(b) the person for the time being lawfully discharging the functions of Commissioner for Lands and Settlement, who shall be Vice President; and

(c) ~~five~~ ^{two} persons not holding office in the public service of the Colony, ^{from time to time} of whom shall be chosen ~~from among themselves~~ by the European Elected Members of the Legislative Council of the Colony, and ~~two~~ ^{one} of whom shall be nominated by the Governor.

(3) Four members of the Board shall form a quorum, and the Board may regulate its proceedings as it thinks fit.

(a) To protect the interests of the inhabitants of the Highlands in the land situate in the Highlands and in particular to make representations to the Governor when in the opinion of the Board anything in relation to the administration, management, development or control of the land in the Highlands is not in the best interests of the inhabitants of the Highlands;

on a day to be appointed by the Governor by Proclamation published in the Gazette.

Draft Highlands Order in Council.

Whereas it is expedient to define the boundaries of the area in the Colony of Kenya known as the Highlands, and to make other provision in respect thereof:

Now, therefore, His Majesty, in pursuance of the powers vested in him by the British Settlements Act, 1887, and of all other powers enabling him in that behalf, is pleased by and with the advice of His Privy Council to order, and it is hereby ordered, as follows:-

1. This Order may be cited as the Kenya (Highlands) Order in Council, 1937.

2(1) In this Order unless the context otherwise requires -

"Colony" means the Colony of Kenya;

"Governor" means the Governor and Commander-in-Chief for the time being of the Colony, and includes every person for the time being administering the Government thereof;

"Commissioner for Lands and Settlement" includes any officer whom the Governor shall by Notice in the Gazette declare to be appointed in place of the Commissioner for Lands and Settlement;

"Gazette" means the Official Gazette of the Colony.

(2) The Interpretation Act, 1889, shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

3. The Highlands of Kenya shall consist of the areas of land described in Government Notice No. published in the Gazette dated

discharging the functions of Colonial Secretary, who shall be President of the Board;

(b) the person for the time being lawfully discharging the functions of Commissioner for Lands and Settlement,

who shall be Vice President; and

(c) ~~five~~ ^{five} persons not holding office in the public service of the Colony, ~~two~~ ^{two} of whom shall be chosen ^{from time to time} from among themselves by the European Elected Members of the Legislative Council of the Colony, and ~~two~~ ^{one} of whom shall be nominated by the Governor.

(3) Four members of the Board shall form a quorum, and the Board may regulate its proceedings as it thinks fit.

5. It shall be the function of the Board

(a) to give or withhold its consent in all matters in which its consent is required by any Ordinance for the time being in force in the Colony; and

(b) to advise the Governor in all other matters relating to the disposition ~~of land~~ of land within the Highlands;

and the Governor shall consult the Board in all such matters as aforesaid.

6. This Order shall come into operation on a day to be appointed by the Governor by Proclamation published in the Gazette.

Draft Highlands Order in Council.

Whereas it is expedient to define the boundaries of the area in the Colony of Kenya known as the Highlands, and to make other provision in respect thereof:

Now, therefore, His Majesty, in pursuance of the powers vested in him by the British Settlements Act, 1887, and of all other powers enabling him in that behalf, is pleased by and with the advice of His Privy Council to order, and it is hereby ordered, as follows:-

1. This Order may be cited as the Kenya (Highlands) Order in Council, 1937.

2(1). In this Order unless the context otherwise requires -

"Colony" means the Colony of Kenya;

"Governor" means the Governor and Commander-in-Chief for the time being of the Colony and includes every person for the time being administering the Government thereof;

"Commissioner for Lands and Settlement" includes any officer whom the Governor shall by Notice in the Gazette declare to be appointed in place of the Commissioner for Lands and Settlement".

"Gazette" means the Official Gazette of the Colony.

(2) The Interpretation Act, 1889, shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

3. The Highlands of Kenya shall consist of the areas of land described in Government Notice No. published in the Gazette dated

(1) There is hereby established in the Colony a Board, which shall be known as the Highlands Board.

(2) The said Board shall consist of the following persons

(a) the person for the time being lawfully discharging the functions of Colonial Secretary, who shall be President of the Board;

(b) the person for the time being lawfully discharging the functions of Commissioner for Lands and Settlement, who shall be Vice President; and

(c) five persons not holding office in the public service of the Colony, four of whom shall be chosen from time to time by the European Elected Members of the Legislative Council of the Colony, and one of whom shall be nominated from time to time by the Governor.

(4) Four members of the Board shall form a quorum, and the Board may regulate its proceedings as it thinks fit.

5. It shall be the function of the Board

(a) To protect the interests of the inhabitants of the Highlands in the land situated in the Highlands and in particular to make representations to the Governor when in the opinion of the Board anything in relation to the administration, management, development or control of the land in the Highlands is not in the best interests of the inhabitants of the Highlands;

(b) to give or withhold its consent in all matters in which its consent is required by any Ordinance for the time being in force in the Colony;

(c) to advise the Governor in all other matters relating to the disposition of land within the Highlands;

and the Governor shall consult the Board in all such matters as aforesaid.

This Order shall come into operation on a day to be appointed by the Governor by Proclamation published in the Gazette.

3) The Board shall not be disqualified from acting by reason of any vacancy or vacancies among the members.

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14.

MEMORANDUM.

The question of issuing the Kenya Highlands Order-in-Council has now got to be tackled. The conclusion reached by the Cabinet was that the Secretary of State should be authorised to prepare an Order-in-Council defining the boundaries of the Highlands ^{area} ~~Highway~~. The question has been under discussion for a long time and when the Governor was over here last August he had discussions with the Secretary of State a record of which will be found at No. 50 on 38005/3/35. There the Governor pointed out that all the elected members would resent the omission in the Order-in-Council of any provision giving statutory effect to their desire that transfer from European to Indian should be forbidden. He thought it would probably be in the best interests of the Europeans themselves. His reason for this was that any attempt to regularise the Administrative practice would bring the matter before the Courts which might lead to impossible results.

The Governor took the view that it would be best for him to get his 1936 Budget through before the Order-in-Council was issued. The Budget, however, had to be only a temporary one because of the expected report by Sir Alan Pim and it was not possible for Sir Alan Pim to complete his report by the end of this year as had been hoped. Accordingly, the Budget will not be settled on Pim lines by the time the Order-in-Council has to be issued. A draft Order-in-Council has already been prepared and will be found at No. 49 on the file.

I am not, however, quite happy with it because I think that the second paragraph of the preamble ought to be omitted. That paragraph has cited that it had been the administrative practice of the Governor of Kenya to employ the power vested in him by the Kenya Ordinances so as to ensure that no persons other than Europeans should acquire agricultural land within the area, or should occupy land. I do not like any idea of referring to administrative practice, especially when it is restricted, and I do not think that the Order-in-Council need refer to the question of the transfer of land. I should prefer to put it that whereas a Commission has been appointed to examine the question of lands in Kenya and among other things to define the area to be known as the European Highlands and whereas they have reported and recommended a definition and whereas it is expedient that the definition should be confirmed by Order-in-Council and not be subject to variation except by amending Order-in-Council, therefore, etc. etc.

