

1937

Kenya

No. 38005/6

SUBJECT.

C0533/476

Land Commission Report
Native Lands Trusts Legislation
Common Lands Legislation
Native Lands Trust Ordinance

Previous

1935

Subsequent

1938

C.I.

LAND.

1. W. HARRAGIN (S/O TO MR. PASKIN)..... Requests completion in draft of the various legislative measures outstanding. 2

2. GOV. KENYA..... CONF. 70..... 29.4.37. Requests early consideration be given to measures sent with Kenya despatch No. 72 of E.L.S. 35(1 on 1935 file).

Orig. regd. on 38005/7/37.

Mr Flood

I had already proposed (u 38005/3/37 below) to draw with legal advisers, with a view to a round table discussion, especially for very difficult problems raised in the 1st. 1/37.

I was distinctly to find that the delay in enacting the legislation to give effect to the Land Commission recommendations is having such a

stagnating effect on the natives' interest in the legislation that

been made for introduction, it is not clear how possible to enact it;

but even had the work of surveying & demarcating the boundaries of the adjustments to the reserves & the highlands is nearly completed,

it is clearly desirable to get forward with the work of the legislation.

My answer of the 14th. 1/37.

? Reply to Mr 1 - - - 1/37.

J. P. Paskin
1/8/37

draft of the various legislative measures outstanding

3 To Harragin (1 and) 30. 10. 3. 37

1/30: 1

1. Draft Native Lands Ordinance - C

2. Amended Draft Native Lands Ordinance - C

3. Note on Crown Lands Ordinance

4. Memorandum

5. Memorandum on Soga Native Land Legislation

6. Memorandum on Native Land

7. Note on Native Land Ordinance

8. Memorandum on Native Land Legislation and Crown Lands (K. M. S. B. S. S.)

9. Amended Draft Native Lands Ordinance - C

10. To King Conf (5) (10 to 12) Conf

11. To King Conf (6) (11 to 11) Conf

} 10000 12

G. O.

35005/6/37

14

Mr. Flood 1/10/37.

Mr.

Mr. Dale 21.

Sir H. Moore.

Sir G. Tomkinson.

Sir C. Dutton 19.10.

Sir J. Shackburgh

X Form. U.S. of S. 26.10.37

Party. U.S. of S.

X Secretary of State 20/3/26. 10-23

Conson.

DRAFT.

KENYA.

CONFIDENTIAL. (6)

GOVERNOR.

Memorandum.
(Draft herewith.)
(No. 17)

Downing Street,

28 October, 1937.

Sir,

I have etc. to address you in regard to the Native Lands Trust Ordinance, a draft of which was submitted in Sir A. Wade's confidential despatch of the 21st May, 1935. The draft as prepared in the Colony, is a most valuable piece of work in view of the complicated nature of the subject. I suggest, however, that it may be amended and improved in various respects partly by the omission of clauses which are already covered by the Native Lands Order-in-Council, partly by some verbal alterations and partly by the inclusion in the Ordinance of some provisions which were in the Order-in-Council as drafted in Kenya. In particular, it will be observed that clause 16 of the Kenya draft Order has been omitted from

FURTHER ACTION.

the Native Lands Order-in-Council (except that provision is made in ~~section 34~~ ^{clause 8(4)} that the Trust

Board shall be a body corporate and have power to sue and to be sued). It follows that so much of the rest of clause 16 of the Kenya

Draft as is necessary should find a place in the Ordinance. Similarly clause 14 of the draft Order-in-Council would more appropriately

be included in the Ordinance. I enclose a memorandum which has been prepared in this Office setting out the alterations which are

suggested for consideration *both in the Native Lands Trust Ordinance and in the Crown Lands (Amendment) Ordinance.*

2. Generally speaking, the draft Ordinance appears to me to effect its purpose of safeguarding Native rights in land while at

the same time making provision for the removal of lands from Native control or leasing them, whether to Government or to private persons,

in proper cases. It follows the recommendation of the Land Commission in regard to the principle of "setting apart" land, except

where permanent exclusion with corresponding additions to Native Reserves may be thought more desirable. Although so much of the

Ordinance

- C. O.
- Mr.
- Mr.
- Mr.
- Sir H. Myers.
- Sir G. Tomlinson.
- Sir C. Bottomley.
- Sir J. Shackburgh.
- Parnt. U.S. of S.
- Parly. U.S. of S.
- Secretary of State.

DRAFT.

Ordinance is taken up with provisions for setting apart land, it will, I think, be found in practice that cases where it is necessary to set apart land in the Native Reserves will not be of frequent occurrence nor involve any large areas, and the provisions of the Ordinance for safeguarding the Native Lands against any undue diminution are, I think, adequate. The provisions for compensation and for payment of rent for mining leases appear to be suitable and, indeed, embody existing practice.

3. I would call attention to clause 36(4) and clause 37(5) of the draft Ordinance. As drafted, clause 36(4) provides that no land in the Highlands shall be added to Native Lands except with the consent of the Highlands Board and that if the Board does not consent the Governor may refer the matter to the Secretary of State for final decision, and clause 37(5) lays down a similar provision in dealing with

FURTHER ACTION.

temporary exclusions for mining purposes.

I suggest that you should consider whether

it is worth while to retain the provision

for reference to the Secretary of State.

If it is omitted the effect will be that

the decision of the Highlands Board in regard

to the addition of land in the Highlands

to the Native Reserves will become final.

It is not to be expected that there will be

many cases where Government will want to add

land, included in the Highlands, to the

Native Reserves in return for land excluded

from the Reserves elsewhere, and if any such

case did arise it would almost certainly be

a case of exchange between Highlands and the

Native Lands, where the Highlands Board would

not be expected to adopt an unreasonable

attitude.

4. One of the most important ^{amendments} sections

of the Ordinance is No. 49. As drafted in

the Colony the first sub-section appears

to be unnecessarily wide and it ought, I

think, to be omitted. Sub-section (2) is

intended to implement the proposal of the

Commission

C. O.

Mr.

Mr.

Mr.

Sir H. Moore.

Sir G. Tomlinson.

Sir C. Batemley.

Sir J. Shackburgh.

Perms. U.S. of S.

Perms. U.S. of S.

Secretary of State.

DRAFT.

FURTHER ACTION.

Commission and embodied in the Order in

Council that Native rights outside the

Reserves should be extinguished. As

drafted the power given is extremely

drastic in that it confers upon the

Governor the power to direct any Native

who belongs to a tribe, for which a

Native Land unit is provided, and who is

not residing in that Land unit, to remove

himself and his belongings there to

without further formality. Such a

provision would naturally be open to

serious misunderstanding and in

particular, it appears clear that before

any such Native is ordered to remove

himself into a Native Land Unit,

Government must be satisfied that there

is land available for his accommodation.

It is, therefore, suggested that a proviso

should be added to the effect that no

such order shall be made unless the

Governor is satisfied that sufficient

land for the accommodation of the Native

in

in such a Native Land Unit is available and that provision for compensation for disturbance has been made. Similarly in clause 69(1) a corresponding proviso is suggested to the effect that no Native shall be compelled to remove himself except by order of the Governor made in accordance with section 49 of the Ordinance:

5. I have given anxious thought to these provisions which are admittedly of a drastic nature. The effect of the extinction of Native Rights outside the Reserves is to abolish the Rights hitherto preserved by section 86 of the Crown Lands Ordinance, and the position of such natives must be carefully considered. An arbitrary order to move might be difficult to fulfil and might lead to hardship. That the Land Commission envisaged a power of removal is clear from the consideration of paragraphs 1854, 1855 and 1856 of their Report. The Commission's recommendation was deliberate and forms part of a general settlement of land questions in Kenya and should, therefore, be looked upon

18

C. O.

Mr.

Mr.

Mr.

Sir H. Moore.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shackburgh.

Parli. U.S. of S.

Parli. U.S. of S.

Secretary of State.

DRAFT.

FURTHER ACTION.

in that light. It is, however, a matter for regret that the Commission's estimate of the number of persons who may be affected turns out to be so far below the mark as is now known to be the case in some areas. It follows that if it is desired in practice to remove any considerable number beyond the few hundred contemplated by the Commission, the payment of additional compensation on what, I suggest, should be a generous scale must be considered.

6. It is also necessary to contemplate the case of those Natives resident outside the Reserves, whom it is not desired to disturb. In such cases it will be necessary to devise some means of regularizing their position, as otherwise they will be in the position of having no rights and yet not be subject to disturbance, and it can hardly be intended that they will simply continue on sufferance.

7.

7. In the note to paragraph 1854 of their Report, the Commission stated that their recommendation as to the extinction of native rights should not be read in such a way as to deny the rights of the tribes such as the Galla or Boni, or the tribes in Turkana and the Northern Frontier districts, to be protected by Government in the use and enjoyment of land. This recommendation is discussed more at length in paragraphs 806 and 806 of the Report, and in the Ordinance as drafted, clause 69(2) appears to be intended to carry it into effect. That it does so, to some extent, is clear, but whether it carries it out fully is not altogether apparent. In the case of nomadic tribes in particular it is necessary to be satisfied that ample land is available for their particular form of existence, and care will have to be taken that if any proposals for the alienation of land in those districts are being considered, an ample area is retained for native use. You will no doubt consider how the Commission's recommendation in paragraph

C. O.

Mr.
Mr.
Mr.

Sr H. Mann
Sr G. Tomkinson
Sr C. Robinson
Sr J. Shackleton
Pres. U.S. of S.
Pres. U.S. of S.
Secretary of State

paragraph 806 of the Report can best be carried into effect and what form the necessary section in the Ordinance should take.

I have, etc.

(signed) W. ORMSBY GORE

DRAFT.

FURTHER ACTION.

38005/6/37

E. Native Lands O. in C.

13

C. O.

Mr. Flood. 18/10/37

Mr. Dale 21.

Mr.

Sir H. Moore.

Sir G. Tomlinson.

Sir C. Bottomley. 19.10.

Sir J. Shuckburgh

X Perm. U.S. of S. 26.10.37

Parly. U.S. of S.