There is one point however to which I think further consideration might be given and that is empowering the Governor in the Order-in-Council to make Rules or Orders for the better effecting of the purposes of the Order-in-Council. If such power is given the Governor, it will, I think be possible for him to establish a Board which will be in a position to advise or if necessary to veto all transfers of land in the Highlands area. In a despatch on the subject (No.4 paragraph 11) the

Governor

Governor discusses the matter and suggests that the general power of veto must remain ⁱⁿ on the ~~last hands~~ of the Governor in Council though he has no objection to the institution of a practice of consulting the Highlands Board before submitting any such transaction to the Governor in Council. This envisages the creation of a Highlands Board of some kind. I think myself that such a Board is totally unnecessary and can only act as a sort of clog. Since, however, the European population attach or pretend to attach

Highlands Order

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Mr. Dale has prepared the draft of an Order-in-Council to deal with the Highlands of Kenya pursuant to the Carter Commission recommendations. The recommendations of that Commission were summed up in the last paragraph of their Report as follows:-

"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. We recommend, therefore, that the external boundaries of the European Highlands be defined under the Order-in-Council and be subject to analogous safeguards as to exclusions, additions and exchanges".

In Section 1979, after discussing the Highlands, the Commission pointed out that the provisions which they recommended would entail some sacrifice on the part of the European community and that some exasperation might be felt that substantial alterations would have to be made so soon after the declaration of Native Reserves in 1926. They said, however, that they were satisfied that the modifications were necessary and then went on to say that these recommendations may give rise to apprehension that the extent of the Highlands may be again diminished. They went on:-

"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 European 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".

This, of course, raises several questions. The European settlers would like to have an Order-in-Council or something else declaring that the

boundaries of the Highlands are unalterable and that the Highlands are reserved for all times for Europeans. For many reasons this is altogether impracticable. To adopt it would at once raise the whole Indian question again. The Indians would regard it as a legal discrimination against them and would not accept it. They would be backed by the Government of India and the India Office and the whole question of Indians in Kenya would come up once more. Further, there is the Japanese question since under the commercial treaty with Japan Japanese subjects have equal rights with British subjects in Kenya, and it would be no good trying to argue that this means only with some British subjects and that if an Asiatic British subject is under certain disabilities in Kenya a Japanese can also be brought under the same disabilities. It follows that it is impossible to discriminate by law against the Japanese, and with regard to the Indian it would be politically unwise. We have been informed that so long as there is no express discrimination against Indians the situation will be accepted. I think the idea is that the Indian will be content to bide his time and that in fifty years or so the policy of white exclusiveness will fail.

Accordingly, the conclusion reached here, and stated by the Secretary of State, has been that there will be an Order-in-Council defining the boundaries.

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The boundaries have never yet been stated. In the case of the Native Reserves it was possible under the old Crown Lands Ordinance to proclaim Native Reserves, which was duly done in 1926. Then when the Native Lands Trust Ordinance of 1930 was enacted it declared that the areas of land specified in Government Notice No. were to be Native Reserves. Taking this as a model it appears that the only way of doing it is to have a Government Notice proclaiming the boundaries of the area to be known as the Highlands and confirming those boundaries by declaration in the Order-in-Council - hence ^{clause 39 of the order} paragraph 3. We considered the advisability of setting out the thing at length in the Order-in-Council, but to do so would be a most unwieldy production and it is so indefinite without reference to things in Kenya such as the Land Register and things of that kind that it would probably be considered unsuitable for inclusion even in a schedule. Accordingly, after much consideration, we decided to recommend that a Notice should be published defining the boundaries and confirmed by the Order. A similar course will have to be taken with regard to the Native Lands Order-in-Council.

Another question on which there will be considerable heartburning is the creation of a Board. In the case of the native lands the idea all through in the old Ordinance and under the Carter Report has been to set up some authority which would be able to veto Government's proposals or at any rate ensure that they were referred to

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the Secretary of State for decision if necessary. Further, it was desired to make it clear that the native lands were not Government lands and accordingly under the Lands Trust Ordinance, 1950, the Native Reserves were declared to be reserved for the use and benefit of the native tribes of the Colony for ever, and the Native Lands Trust Board was established with an express declaration that all lands in the reserves and all matters relating to such lands were under the management and control of the Board and that all such lands should be administered for the use and benefit of the native tribes. This is all right as regards native lands since it can be represented as protecting them against the Government, the settlers and the Indians, and even against each other. Such provision is not, however, necessary in the case of the Highlands since the settlers can hardly need protection against themselves (I think they will but it would not do to say so) and the Government is not likely to take any steps to interfere with their enjoyment of the Highlands. Further, it would seem a strange step to a European holding land on a 999-year lease, or freehold, to declare that the ownership of his land did not rest with him but with a mysterious Board. It would seem, therefore, unnecessary and inexpedient to create a Board to hold the Highlands for the European population. Indeed, if such

a Board were created, it would be difficult to give it any proper functions because it could not be said to hold the Highlands for the Europeans without raising the Indian question once more in a slightly different form. On the other hand, an Advisory Board of some kind is almost a necessity, partly in order to give the Governor a body which he can consult - especially in regard to the question of the change of user of agricultural land - and also in the Native Lands Trust Ordinance references are made to the body which deals with the Highlands in cases where exchanges of land between a Native Reserve and the Highlands are under consideration. It therefore appears necessary to set up a Board.

The composition of the Board may cause a good deal of trouble. The Native Lands Board is easy but in the case of the Highlands it is absolutely necessary to give the Unofficials as large a measure of control as can possibly be allowed. The composition first suggested by us was:-

1. The Colonial Secretary as President.
2. The Commissioner for Lands and Settlement as Vice-President.
3. Two Unofficials chosen by the European Elected Members and two nominated by the Governor.

On examination, however, this did not appear to give enough settler representation since the two nominated by the Governor would be suspect and if they voted with the President and Vice-President would have a majority. Accordingly the suggestion is now put forward that there shall be five

Unofficials - four of them shall be chosen by the European Elected Members (thus enabling them to appoint either persons from among their own body or any other suitable European they think fit) and one nominated by the Governor. The one person nominated by the Governor might, of course, in theory be an Indian or a native but he won't be.

The duties of the Board fall into two parts: ~~first~~ ^{first} to consider and approve or not any matter on which its approval is required by Ordinance, ~~and secondly~~ ^{and} to advise the Governor in all other matters relating to the disposition of land within the Highlands and it is provided that the Governor shall consult the Board on all such matters. This gives the Board very wide powers but, as I have pointed out above, wide powers are necessary. If the Europeans are to be given the security which they pretend to want I can see no other way of giving it. As it is, these proposals will not satisfy the extreme section among the settlers who will say they have been done down again, but they do, I think, go as far as the Secretary of State can possibly be advised to go, and they do implement the recommendations of the Carter Report that the boundaries of the Highlands shall be defined by Order-in-Council and shall be subject to analogous safeguards as regards exclusions, additions and exchanges, since no exclusion or addition or exchange can be made without the ~~consent~~ ^{approval} of the Highlands Board.