Secretary of State. 26.10.37

28 October 1937.

Sir,

DRAFT, for cpon.

KENYA.

CONFIDENTIAL. (5)

GOVERNOR.

Draft Native Land Order-in-Council. (herewith)

(N° 12)

I have the honour to refer to Sir A. Wade's confidential despatch of the 21st of May, 1935, and to transmit for your consideration, a revised draft of the Native Lands Order-in-Council which has been prepared here.

2. On examination of the draft as prepared in Kenya, I came to the conclusion that, while it followed closely the recommendations and, indeed, the phrasing of the Morris Carter Land Commission, it was in many respects over-elaborate. In particular, it contained several clause-making provisions which, on further examination, appeared to be more suited

FURTHER ACTION.

for inclusion in the proposed Native Lands Trust Ordinance. Further, the functions of the Trust Board, as set out in clause 13 of the draft, appeared to be detailed at undue length, and it accordingly appeared possible to reduce the length of the Order-in-Council as in the draft now enclosed.

3. The draft Order as prepared proposed to schedule the various areas of land which were to be regarded as native lands and native leasehold areas, with another schedule defining the nine native land units as recommended by the Commission. On examination of the Report of the Commission, it appeared that the definitions of the various areas set out in the Report were not sufficiently accurate for the purpose of inclusion in an Order-in-Council and, accordingly, as in the case of the Highlands, I have come to the conclusion that the only practicable method of defining the boundaries is to adopt the practice followed when the existing Native Lands Trust Ordinance was framed, that is, to issue public notices

C. O.

- Mr.
- Mr.
- Mr.
- Sir H. Moore.
- Sir G. Tomlinson.
- Sir C. Bottomley.
- Sir J. Shackburgh.
- Parul. U.S. of S.
- Parul. U.S. of S.
- Secretary of State

DRAFT.

FURTHER ACTION.

notices in the Gazette, one defining the boundaries of the native lands, and the native land units, and another defining the native leasehold areas, to which notices reference can properly be made in the Order-in-Council when issued. I accordingly request that notices may be issued defining the boundaries as aforesaid.

4. In Sir A. Wade's despatch he recommended strongly that Class "B.1" lands, to adopt the Commission's phraseology, should be incorporated with Class "A" lands. With this recommendation I find myself in entire agreement. The lands classified as "B.1" are to be added to the Native Reserves on the ground that they are required for the economic needs of the tribes, and they are likely to be permanently required. There seems, therefore, no point of principle in separating

separating such lands from Class "A" lands, and in my opinion they should be included with the Class "A" lands in the native lands area as published in the Gazette without any distinction. Lands classified as "B.2", which the Commission regard as "temporary Native Reserves", are in a different category, though, in practice, it appears very unlikely that they will ever cease to be required for the use of the native population. However, as I do not wish to depart further than is absolutely necessary from the proposals in the Report, I think it is well to make separate provision in regard to such lands, and clause 6 of the draft Order-in-Council makes provision for such temporary Native Reserves, providing that the land shall continue to be Crown land and subject to the provisions of the Crown Lands Ordinance.

5. Clause of the draft Order-in-Council provides for the "native household areas", and also provides that they shall continue to be Crown lands and subject to the provisions of

the

C. O.

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

DRAFT.

FURTHER ACTION.

the Crown Lands Ordinance. The areas recommended by the Commission as Class "C" are set out in paragraph 1879 of the Report, but, of course, the definition there given, even with reference to the maps, is not sufficient for legal purposes, and they should be defined in a Government notice as already indicated in paragraph 3 above.

6. It will be noted that clause 4 of the draft vests the native lands in the Trust Board, divides them into the nine native land units, and provides that the areas of land in the native lands and the native land units shall not be altered except in the cases for which express provision is made in the Native Lands Trust Ordinance. I felt some doubt whether it was advisable to define the nine different land units, but, since the Commission make an express recommendation to that effect in paragraph

paragraph 449 of the Report, I thought it best
to retain a provision to that effect.

7. Clause 4, sub-section 4, provides
that the native lands shall be administered
in accordance with the Native Lands Trust
Ordinance, and sub-section 6 preserves the
right of the Crown to all minerals within the
native lands.

8. Clause 5 is identical with Clause 5
of the Draft prepared in the C. J. Ordinance
with the addition of the words "for a
limited time".

9. In Clause 6 of the draft Order,
provision is made for the establishment of
the Native Lands Trust Board. You will
observe that in the composition of the Board
Clause 12 of the draft prepared in Kenya has
been followed, with the important exception
that in the case of the last member whom
provision is made in sub-section (d), the
word "person" is substituted for the word
"European", thus allowing the Governor to
appoint anyone whom he considers suitable
irrespective

C. O.

Mr.

Mr.

Mr.

Sir H. Moore.

Sir G. Tomkinson.

Sir C. B. B. B.

Sir J. Skelton.

Par. U.S. of S.

Par. U.S. of S.

Secretary of State.

DRAFT.

FURTHER ACTION.

irrespective of race.

10. Clause 10 carries out the
recommendation of the Commission that
existing native rights in land
situated outside the native lands, the
"temporary native reserves", and the
"native leasehold areas", shall be
extinguished. This is in accordance
with the Commission's recommendation
and is part of the definite settlement
at which they have aimed, but I must
own that its implications give me some
cause for anxiety. I will, however,
discuss this matter further in dealing
with the Native Lands Trust Ordinance,
which I propose to do in a separate
despatch.

11. In paragraph 2148 of their
Report, the Commission recommend that
the clauses in the Native Lands Trust
Ordinance, which lay down how additions,
exclusions or exchanges may be made,
should

should be safeguarded against amendment except by Order-in-Council. You will notice that the draft enclosed does not in terms carry out that recommendation, but it does provide that no amendment of the Native Lands Trust Ordinance or of the Crown Lands Ordinance shall have effect unless the amending Ordinance has been approved for His Majesty's pleasure, and His Majesty has assented thereto. The draft Order-in-Council provides for the main general principles and I think that together with the Native Lands Trust Ordinance, and the requirement that an amending Ordinance must be reserved, it adequately safeguards the native lands and the rights of the native population thereto.

12. Clause 11 of the draft is intended to carry out, so far as may be, the suggestion put forward by the Commission in paragraphs 1644 and 1645 of their report. Clause 8 of the draft prepared in Kenya was directed to this end. From a legal point of view I am advised that the provisions of the draft Order could not be held

C. O.

- Mr.
- Mr.
- Mr.
- Sir H. Moore.
- Sir G. Tomlinson.
- Sir C. Bannister.
- Sir J. Shackburgh.
- Parlt. U.S. of S.
- Parlt. U.S. of S.
- Secretary of State.

DRAFT.

FURTHER ACTION.

held to affect in any way the provisions of the Orders-in-Council mentioned in paragraphs (a) and (b) of Clause 11. In view, however, of the Commission's express recommendation it appeared to me desirable to insert some such clause as a derogatory measure in order to avoid the raising of any possible doubt hereafter. Paragraph (c) of clause 11 is intended to make it clear that nothing in the Order is to affect existing powers to regulate the use of land e.g. such as exist under the Crop Production and Livestock Ordinance 1952. Here again I was advised that the provisions of the draft Order do not affect these powers in any way, and the paragraph has been inserted in view of the Commission's recommendation. But it is possible that certain provisions of the Native Lands Trust Ordinance might be held to affect existing Ordinances in this

this respect, and I shall be glad if your
advisers will consider whether the wording
of clause 58 of the Ordinance is apt to prevent
this. The terms of paragraph (c) of clause 11
of the draft Order might then well follow the
wording of clause 58 of the Ordinance.

13. The draft has been discussed with
Mr. Harragin and is, I think, suitable for its
purpose, but I shall be glad to have any comments
which you may wish to make, after consultation
with your advisers, before it is laid before
His Majesty in Council. 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,
~~as~~ ^{cannot} the text of it ~~ought not to~~ be published.

I have, etc.

(Signed) W. ORMSBY GORE.

39 13
12

~~60~~ E

Draft Native Lands Order in Council.

Whereas a Commission was appointed in the year 1932 to enquire into and report upon the claims and needs in respect of land of the native population in the Colony and Protectorate of Kenya, and certain other matters: And whereas in order to satisfy all such claims and needs the Commission has made certain recommendations to which it is expedient to give effect in manner hereinafter appearing:

Now, therefore, His Majesty, in pursuance of the powers vested in him by the British Settlements Act, 1887, and the Foreign Jurisdiction Act, 1890, 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 (Native Lands) Order in Council, 1937.
2. (1) In this Order unless the context otherwise requires:-

"Colony" means the Colony and Protectorate 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;

"Chief Native Commissioner" means the person for the time being lawfully discharging the functions of Chief Native Commissioner in the Colony, and includes the person for the time being lawfully discharging the functions of any officer whom the Governor shall by Notice in the Gazette declare to be appointed

Copy to Kenya (13)

appointed in place of the Chief Native Commissioner;

"Trust Board" means the Native Lands Trust Board established in pursuance of Section 3 of this Order;

"Crown Lands Ordinance" means the Crown Lands Ordinance, Chapter 140 of the revised edition of the Laws of Kenya, as amended by the Crown Lands (Amendment) Ordinance, 1929, the Crown Lands (Amendment) Ordinance, 1934, and the Crown Lands (Amendment) Ordinance, 1937.

"Gazette" means the official Gazette of the Colony.

(2) In this Order references to the Native Lands Trust Ordinance, 1937, and the Crown Lands Ordinance shall include any Ordinance which may be enacted to amend or replace the same provided that such Ordinance shall have been reserved for the signification of His Majesty's pleasure thereon and His Majesty's assent shall have been given thereto.

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

3. There shall be areas of land in the Colony to be known as the Native Lands, the Temporary Native Reserves, and the Native Household Areas.

4. (1) The Native Lands shall be the areas of land described in Government Notice No. _____ published in the Gazette dated _____ and they are hereby vested in the Trust Board.

(4)

14

(2) The Native Lands are hereby divided into the nine Native Land Units specified in the said Government Notice and the Trust Board shall hold the Native Land Units in trust for the native tribes as set out in the said Notice.