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There will be a good deal of heart-searching over this because there are, as we know, certain people who are anxious to get rid of their property to Indians, and there are probably far more who would be willing to sell to Indians or sell to the devil if the price was right. The existence of a Board which the Governor has to consult will prevent that since the Elected Members are nearly all pretty extreme and they can be relied upon to see that the people they put on the Board are not the least in sympathy with their particular views. In this connection what Mr. Harragin told us is worth putting on record. He said that the Europeans in regard to the Highlands policy were not at all anti-native. They realized that they could not possibly get on in the Highlands without a large native population to do the work, but what they were really after was the Indians. European opinion in Kenya, led by Lord Francis Scott, is extremely intolerant of the Indian and therefore the Europeans will do all they can to prevent the Indians getting anywhere. Their idea of the Highlands is a large park where they can let the world roll by and where no Indian can approach to interfere with their amenities. This results in a dog in the manger policy, since at the present time a great part of the Highlands is not being put to any practical use. I do not mean the bits which are marked off as forest reserves, which are pretty considerable, and the bits which are uncultivable, but the fact that there are many estates where only a small proportion is actually

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under cultivation or being put to profitable use. The trouble is recognized by the more intelligent of the settlers, hence the demand for closer settlement. Closer settlement, however, is, I fear, liable to failure because the land cannot carry much more close development since there is not the native labour force available to do the work on it, and the supply of people with the necessary capital and/or income must be limited.

There is one more point where there is liable to be trouble, that is the boundaries of the Highlands area. The only difference, in fact, between having land included in the Highlands and land not included in the Highlands is that in the former case the Highlands Board will have to be invoked. A farm outside the area would be dealt with just as hitherto and Government would be just as able to keep up the administrative practice of not leasing it to Indians if it so chose. The Europeans, however, have a tendency to look upon it as a sort of game and to insist on including a lot of land in the Highlands although it isn't occupied and not likely to be occupied, and they may raise objections to the boundary because certain farms are not included. The objection has no practical value but it has a sort of sentimental value, but I feel bound to mention it.

As regards the European Highlands Order-in-Council the position is that the Carter Commission recommended in paragraph 1979 of its report that the boundaries of the European Highlands should be safeguarded by an Order-in-Council. The idea of having an Order-in-Council is to allay an apprehension felt among Europeans that it may be possible hereafter to reduce or alter the boundaries of the Highlands to the detriment of the Europeans and the Commission thought that if the boundaries were secured by an Order-in-Council, then, since that could not be altered except by another Order-in-Council and not by a local Ordinance or by an Executive Act of the Governor, the situation would be easier. In their detailed summary of recommendations they, after detailing the recommendations which they wanted to put into the Native Lands Order-in-Council, said that it would be invidious if the native reserves were secured in this manner and no similar security could be given to the European Highlands. They therefore recommended that the external boundaries of the European Highlands should be defined in an Order-in-Council and be subject to analogous safeguards as to exclusions, additions, and exchanges.

It is to be noted that the Commission does not expressly say that there should be a body of trustees to control matters relating to land in the Highlands as in the case of the native reserves. Early in 1935 Europeans raised the question and demanded that the control of all land transactions in the Highlands should be vested in a European Highlands Board, with powers analogous to those of the Native Land Trust Board which was to be set up under the Native Order-in-Council. The Government

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of India, as represented by the Secretary of State, took a hand in the game and urged very strongly that there should be no change in the privileged position in the Highlands area, either as regards the definition of what the privileged position meant or as regards the area in which it was to be enjoyed, and that the farms near Muhoroni, which were alienated to Indians in 1906, should not be subject to racial distinction of any character.

Lord Zetland and Sir Joseph Blore of the Government of India objected to any Order-in-Council which would embody restrictions against Indians in a statutory form. What they objected to was the political effect of an Order-in-Council which would give statutory validity to the present arrangements which depend upon administrative practice. Mr. MacDonal, who was then Secretary of State, thought that it would be in accordance with the pledge given in the 1934 White Paper to have an Order-in-Council simply confining the boundary without any statutory confirmation of the reservation of the Highlands to Indians.

Later the question of the Highlands in Kenya was discussed with the Governor, who took the view that while the elected members might object to any statutory effect being given to the administrative practice, it would probably be in the best interests of the Europeans themselves not to do so, and he advocated the institution, under the Order-in-Council, of an Advisory Board which the Governor

might

might consult, with the proviso that cases in which the Governor did not accept the advice of the Board should be referred to the Secretary of State for decision.

On this point there has been a good deal of discussion, and it is realised by the elected members that there are too many difficulties in the way of having any legislative recognition of the administrative practice. The objection is not only the political one as regards India but the much more serious one of the position of the Japanese, since under the Treaty of Japan, Japanese can claim the same rights as British subjects. If then, it is laid down that European British subjects can hold land in the Highlands, equally Japanese must be allowed to do so, and if Japanese, why not Indians, or natives who are British subjects?

A year ago we asked Kenya for a provisional definition of the boundary and got a reply that several important adjustments had not yet been completed and that the Highlands Order-in-Council would have to be issued along with the Native Lands Order-in-Council, because if not, there would be misgiving among the natives who might think that their interests were being neglected. The Governor pointed out that it was desirable that both Orders should issue simultaneously.

The boundary definition which has been produced in Kenya is unfortunately not at all fully satisfactory. The map in the Carter Commission is on too small a scale to be any use. The boundary recommended is shown in the first map in the folder herewith, and shows unsettled boundary in six places,

together

The European Highlands are not one compact area in a ringed fence but comprise two large blocks - one to the north and west of Nairobi and a smaller one to the south and east. In addition there are three island blocks - one large one mentioned in paragraph 1176 of the Carter Report in the Lumbwa Dorobo area and two smaller ones, one in the Nandi Reserve and one between the two main blocks.

Accordingly the boundary of the Highlands has to be defined in five bits. Schedule 1 refers to the main block to the north-west, Schedule 2 to the south-eastward block, Schedule 3 represents the small island near Nairobi, Schedule 4 the Lumbwa island and Schedule 5 represents the smaller island in the Nandi Reserve. It is quite obvious that before an Order-in-Council can be issued the boundary will have to be definite since the schedules in places simply contain gaps.

In addition to the five schedules there is the Sixth Schedule which contains a few isolated farms. It seems a pity to have to include them in an Order-in-Council but it only shows the meticulous care with which the Land Commission probed the whole situation.

In point of fact, it would not matter one row of beans whether the few farms in question were included in the area known as the Highlands or not and the only practical effect would be to restrict the

right

right of the owners to alienate their land to Indians.

This is where we come up against an attitude of mind on the part of the white settlers who think that the area called the Highlands should be made sacred and reserved for them to play in free from the presence of natives and especially of Indians. As a result, those among them who want to and would very much like to sell land to Indians are not allowed to do so in the assumed interests of the others - most of whom would probably be only too glad to sell out if they could get a decent price.

Draft No 38005/4/37

11.64

K. E. N. Y. A.

DARLING STREET,

CONFIDENTIAL.

September 1937.

Sir,

I have the honour to acknowledge the receipt of your despatch No. 109 of the 9th of August, on the subject of the legislative measures required to implement the Kenya Land Commission Report. I regret the delay which has taken place in considering this draft legislation. The delay has been due to the necessity for close examination of the effect of the drafts which have been prepared, and also to the difficulty in finding any satisfactory definition for the Highlands which would be suitable for embodiment in an Order-in-Council. Eventually, the conclusion was reached that the only satisfactory method was to define a boundary, and the final detailed information to enable the boundary to be set forth has just been received.