(3) Except as provided in the Native Lands Trust Ordinance 1937, the areas of land comprised within the Native Lands and the Native Land Units shall not be altered:

Provided that the Governor may with the consent of the Trust Board make adjustments of the boundaries of the Native Land Units where the Board is satisfied that any such adjustment is of a minor character and in the interest of the native population.

(4) The Native Lands shall be administered in accordance with the provisions of the Native Lands Trust Ordinance, 1937, and shall be subject generally to the provisions of that Ordinance.

(5) The definition of "Crown Lands" contained in Section 2 of the Kenya Colony Order in Council 1921 shall no longer apply to the Native Lands.

(6) Nothing contained in this section shall be taken to affect the provisions of the Mining Ordinance, 1933, whereby the property in minerals and mineral oils is vested in the Governor in trust for His Majesty, nor the provisions of the Water Ordinance, 1929, whereby the property in water is vested in the Crown.

5. The Native Lands shall be subject at all times to all such rights in respect of land as are or may be enjoyed by native tribes, groups, families or individuals by virtue of existing native law and custom, or any subsequent modification thereof in so far as such rights are not repugnant to any law

law from time to time in force in the Colony.

6 (1) The Temporary Native Reserves shall be such areas of land as are temporarily reserved for the use and enjoyment of the native population in accordance with the provisions of the Crown Lands Ordinance.

(2) The Temporary Native Reserves shall continue to be Crown lands and they shall be subject to the provisions of the Crown Lands Ordinance.

7 (1) The Native Leasehold Areas shall be the areas of land described in Government Notice No. _____ published in the Gazette dated _____ and except as provided in the Crown Lands Ordinance the areas of land comprised within the Native Leasehold Areas shall not be entered.

(2) The Native Leasehold Areas shall continue to be Crown lands and shall be subject to the provisions of the Crown Lands Ordinance.

8. (1) There shall be established in the Colony a Board which shall be known as the Native Lands Trust Board.

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

(a) The Native Commissioner.

(b) The President of the Board.

(c) Two Nominated Unofficial Members of the Legislative Council of the Colony, appointed from time to time.

(d) Any Instructions

issued by His Majesty under the Royal

Sign Manual and Signet to the Governor to

represent the interests of the African

community

community on such Council;

(c) One of the European Elected Members of the Legislative Council of the Colony who shall be chosen from time to time by the European Elected Members at a meeting of the Legislative Council;

(d) A person from time to time nominated by the Governor, who shall not be a person holding office in the public service of the Colony nor a member of the Executive or Legislative Councils of the Colony.

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

(4) The President and two other members of the Board shall form a quorum, and the Board may regulate its proceedings as it thinks fit provided that on any matter upon which the votes of the Board are equally divided the President shall have a second or casting vote.

(5) The Trust Board shall be a body corporate with power to hold lands in the Colony and may sue and be sued.

9. (1) It shall be the function of the Trust Board -

(a) to protect the interests of the natives of the Colony in the areas of land mentioned in Section 3 and in particular to make representations to the Governor when in the opinion of the Trust Board anything in relation to the administration, management, development or control of the land in the said areas is not in the best interests of the said natives;

(b) to advise the Governor upon any matter relating to the areas of land mentioned in Section 3 which he may refer to the Board;

(c) to exercise any power or perform any duty which may be conferred or imposed on the Board by the Native Lands Trust Ordinance, 1937, the Crown Lands Ordinance or any other law for the time being in force in the Colony.

(4) The Trust Board may in any matter in regard to which the Native Lands Trust Ordinance 1937 or the Crown Lands Ordinance so provides delegate its powers and duties to the Chief Native Commissioner.

10. Except as provided by the Native Lands Trust Ordinance 1937, all existing native rights, whether such rights relate to tribal, group, family or individual holdings, in any land in the Colony (but not in the Protectorate) situate outside the areas of land mentioned in section 3 are hereby extinguished.

11. Nothing in this Order shall be taken to affect -

(a) the provisions of the Kenya (Annexation) Order in Council, 1920, the Kenya Colony and Protectorate (Boundaries) Order in Council 1921, and the Kenya Colony and Protectorate (Boundaries) Order in Council 1926, whereby the territories forming the Colony of Kenya were annexed to, and made to form part of His Majesty's dominions, and the boundaries of the Colony and Protectorate defined;

(b) except as provided by Section 4(4) hereof, the provisions of the Kenya Colony

Order

Order in Council, 1921;

x Kenya to consider this.

(c) Except as expressly provided herein, the provisions of (any law in force in the Colony relating to land.)

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

The definition of Trust Board should run as follows:-

"Trust Board" means the Board which may be established as Native Lands Trust Board in accordance with the provisions of any Order of His Majesty in Council".

And the definition of "Highlands Board" will be the same mutatis mutandis. The Native Lands Units and the Native Leasehold Areas should be defined to mean respectively the areas of land which may be declared to be such by Order of His Majesty in Council and the definition of Highlands will be the same. The Temporary Native Reserves will be defined by reference to the Crown Lands Ordinance.

There should be a separate section dealing with the commencement of ^{the Native Lands Trust} this Ordinance which should run as follows:-

"This Ordinance shall not come into operation until Orders have been made by His Majesty in Council providing for the establishment of a Native Lands Trust Board and a Highlands Board and for defining the areas of the Native Lands Units, the Native Leasehold Areas and the Highlands, and shall thereafter come into operation on such date as the Governor shall by proclamation in the Gazette appoint."

Copy to Kanga 114

30/11/12

~~Memorandum on the Kenya Native Land Legislation.~~

60

12

Memorandum on the Kenya Native Land Legislation.

General.

The Native Lands Order in Council has been entirely redrafted. The object has been to put in the Order in Council the important general provisions which the Commission recommended should be the subject matter of an Order in Council. The rest will go into the Native Lands Trust Ordinance, ~~to be known as the~~ Native Lands Trust Ordinance.

The following amendments will be necessary in this draft Ordinance:-

Clause 2.

Definitions will be required of the Trust Board, the Highlands Board, the Highlands, the Native Lands, and the Native Land Units, by reference to the two Orders in Council. It will also be convenient to incorporate definitions of the Temporary Native Reserves and the Native Leasehold Areas. (see clause 69 as amended).

Clause 4 to 8 inclusive.

Will be omitted (see Order in Council)

Clause 9 (1) (d).

The words "in accordance with the provisions of this Ordinance" are not understood. It will probably be sufficient to say simply "co-opted at any time by the Board".

Clause 10 (line 1).

For "duty" substitute "function".

(line 3).

Omit "and responsibilities".

Clause 13.

Clause 13. Proviso.

Insert between "may" and "effect" the words
"by Notice published in the Gazette".

Clause 14.

In view of Clause 54 (6) of the draft Crown
Lands Ordinance this can be omitted.

Clause 15.

The word "European", should be omitted from this
and all similar references to the Highlands Board.

Clause 16(2).

It appears that it will be necessary where
land is required for public purposes and is not to be
leased that the Governor's declaration must come before
the setting apart; compare Clause 31 (1)

Clause 16(3).

The words "be deemed to term" should be
altered to "remain".

Clause 17 (1).

This sub-section should apparently begin with
the words:-

"When it is desired that and should be set
apart in accordance with the provisions of this
Ordinance, application shall be made to the
Provincial Commissioner in writing".

Sub-sections 2 and 3 should be transposed and
the new sub-section 2 should run as follows:-

"Residential

"Residential sites engaged in any trade or industry may be included in the area to which the application relates". (This alteration is made because it is thought that it may be necessary to set apart residential sites for purposes, for example, of a factory as well as for mining).

Clause 21.

Paragraph (3), which should begin with the words "when the land is to be leased" (in order to exclude the cases e.g. when the land is to be acquired for public purposes, when no lease will be granted), should be transposed to come after paragraph (4).

Clause 25(2) (line 5).

Substitute "awarded" for "held". Insert "and" before "subject". substitute a comma for full-stop after "Ordinance". omit "such". It is not understood why this subsection is made subject to the provisions of section 30 of this Ordinance.

Clause 25 (5).

Should run "All sums of money awarded as compensation".

Clause 27(4) (line 5).

This sub-section should read "The natives as may be entitled thereto under Section 24".

Clause 28(1) The words "Save as is provided in Section 30 of this Ordinance" appear to be unnecessary.

Clause 29.

21

Clause 29.

For "Sections 27 and 28" substitute "this Part of". It will then be open for the District Commissioner to decide that any lump sum may be paid over to the native in instalments.

Clause 30.

The marginal note should be:-

"Setting apart for local public purposes".

Clause 30 (1) (c).

This gives the Provincial Commissioner power to set apart "for any purpose" where there will be a return in rent. Presumably there will then be a lease granted under clause 16, and it should be considered whether the power to grant leases conferred by Clause 16 is wide enough for this purpose.

Clause 30 (3).

It appears that this should be "In respect of the setting apart of any land under this section, compensation shall be payable in accordance with the provisions of Sections 24 and 25 of this Ordinance, save that" etc.

Clause 31.

In marginal note insert "general" before "public".

Clause 32(1).

Should read "Notwithstanding anything in this Part contained, but subject to the provisions of Sections 24 and 25, a Provincial Commissioner may set apart from the Native Lands any land which is required for a public railway, tramway or road, or for a tramway or road of access. For the purposes of this sub-section tramway or road of access shall mean a tramway or road which gives access -"

At the end of paragraphs (a) and (b) "and" should be "or" and omit "contiguous" from paragraph (b)

Clause 33(1)

Clause 33(1).

For "settled by one outright payment" substitute "payable in accordance with the provisions of this section".

Clause 34.

It is understood that where land is to be declared to be a forest area there will be no need to set apart the land under this Ordinance. If this is so, Clause 34 could more conveniently be placed in Part VI of the Ordinance.

Clause 34(1)

Should then be altered to read "Notwithstanding anything contained in this Ordinance land in the Native Lands may with the consent of the Trust Board be declared to be a forest area", etc.; and the first twelve words of sub-section (2) should be omitted.

Clause 36(3).