As you recognize, since the Land Commission has recommended that course, it is necessary that native rights existing outside the reserves should be expunged by an express provision in the Order-in-Council. I need hardly say that such a provision will be subject to criticism in many quarters, but the recommendation has been adopted by His Majesty's Government and will be carried into effect. It had been my hope, and the hope of my predecessors, that the necessary adjustments and removals of existing

communities

VERNON,
AIR CHIEF MARSHAL

SIR ROBERT BROOKE-POPHAM, G.C.V.O., K.C.B., K.C.S.I., D.S.O., A.F.C.,

etc., etc., etc.

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communities or individuals could be effected by amicable arrangement, without having recourse to compulsory powers. Since, however, it appears that this hope is not being completely fulfilled, I can assure you that early action will now be taken to implement the recommendations of the Land Commission. That action will generally follow the lines proposed in Sir Joseph Byrne's despatch of the 21st of May 1935.

I have the honour to be,

Sir,

Your most obedient,

humble servant,

(Signed) W. ORMSBY GORE

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31st August, 1937.

Draft on
46590/37 E.A.

Dear Brooke-Popham,

Thank you for your letter of the 17th of August. As you say, Palestine is giving me a good deal of trouble and I don't want to think of any more coming from Kenya.

As regards income tax, my feeling has always been the same, and that is that income tax is the most equitable and convenient way of raising the necessary money in East Africa. It is better than any of the expedients which were devised to take its place and it does ensure, so far as can reasonably be done, that any burden falls on those best able to bear it. While, however, that is my opinion and I have told it to both Uganda and Tanganyika, one must recognise the force of special local circumstances. The Governor of Uganda points out very strongly that in present circumstances it would be inexpedient to impose income tax in that Protectorate. In Tanganyika the position is complicated by the Mandate, since if we started income

AIR CHIEF MARSHAL
SIR ROBERT BROOKE-POPHAM, GOV. , KOB. , CMG. , DSO.

income tax in Tanganyika we should have to be able to show that it was in the interests of the Territory. I think this could be done and I think that before very long you will see that there is an income tax in Tanganyika, even if Uganda still holds out.

There is, however, one thing on which you can be quite certain, and that is that if there is any illegitimate tax evasion which is being worked because there is no income tax in adjoining territories, then steps will be taken in those territories to put an end to that state of affairs.

You will have seen what Pim said in his report (paragraph 385-and) which was to the effect that the working of the tax would be greatly facilitated if a similar tax were imposed in the adjoining territories, but it should not be incapable of operation even if Kenya stood alone. That view is indeed my own, and in fact, I go further than Pim did, because I think that it ought to be introduced, and I am quite sure it will

be

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introduced some time or other, even though the time may not yet be ripe. Nevertheless, there is not, so far as I know, any justification for the suggestion that income tax was being introduced in Kenya preparatory to its introduction in the neighbouring territories, if, as I gather from your letter, the idea is that Uganda and Tanganyika must follow suit or that there was any implied undertaking to that effect.

You may notice that I have talked about "illegitimate" evasion. The reason for that is that it was not part of my intention or of anyone's that people living in Kenya should be made liable to income tax on income not properly assessable to duty in Kenya. If a man had a business making profits in Uganda and Tanganyika, he would be perfectly justified in not taking those profits into account in the Kenya part of his business, and to take steps in that direction could not properly be described as tax evasion.

I don't think that there is really much force in

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the argument that because there is a Customs agreement, the other territories must follow Kenya in income tax. I think the other territories would object very strongly to the idea that Kenya is tied to them in matters of taxation, and they would probably say it was just the other way round.

I quite agree with you that the Carter Report legislation has been delayed too long. It has all had to be redrafted and the new drafts will be gone through with Harragin in the course of the next day or two. Then I think the way will be clear to get ahead. I am not, however, confident that the legislation, when produced, will satisfy everybody. In fact, I am fairly sure it won't. It will be possible to define the boundaries of the Highlands, but for reasons which you know, it will not be possible to say in the Order-in-Council that "the Highlands" are to be confined to Europeans. Similarly it would be very difficult to arrange for precisely similar conditions as regards

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the control of the Highlands area and of the native lands. In the case of the native lands, the idea is to devise machinery which will protect the natives against the Government, the European settlers, the Indians, and themselves. In the case of the Highlands it is not necessary to provide for so much control and I do not think that the Europeans would like it if the ultimate ownership of the lands in the Highlands were taken from them and transferred to a Board of Trustees. Also, they can, I presume, be trusted to look after themselves, even against the Government. I therefore think that the Highlands Order-in-Council will be much simpler than the Native Lands one, and if it can be kept without reference to races, it will not be possible for the Governments of India or of Japan to allege discrimination on racial grounds. I expect, however, that there will be much opposition to clauses extinguishing native rights outside the native lands. The implications of such clauses can be made to look serious. However,

that

that was the Carter Commission's recommendation and I have accepted it. Sooner or later the position of native families long and continuously resident on European lands will have to be further regularised but I fully realize how difficult this problem is.

Yours sincerely,

W. Stanley Gore

EXTRACT FROM LETTER FROM SIR ROBERT BROOKE POPHAM
TO THE SECRETARY OF STATE DATED 17.8.37.

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We have just completed a session of the Legislative Council. On the whole, things went smoothly, though there were some rather violent speeches about the implementation of the Carter Commission Report. The Government were placed in rather a difficult position, because most of us agreed fully that there has been the most appalling delay in bringing out the necessary Orders-in-Council, and, as you may have seen in official letters, the situation in some places is becoming really serious. However, we had to be loyal to the Colonial Office and so to a large extent had to take the blame on our own shoulders. I have already written privately to Maffey and Parkinson on the subject, and unless we can get the whole thing settled before the end of this year there may be some very unfortunate occurrences.

In general I found the Elected Members very ready to help. There was one clause that had been cut out of the Resident-Labourers' Bill in Select Committee, though a minority report signed by Archdeacon Burns, and an Indian, de Sousa, recommended the section should be retained. I was in favour of the retention of the clause as a safeguard to the African but omitted to warn my people in time. So when the adoption of the Select Committee report was moved from the Government side, the mover argued that the omission of the clause was desirable. However, I got an amendment to put back the clause moved and seconded amongst the Elected Members, and the Government then was graciously pleased to accept the amendment, so all was well.

I am off to Mombasa tomorrow and had hoped to get a little rest, but now Pirow and the U.S. of S for Air are coming out, so business will go on as usual. However, one must keep on smiling.

x x x

...the Carter Commission's recommendations and
I have accepted it. I should like to have the position
of native families and continuously received
no further enquiries will have to be made
but I fully realize how difficult the problem is
Yours sincerely,

W. G. ...

EXTRACT OF MR. FLOOD'S MINUTE OF 25.8.37.

(over 2659/1/EA)

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(17) on 38005/7/37

of 25.8.37 - *id. f.c.*

As regards the Land Commission, I attach hereto a copy of a despatch from Kenya, together with a minute and draft reply which I wrote on the subject before this letter appeared. The delay has been great and I am responsible for it, but my anxiety has been to get the thing finally settled, if possible. It will be worse than useless to introduce a measure in a hurry and then have to amend it, and really there should have been no trouble in maintaining the existing state of affairs, which was not going to be very much disturbed. Certainly the thing should be out of the road well before the end of the year.

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INDIA'S PART IN THE EMPIRE

LEADER OF THE EAST

Sir Muhammad Zafrulla Khan, a member of the Executive Council of the Governor-General of India, broadcast last night the fifth address in a series on "Responsibilities of Empire." He spoke of the part India had to play in the Empire.

Occasional troubles between different interests or creeds, he said, should not blind the outside world to the fundamental process of nation-building that was going steadily on in India, and to the fact that this enormous and growing nation found its rallying point and unifying force in its allegiance to the Crown.

The time would undoubtedly come when India, with a population rapidly approaching 400,000,000, would share with confidence her destined task of interpreting the West to the East and the East to the West, and would stand forth beyond any question of challenge as the leader of the East. But for this generation, and perhaps for the next also, the urgent task before India was the achievement of national unity and the improvement of the educational and economic position of the masses, who were the foundation and strength of every nation. Under the new Constitution he had every confidence that those to whom this great opportunity was being presented would accept the trust and the responsibility and would proceed to discharge them with faith and courage.

INCOMPLETE CITIZENSHIP

Dealing with the status of India in the Empire, Sir Muhammad Zafrulla Khan said there was still a certain incompleteness in the measure of their citizenship. Whatever the reason, it was clearly not one which they could contemplate as continuing indefinitely. The people of India had drunk at the same wells of freedom as the people of Britain, and they claimed that they had exacted the same birthright to be acknowledged as the full masters of their political destiny as any other nation in the Empire.

India even to-day enjoyed some of the insignias of a Dominion. The greater part of the reality was yet to follow, and it was their earnest desire that a period of time that must still elapse before their consummation was achieved should be as brief as possible. The discrimination practiced against India, if several of the Dominions and Colonies was felt very keenly by India, and was deeply resented. It was one of the discords and disharmonies which must be eliminated if the Commonwealth was to stand out before the rest of the world as a symbol of unity and

Sir C. Bottomley

Copies herewith. It doesn't help much. Kenya is not altered very much in the talk in India.

Done 4.6.

Sir J. Kaffy

As this is in private communication? Sir J. Kaffy 22/5

Sir C. Bottomley

Sir J. Kaffy

I take this to be primarily a reference to the white highlands in Kenya, with possibly a backslush at the clove and nutmeg legislation in Z. Bar.

The latter is not formally a to any large extent really discriminatory. The former of course is.

A. L. Dawson 24/5

M. A. Dawson

38005/3/37.

6⁷⁵

C.O.

C. D.
R 25 AUG
D 37.4

Mr. Parnin 24/8

Mr. Flood 25/8

Mr.

Sir H. Moore

Sir G. Tomlinson

Sir C. B. Doolley

Sir J. Shackburgh

Permt. U.S. of Se

Parly. U.S. of S.

Secretary of State

St

- 1 SEP 1937

Sir,

I have re. to enc. the receipt of your Conf. Dep. No. 110 of the 13th of Aug. on the subject of the proposed Highlands Order in Council and to inform you that this matter has been engaging my earnest consideration.

As was planned in Sir Joseph Byrne's Conf. Dep. No. 132 of the 8th of December it is ^{small} ~~concluded~~ ^{reason} that the two Orders in Council declaring the Highlands & the Native Lands to shall be issued simultaneously, and it has been necessary, in considering the provisions to be inserted in the Highlands Order, to have

DRAFT.

Kera
Gov
Conf

Notes of conf
(enc. to No 1)
H.A. It is the incomplete and what is to be returned ^{with the complete one}

FURTHER ACTION.

amongst other considerations,

regard, to the terms of the
Corresponding Native Lands Order,

of wh. a draft was submitted
with Sir Joseph Byrne's Conf. Dep. No 72
of the 21st of May 1935.

The drafts of that Order &
of the two local Ordinances wh.
accompanied it have also been
receiving careful & prolonged consideration
& I hope to be in a position
very shortly, to communicate to you
my observations on those drafts
together with a draft, for your
consideration, of the proposed Highlands
Order.

I take the opportunity
of returning to you the incomplete
folios of maps, showing the
proposed boundaries of the Highlands,
as requested in Sir Joseph Byrne's
Conf. Dep. of the 8th of December. I
assume that you do not wish me
to return the folios of ~~the~~ maps,
showing the ~~the~~ completed boundaries,
mentioned in your Dep. of the 13th of May.

(Signed) W. ORMSBY GORE.

amongst other considerations,

regard, to the terms of the
corresponding Native Lands Order,
of wh. a draft was submitted
with Sir Joseph Byrnes Conf. Dep. No 72
of the 21st of May 1935.

3. The drafts of that Order &
of the two local Ordinances wh.
accompanied it have also been
receiving careful & respectful
& I hope to be in a position
very shortly, to communicate to you
my observations on those drafts
together with a draft, for your
consideration, of the proposed Highlands
Order.

4. I take this opportunity
of returning to you the incomplete
folios of maps, showing the
proposed boundaries of the Highlands,
as requested in Sir Joseph Byrnes
Conf. Dep. of the 8th of December. I
assume that you do not wish me
to return the folios of ~~maps~~ maps,
showing the ~~completed~~ completed boundaries,
mentioned in your Dep. of the 13th of Aug.

(Signed) W. ORMSBY GORE.

AIR MAIL

KENYA
No. 110



76
5
GOVERNMENT HOUSE
NAIROBI
KENYA

RECEIVED
19 AUG 1937
C.O. REGY

CONFIDENTIAL.

13 August, 1937.

Sir,

I have the honour to refer to Sir Joseph Byrne's Confidential Despatch No. 152 of the 8th. December last on the subject of the Highlands Order in Council.

2. Mention was made in paragraph 2 of that Despatch of a few points at which the Highlands boundary was at that time unsettled pending decision on matters of policy and subsequent survey of the land affected.

The definitions have now been completed and a description prepared covering the whole of the Highlands Area. This description will be forwarded by an early Air Mail and the folio of plans illustrating it will follow by parcel mail.

3. I would again take the opportunity of stressing the importance of an early indication of your views on the inter-dependent legislation which will be necessary to carry into effect the accepted recommendations of the Land Commission.

I have the honour to be,

Sir,

Your most obedient, humble servant,

A. Brooker Popham

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.

Handwritten notes:
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G. O.

Sir C. Parkinson 19/8/37

Mr.

Mr.

Mr.

Sir H. Moore.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

MOST IMMEDIATE

DRAFT

Code Tel.

Governor, Nairobi.

O.D.
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*Coded 2001
6.15 pm
9.8.37*

Personal

Following from Parkinson.

begins Your telephone enquiry
as to Lands Commission. Suggest

you say that delay has been due
to necessity for close examina-
tion of details ~~how~~ As
stated in White Paper of 1934
general conclusions of Commission
are accepted by Government and
will be implemented, but details
of legislation present many
points of difficulty and while
delay is regretted it seems
better to go into all points which
arise before disturbing existing
arrangements so as to avoid
necessity of subsequent further
amending legislation. As to
Orders in Council that ~~for~~

FURTHER ACTION

to file

~~defining Highlands can be prepared~~

~~when description of boundaries can~~

~~be completed and it is hoped that~~

both Highlands Order and Native

Lands Order will be ready in the

Autumn ends.

Seen



RECEIVED
4 JAN 1937

C. O. GOVERNMENT HOUSE,
NAIROBI,
KENYA.

KENYA
NO. 132

CONFIDENTIAL.

8 December, 1936.

Sir,

I have the honour to refer to your confidential telegram No. 159 of the 24th of June, 1936, and my telegraphic reply No. 162 (confidential) of the 9th. of July, 1936, on the subject of the Highlands Order in Council.