There is a further proviso to come here, see despatch on 3006/436. N° 217 of 4/6/7.

Clause 36(5).

This sub-section should run "In any case..... under this section the Governor may refer the matter to the Secretary of State whose decision shall be final".

Clause 38 .

Under sub-section (2) the native whose private rights are extinguished is entitled to an option for compensation or residence in the added area. Since he would apparently already be entitled to reside there under sub-section (1), the Proviso to sub-section (2) might be deleted.

Clause 38(1) line 7.

Insert after "entitled" the words "so far as may be practicable".

Clause 38(2) Proviso.

Clause 38(2) Proviso.

Insert after "reside" the words "if practicable"

Clause 39(1)

As the Native Lands are vested in the Trust Board there seems to be no need for the words "for and on behalf of the Governor", and they should be omitted. But insert after "lease" the words "of the Native Lands to be".

Clause 41, line 7.

Omit "always".

Clause 42.

For "Governor" substitute "Provincial Commissioner throughout this Clause and add a new subsection (4) as follows:-

"An appeal shall lie to the Governor from any refusal of the Provincial Commissioner to give his consent under this section".

Clause 43(1)

Should read "where a lessee under this Ordinance desires to change the user of any land comprised in his lease" etc.

Sub-section (3) should run "where the land in respect of which any such application is made exceeds 10 acres in extent the Governor shall, before making his decision, consult the Trust Board". It is felt that it is unnecessary to bring in the Secretary of State here.

Clause 44.

In line 6 after "implied" insert "or any change of user not authorized under Section 43", and in line 10 after "committed" insert "or the change of user which is alleged".

Clause 45(1)

Add a proviso that any licence granted under paragraph (a), (b) or (c) shall be granted for a period not exceeding twelve months at any one time.

Clause 45(7) Proviso.

Clause 45(7) Proviso.

Omit the provision requiring reference to the Secretary of State.

Clause 49(1).

This sub-section is felt to be too wide and should be omitted.

Clause 49(2).

The words "more particularly" at the beginning should be omitted and there should be added the following proviso: "Provided that no such order shall be made unless the Governor is satisfied that sufficient land for the accommodation of the native in such Native Land-unit is available and that provision for compensation for disturbance has been made".

Clause 50(2).

Insert after "provisions of" Sections 24 and 25 of, and after "damaged" in line 6 delete the semicolon and substitute "and".

Clause 52(1) and (2).

Insert the words "and without negligence" after "in good faith".

Clause 54(1).

Omit "by or on behalf of the Governor".

Clause 57.

The last two lines should be omitted since the jurisdiction of the Courts must clearly not be excluded altogether.

Clause 54(1), second line.

After "may" insert "with the advice and consent of the Trust Board".

Clause 54(1), paragraph (f) (iv).

Should be "The method of collecting the rents for leases and the persons or bodies to whom such rents are to be paid."

Sub-section (3) should be omitted.

Clause 66.

Should begin with the words "Except as expressly provided in this Ordinance nothing herein contained".

Clause 69(1), line 4.

After "Native lands" add "the Temporary Native Reserves and the Native Leasehold Areas". Add the following further proviso after the first proviso:-

"Provided further that no native shall be compelled to remove himself from such land except by order of the Governor made in accordance with Section 49 of this Ordinance".

Paragraph (b). "labour tenants" should be "resident labourers", and, in order to prevent any doubt the words "until the termination of the contract" should be added at the end of (b); there should also be added as paragraph (d) "Native Rights in the Protectorate".

Clause 69(2).

The words "for whom no specific Native Reserve has heretofore been set aside and" appear to be irrelevant, the question being solely whether a specific Native Land Unit has been provided under the Ordinance. If this is so the words should be omitted.

The following further points arise:-

1. It has been thought unnecessary to incorporate in the Order in Council Clause 16 of the Kenya draft Order, except for the first phrase. The rest of this Clause should therefore be inserted in the Ordinance (it will probably conveniently come in Part VI). It is for consideration whether sub-section (2) is necessary, but if so it is suggested that it should read "Any costs incurred by or damages awarded against the Trust Board in connection with any legal proceedings shall be paid" etc.
2. In the same way it has been thought unnecessary to incorporate in the Order in Council Clause 16 of the
Kenya

Kenya draft, and therefore this Clause should also appear in the Ordinance. The words "by virtue of the trusteeship of the Native Lands" seem however to be redundant, and it is for consideration whether the word "landowner" is the appropriate one; in view of the provisions of the Water Ordinance possibly "landholder" would be better, and a reference to that Ordinance may be thought necessary.

3. Clause 9(2) of the draft Order in Council gives a general power to the Trust Board to delegate, and it will be necessary to provide in the Ordinance for the occasions on which the Trust Board may delegate. Clause 20 of the draft Ordinance contains a power to delegate in one particular respect but it will probably be considered necessary to incorporate in the Ordinance Clause 17 of the Order in Council as drafted by Kenya.

4. Clause 14 of the Order in Council as drafted by Kenya should also be incorporated in the Ordinance (compare Clause 45 (5) of the draft Ordinance).