2. I regret that the preparation of the boundary description and illustrative plans has taken longer than was expected on account of various adjustments of a minor character which had to be made. I now forward a folio of maps together with a copy of a schedule containing a written description of the boundaries. On the first page of the folio is given a plan showing the points at which the boundary is still unsettled. I shall be glad if you will, in due course, return the folio in order that it may be altered in accordance with the final decision on the matters still outstanding.

3. The lands which are to be declared to be Highlands include a number of portions of land which are at present within declared Native Reserves; and, on the other hand, certain portions of land which are now Crown Land in the Highlands are to become Native Lands. Although the total area of these portions is an inconsiderable proportion of the total areas of the
.....Highlands

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

(20) on 38005/3/36
(21) " " "

KENYA

No. 132



RECEIVED
4 JAN 1937

C. O. GOVERNMENT HOUSE,
NAIROBI,
KENYA.

8 December, 1936.

CONFIDENTIAL.

Sir,

(20) on 38005/3/36

(21) " " " " " "

I have the honour to refer to your confidential telegram No. 159 of the 24th. of June, 1936, and my telegraphic reply No. 162 (confidential) of the 9th. of July, 1936, on the subject of the Highlands Order in Council.

2. I regret that the preparation of the boundary description and illustrative plans has taken longer than was expected on account of various adjustments of a minor character which had to be made. I now forward a folio of maps together with a copy of a schedule containing a written description of the boundaries. On the first page of the folio is given a plan showing the points at which the boundary is still unsettled. I shall be glad if you will, in due course, return the folio in order that it may be altered in accordance with the final decision on the matters still outstanding.

3. The lands which are to be declared to be Highlands include a number of portions of land which are at present within declared Native Reserves; and, on the other hand, certain portions of land which are now Crown Land in the Highlands are to become Native Lands. Although the total area of these portions is an inconsiderable proportion of the total areas of the
.....Highlands

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

Highlands and Native Lands, it seems essential that the two Orders in Council declaring the Highlands and the Native Lands respectively should be issued simultaneously.

4. Moreover, the schedules of Native Lands are to form part of the new Native Lands Trust Ordinance and, as the operation date of an Order in Council could not, I presume, be made dependent upon the date of a local enactment, it would seem that the Native Lands Trust Bill should be enacted first. With this point in view an operation clause was provided in the Draft Bill so that the Ordinance might be brought into effect from the date of the Order in Council.

5. There is a considerable amount of local action required after the two draft Bills forwarded with Kenya Despatch No. 72 of May 21st., 1935, have been considered in general principle by you. They have not yet been discussed with Provincial Commissioners or by the Executive Council, and a longer time than the usual period of publication prior to introduction into Legislative Council is probably desirable.

It would, therefore, be of great assistance if I could receive your views on the principal points raised in that despatch at an early date.

I have the honour to be,

Sir,

Your most obedient, humble servant,

BRIGADIER-GENERAL.
GOVERNOR.

(1) on 38005/6/35
2/1/35 Packer

SCHEDULE 1.	PAGE	1 - 25.
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" V.	"	42 - 43.
" VI.	"	44.

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BOUNDARIES OF THE HIGHLANDS OF KENYA.

DESCRIPTIONS.

SCHEDULE I.

Commencing at the westernmost corner of L.R. No. 6459;
thence by the south western boundary of that portion
to its intersection with the Kamakoiwa River;
thence down-stream by that river to its junction with
the Kimilili (Kabisi) River;
thence down-stream by that river to its junction with
the Nzola River;
thence down-stream by that river to its intersection
with the south-western boundary of L.R. No. 4099;
thence by the latter boundary to the westernmost
corner of L.R. No. 4121;
thence by the south-western boundaries of L.R. Nos.
4121 and 4122 to the southernmost corner of the latter
portion (SENYA HILL);
thence by the north western boundaries of L.R. Nos.
6176 and 4130 to the south-western corner of the latter
portion (BWANGA); (2)
thence by the southern boundaries of L.R. Nos. 4130,
4126,

thence by the south ^{we} eastern and the eastern boundary of L.R. No. 4365 to the north eastern corner of that portion;

thence by part of the south western boundary of L.R. No. 3161, and the south western boundaries of L.R. Nos. 3150, 3149, 3148 and 3147 to the south eastern corner of the last portion;

thence northerly by the eastern boundaries of L.R. Nos. 3147 and 3151 and onwards across the road reserve to the southernmost corner of L.R. No. 3120;

thence still northerly by the eastern boundaries of L.R. Nos. 3120, 4112, 5156, 8427 and 6426 to the north-eastern corner of the last portion; (4)

thence easterly by part of the southern boundary of L.R. No. 755/2/2 and the whole of the southern boundaries of L.R. Nos. 5823 and 755/4/R to the south eastern corner of the latter portion (ELDALAT);

thence by the generally western boundaries of L.R. Nos. 5731, 766/1, 766/2, 766/3, 749, 748, 747, 6467, 6609, 6608, 6478, 693/1, 689, 3063, 4137, 4281 and 686 to the southern corner of the last portion (OLESSOS); (5)

thence by the north-western boundary of L.R. No. 6457/R and onwards across a road reserve to the northernmost corner of L.R. No. 1484;

thence by the north-western boundaries of L.R. Nos. 1484, 6775, 1481/R and part of 1478A to its intersection with the Kepsimbegwa River;

thence downstream by that river to its junction with the Choimim River;

thence downstream by the latter river to its intersection with the northern boundary of L.R. No. 1571;

thence by the northern boundary of the latter portion to its north-western corner;

thence by the western boundary of L.R. No. 1371 to its intersection with the Kamarya River;

thence down-stream by that river to its junction with the Kapchure River;

thence down-stream by that river to its intersection with the south-western boundary of L.R. No. 7057; (6)

thence by that south-western boundary to the southern-most corner of that portion;

thence by the south-western boundary of L.R. No. 1468 to its intersection with the Ainomotua River;

thence up-stream by that river to its intersection with the western boundary of L.R. No. 3071;

thence by the generally western boundaries of L.R. Nos. 5071, 1617 and the north-western boundary of L.R. No. 1613 to the south-western corner of the last portion;

thence south-easterly by part of the north-eastern boundary of L.R. No. 6086 to the north-western corner of L.R. No. 1580/1;

thence by the north-western boundaries of L.R. Nos. 1580/1 and 1580/2 to the south-western corner of the latter portion and onwards by the same straight line to its intersection with the southern boundary of the Kenya and Uganda Railway Reserve;

thence easterly by that southern boundary to the north-western corner of L.R. No. 5102;

thence by the north-western boundary of that portion to its intersection with the Nyando River;

thence up-stream by that river to its intersection with the north-western boundary of L.R. No. 5979;

thence by that north-western boundary to its south-western corner;

94
thence by the southern boundaries of L.R. Nos. 3979
and 3978/2 to the south-eastern corner of the latter
portion;

thence by part of the eastern boundary of L.R.
No. 3978/2 for a distance of 5751.54 feet to the Chemutum
Salt Lick;

thence by a straight line on a true bearing of
 $296^{\circ} 26' 20''$ for a distance of 4154.0 feet to a beacon;

thence by a straight line on a true bearing of
 $208^{\circ} 26' 20''$ for a distance of 600.0 feet to a beacon;

thence by a straight line on a true bearing of
 $296^{\circ} 26' 20''$ for a distance of 900.0 feet to a beacon;

thence by a straight line on a true bearing of
 $26^{\circ} 26' 20''$ for a distance of 900.0 feet to a beacon;

thence by a straight line on a true bearing of
 $116^{\circ} 26' 20''$ for a distance of 5045.3 feet to a beacon
on the south-eastern boundary of L.R. No. 3978/2;

thence by part of the south-eastern boundary of
L.R. No. 3978/2 and the whole of L.R. No. 3977 to the south-
western corner of L.R. No. 643/1;

thence by the southern boundary of L.R. No. 643/1 to
its intersection with the Nyando River;

thence up-stream by that river to its junction with
the Tugenon River;

thence up-stream by that river to its intersection
with the western boundary of the Lumbwa-Kericho road
reserve;

thence generally south-westerly by that road reserve
boundary to its intersection with the north-eastern
boundary of Kericho Township (L.R. No. 651);

thence north-westerly, south-westerly and south-
easterly by part of the north-eastern, the north-western,
and part of the south-western boundary of that township
to the intersection of the last mentioned with the north-
western boundary of the Sotik-Kericho Road Reserve;

thence generally south-westerly by that road reserve boundary (which road forms the generally north-western boundaries of L.R. Nos. 5467 and 4098) to its intersection with the Kitho (or Jamji) River;

thence down-stream by that river to its junction with the Chepkoisi River;

thence up-stream by the latter river to its intersection with the southern boundary of L.R. No. 5436;

thence easterly by that boundary to the south-eastern corner of the latter portion;

thence northerly by the eastern boundary of that portion to its intersection with the southern boundary of L.R. No. 6001/1;

thence easterly by the latter boundary to its intersection with the Koruma River;

thence up-stream by that river to its intersection with the eastern side of the Sotik-Kericho main track 25 foot reservation;

thence southerly by a cut and beacons straight line to its intersection with the Chepkoisi (Kiptiget) River which forms the northern boundary of L.R. No. 6020;

thence down-stream by that river to its junction with the Dare (Itare) River;

thence up-stream by the latter river to its intersection with the straight line joining the trigonometrical beacon Posta with the south-western corner of L.R. No. 553;

thence south-westerly by a straight line to the trigonometrical beacon Posta;

thence by a straight line in the direction of the trigonometrical beacon Kobroret to its intersection with the Kipsanoi River;

thence north-easterly by a straight line to the south-western corner of L.R. No. 4600;

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thence by the generally south-eastern boundaries of L.R. No. 4800 and 4598 to the north-eastern corner of the latter portion;

thence by part of the generally south-eastern boundary of L.R. No. 4597 for a distance of approximately 2800 feet to its intersection with a cut and beacons line;

thence south-easterly by that cut and beacons straight line which is on a true bearing of $100^{\circ} 29' 29''$ for a distance of 12554.2 feet to a beacon;

thence by a straight line on a true bearing of $120^{\circ} 29' 29''$ for a distance of 7899 feet to a beacon;

thence by a straight line on a true bearing of $25^{\circ} 37' 13''$ for a distance of 11760.2 feet to a beacon;

thence by a straight line on a true bearing of $60^{\circ} 56' 43''$ for a distance of 3294.6 feet to a beacon;

thence by a straight line on a true bearing of $74^{\circ} 52' 54''$ for a distance of 11498.2 feet to a beacon;

thence by a straight line on a true bearing of $128^{\circ} 00' 55''$ for a distance of 5486.4 feet to a beacon;

thence by a straight line on a true bearing of $190^{\circ} 01' 32''$ for a distance of 6135.2 feet to a beacon;

thence by a straight line on a true bearing of $117^{\circ} 13' 37''$ for a distance of 24163.7 feet to a beacon;

thence by a straight line on a true bearing of $145^{\circ} 23' 55''$ for a distance of 9007.8 feet to a beacon;

thence by a straight line on a true bearing of $112^{\circ} 04' 02''$ for a distance of 5048.3 feet to a beacon on the western boundary of L.R. No. 3990;

thence southerly and easterly by part of the western boundary and the whole of the southern boundary of the latter portion to its south-eastern corner;

thence generally southerly by the generally western boundary of L.R. No. 1516 to the southernmost corner of that portion;

(9)

thence north-easterly by part of the south-eastern boundary of the latter portion for a distance of 50285.7 feet to a beacon;

thence by a straight line on a true bearing of 140° 38' 53" for a distance of 1018 feet to a beacon;

thence by a straight line on a true bearing of 151° 04' 32" for a distance of 500.9 feet to a beacon;

thence by a straight line on a true bearing of 122° 16' 52" for a distance of 534.8 feet to a beacon;

thence by a straight line on a true bearing of 191° 01' 59" for a distance of 760.95 feet to a beacon;

thence by a straight line on a true bearing of 125° 56' 06" for a distance of 736.4 feet to a beacon;

thence by a straight line on a true bearing of 121° 34' 27" for a distance of 841.95 feet to a beacon;

thence by a straight line on a true bearing of 122° 45' 25" for a distance of 592.9 feet to a beacon;

thence by a straight line on a true bearing of 132° 05' 08" for a distance of 350.1 feet to a beacon;

thence by a straight line on a true bearing of 140° 54' 00" for a distance of 632.54 feet to a beacon;

thence by a straight line on a true bearing of 151° 33' 01" for a distance of 878.73 feet to a beacon;

thence by a straight line on a true bearing of 135° 15' 19" for a distance of 733.3 feet to a beacon;

thence by a straight line on a true bearing of 155° 19' 51" for a distance of 462.85 feet to a beacon;

thence by a straight line on a true bearing of 111° 15' 07" for a distance of 644.04 feet to a beacon;

thence by a straight line on a true bearing of 56° 55' 52" for a distance of 12329.1 feet to a beacon;

thence by a straight line on a true bearing of 63° 26' 53" for a distance of 16032.5 feet to a beacon

at the north-western corner of L.R. No. 1771;

thence by the western boundary of L.R. No. 1771 to the north-western corner of L.R. No. 6235;

Group 1

thence southerly by the generally western boundaries of L.R.No.1380 to the southernmost corner of that portion;

thence southerly and easterly by the generally western and southern boundaries of L.R. No. 2882 to the south-eastern corner of that portion;

thence south-easterly by a cut and beacons straight line for a distance of approximately 54758.3 feet to a beacon on the Eljabe-Narok Road;

(10)

thence south-easterly by a straight line to the westernmost corner of L.R. No. 375;

thence by the south-western boundaries of L.R. Nos. 375 and 373 to the southernmost corner of the latter portion;

thence north-easterly by the generally south-eastern boundaries of L.R. Nos. 373 and 374 to the easternmost corner of the latter portion;

thence south-easterly by part of the south-western boundary of L.R. No. 378 to its southernmost corner;

thence by part of the south-eastern boundary of L.R. No. 378 for a distance of 16194.4 feet to a beacon on the western boundary of the Kikuyu Escarpment Forest Reserve; (11)

thence generally southerly, easterly, northerly, again easterly and generally southerly by a series of cut and beacons straight lines which form a part of the western and generally southern boundary of the aforesaid Forest Reserve (L.R.No. 4448) to its intersection with the northern boundary of Limoru Township;

thence easterly by part of that township boundary to its intersection with the western boundary of the Kenya and Uganda Railway Reserve;

thence southerly by that reserve boundary to its intersection with the northern boundary of Limoru Railway Station Reserve;

thence westerly, southerly and easterly by part of the northern, the western, and part of the southern boundaries of that station reserve to the western boundary of the Kenya and Uganda Railway Reserve;

thence southerly by that Railway Reserve boundary to its intersection with the north western boundary of L.R. No.173/1;

thence southerly by the generally western boundary of L.R. No.173/1, and south easterly by the south-western boundary of L.R. No.173/2 to the southernmost corner of the latter portion;

thence north-easterly by the south-eastern boundary of L.R. No.174 to its intersection with the western boundary of the Kenya and Uganda Railway Reserve;

thence southerly by that Railway Reserve boundary to a point due west of the southernmost corner of L.R. No.4713;

thence due east to that southernmost corner;

thence by the south-eastern boundaries of L.R. Nos. 4713, 5851, and 4493 to the easternmost corner of the last portion;

thence south-easterly by the generally south-western boundaries of L.R. Nos.5851/5, 5851/9 and 184/3 to the northernmost corner of L.R. No.170/1/2;

thence southerly by the western boundary of the last portion to its intersection with the Mutigutu River;

thence down-stream by that river to its intersection with the south-eastern boundary of L.R. No.5878;

thence north-easterly by the south-eastern boundaries of L.R. Nos.5878, 3564, 2950/1, 2950/5/2/3, 2950/3/R, 5916 and 152 to the easternmost corner of the last portion; (12)

thence south-easterly by the south-western boundaries of L.R. Nos.132/1/1/3, 245/1, 245/2/R, part of 134/3/R, the whole of 134/6 and again part of 134/5/R to the south-eastern corner of the last portion;

thence north-easterly by the generally south-eastern boundaries of L.R.Nos.134/3/R, 134/7, 134/4/R, 5876, 4640 and 126 to the intersection of the last with the Kamiti River.

thence up-stream by that River to its intersection with the eastern boundary of L.R.No.3696;

thence northerly by the eastern boundaries of L.R. Nos 3696 and 3698 to the north eastern corner of the latter portion; (13)

thence northerly by part of the eastern boundary of L.R. No.3700 to the southern most corner of the Kikuyu Escarpment Forest Reserve (South eastern portion);

thence easterly, northerly and westerly by the generally eastern and northern boundaries of that Forest Reserve to the north-eastern corner of L.R. No. 241/3;

thence westerly by the northern boundary of L.R. No. 241/3 to the north-western corner of that portion;

thence by part of the eastern, the northern, generally western and southern boundaries of L.R. No. 3900 to the south-eastern corner of that portion;

thence by part of the western boundary of L.R. No. 241/3 for a distance of approximately 855 feet to its intersection with part of the northern boundary of the Kikuyu Escarpment Forest Reserve (South western portion);

thence westerly by that Forest Reserve boundary to its intersection with the eastern boundary of L.R. No. 4768;

thence northerly by part of that boundary and westerly by the northern boundary to the northernmost corner of that portion;

thence southerly by the western boundary of L.R. No. 4788 to its intersection with the northern boundary of the Kenya and Uganda Railway Reserve;

thence south-westerly by that railway reserve boundary for approximately 3200 feet to its intersection with a cut and beacons line which forms the boundary of the Kikuyu Escarpment Forest Reserve;

thence northerly by a series of cut and beacons lines which form part of the eastern boundary of that Forest Reserve (L.R. No. 4448) to its intersection with the eastern boundary of the Kenya and Uganda Railway Reserve. (14)

thence northerly by that Railway Reserve boundary for a distance of approximately 8000 feet to its intersection with the north-western boundary of L.R. No. 388/1;

thence by the north-western and north-eastern boundaries of that portion to its easternmost corner;

thence by part of the south-eastern boundary of L.R. No. 388/1 for a distance of approximately 2200 feet to a beacon.

thence south easterly by part of the generally south-western boundary of the Kikuyu Escarpment Forest Reserve (northern portion) to its intersection with the Kimaiti River; (15)

thence northerly by the generally eastern boundary of the Kikuyu Escarpment Forest Reserve (northern portion) and the Aberdare Forest Reserve to the intersection of the western boundary of L.R. No. 5143 with the Muringato River; thence downstream by that river to its intersection with the south-eastern boundary of L.R. No. 5152;

to its intersection with the Muringato River;
thence down-stream by that river to its junction
with the Muraria River;
thence up-stream by that river to its intersection
with the south-western boundary of L.R. No.1105/2;
thence south-easterly by the generally south-western
boundary of that portion and the generally western
boundary of L.R. No.1105/1 to the intersection of the
latter with the Chania River;
thence down-stream by that river to its intersection
with the western boundary of Nyeri Township (L.R. No.1108);
thence by part of that boundary and by the southern
and part of the eastern boundary of that township to the
intersection of the last with the Chania River;
thence down-stream by that river to its intersection
with the western boundary of L.R. No.1119;
thence by that boundary and by the southern, and part
of the eastern boundary of that portion to the intersection
of the last with the Chania River;
thence down-stream by that river to its junction with
the Muringato River; (17)
thence up-stream by that river to its junction with
the Amboni River;
thence easterly by a cut and cleared line to the
intersection of the eastern boundary of L.R. No.5489 with
the Nairobi River;
thence down-stream by that river to its junction
with the Sagana River;
thence easterly and northerly by the generally
southern, and eastern boundaries of the Mount Kenya Forest
Reserve to the intersection of the south-eastern boundary
of L.R. No.4854 with the Marania River; (18)

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thence down-stream by that river and onwards by the
Siolo River to its intersection with the northern boundary
of L.R. No.2794;

thence westerly by the northern boundaries of L.R.
Nos.2794 and 2792 to the north-western corner of the latter
portion;

thence by the western boundary of L.R. No.2792 and
the north-western boundary of L.R. No.2791 to the western-
most corner of the latter portion;

(19)

~~thence westerly by the northern boundaries of L.R. Nos. 5185 and 5761 to the intersection of the latter with the Engare Uaso Nyere.~~

thence down-stream by that river for a distance of approximately 17 miles to its junction with an unnamed stream;

thence up-stream westerly by that stream to its source;

thence by a straight line due west to its intersection with the top edge of the cliffs forming the eastern edge of the Angata Wergoi;

thence north-westerly by the top edge of these cliffs to the trigonometrical beacon Bergoi;

thence westerly by a straight line for a distance of approximately 1½ miles to a point on the Ol Keju Mara (Seya) River due north of a cairn on the right bank;

thence up-stream by that river to its point of emergence from the north-eastern lake of Sugota Marmar;

thence south-westerly by a line through the centre of that lake to its intersection with the south-western shore;

thence southerly by a straight line to a cairn situated midway between the two lakes of Sugota Marmar; (21)

thence westerly by a cut and beaconed line to its intersection with the Amaya River;

thence down-stream by that river for a distance of approximately two miles to its intersection with a cut and beaconed straight line; (22)

thence by that straight line on a true bearing of 288° 55' 12" for a distance of approximately 7000 feet to a beacon;

thence by a straight line on a true-bearing of 200° 52' 21" for a distance of 5256.1 feet to a beacon;