~~5. It is important to take care that neither the Order in Council nor the Ordinance will restrict the powers of the Governor which already exist to control the development etc. of land, for example, under the Crops Production and Livestock Ordinance 1926 and all similar powers. Clause 28 of the Ordinance contains a saving in this respect, and Clause 11(c) of the draft Order in Council has been framed to meet this point. It should be carefully considered whether the wording in both cases is appropriate.~~

Crown Lands Amendment Ordinance.

Clause 2.

Definitions will have to be inserted as suggested in the case of the Native Lands Trust Ordinance,

New Clause 24(1).

It is suggested that sub-sections (1) and (2) be run together to read "Subject temporarily"

temporarily reserved for the use and enjoyment of the native tribes specified in the fourth Schedule, and shall be known as "The Temporary Native Reserves".

Sub-Section (7) of the New Clause 54.

Should read "if any such area of Crown land is situate in the Highlands it shall not be set aside except with the consent of the Highlands Board".

New Clause 55.

Sub-sections (1) and (2) appear in the Order in Council and should be omitted.

Sub-section (3). - In the references to Highlands "European" should of course be deleted and paragraph (c) should be omitted.

New Clause 56(1)

Insert after "may" the words "with the advice and consent of the Trust Board".

Paragraph (a) for "and for prescribing conditions relating to" substitute "including", and for "any breaches of any such conditions" substitute "failure to comply with such rules".

Paragraph (b). It is suggested that it is unnecessary to set out all these particular subjects and that the rule-making power under this paragraph should be conferred in general words.

Sub-section (2). It is suggested that the penalties imposed under this sub-section should be brought into line with the penalties imposed under Clause 59 of the Native Lands Trust Ordinance.

Sub-section (3) should be deleted.

New Clause 57 (1).

The reference here should be to the Native Lands Grazer in Council.

New Clause 58(2)

It is suggested that provision should be made for compensation for disturbance. Compare section 15(3)(ii)(c) of Ordinance 9 of 1930.

temporarily reserved for the use and enjoyment of the native tribes specified in the fourth Schedule, and shall be known as "The Temporary Native Reserves".

Sub-Section (7) of the New Clause 54.

Should read "if any such area of Crown land is situate in the Highlands it shall not be set aside except with the consent of the Highlands Board".

New Clause 55.

Sub-sections (1) and (2) appear in the Order in Council and should be omitted.

Sub-section (3). In the references to Highlands "European" should of course be deleted and paragraph (c) should be omitted.

New Clause 56(1)

Insert after "may" the words "with the advice and consent of the Trust Board".

Paragraph (a) for "and for prescribing conditions relating to" substitute "including", and for "any breaches of any such conditions" substitute "failure to comply with such rules".

Paragraph (b). It is suggested that it is unnecessary to set out all these particular subjects and that the rule-making power under this paragraph should be conferred in general words.

Sub-section (3). It is suggested that the penalties imposed under this sub-section should be brought into line with the penalties imposed under Clause 59 of the Native Lands Trust Ordinance.

Sub-section (3) should be deleted.

New Clause 57 (1).

The reference here should be to the Native Lands Order in Council.

New Clause 58(2)

It is suggested that provision should be made for compensation for disturbance. Compare section 15(3)(ii)(c) of Ordinance 9 of 1930.

Clause 4.

The reference should be to the Native Lands Ord
in Council.

Colonial Office
October 1937

~~6/2/37~~

~~6/2/37~~

K

1/11/32

2-98

Flag 5/6/32
300

Mr. Dale has re-drafted the Native Lands Order-in-Council and I have submitted a separate minute on the subject. It is now necessary to consider the Native Lands Trust Ordinance which is to replace the present Kenya Lands Trust Ordinance and will serve to implement the provisions of the Native Lands Order-in-Council. In the draft as submitted by Kenya there was a great deal of repetition, several clauses being put into both the draft Order-in-Council and the draft Ordinance. This procedure is ~~of course~~ wrong ~~as it might lead to doubt about the validity of the clauses which were reproduced in both.~~ ^{on the reasons explained elsewhere} Mr. Dale has submitted a memorandum showing the various changes in the draft which are contemplated, and I do not want to add anything to them. In four points Mr. Dale suggests that some things which Kenya wanted to put into the Order-in-Council should be put into the Ordinance, ^{and} in all ^{the} cases the proposed ~~action~~ seems to be a distinct improvement since the Ordinance is the most suitable place for such matters.

There is, of course, a lot of politics connected with this legislation. Up to now the Kenya Native Lands Trust Ordinance of 1930, with its amendment introduced in 1936, has been in force. The Ordinance in question was very rigid in form. In particular, it prescribed that the areas of land which had been gazetted as Native Reserves were set aside for the use and benefit of the native tribes "for ever", and no land in a Native Reserve could be leased or disposed of unless the Trust Board were satisfied that the natives had been

informed

Mr. Dale has re-drafted the Native Lands Order-in-Council and I have submitted a separate minute on the subject. It is now necessary to consider the Native Lands Trust Ordinance which is to replace the present Kenya Lands Trust Ordinance and will serve to implement the provisions of the Native Lands Order-in-Council. In the draft as submitted by Kenya there was a great deal of repetition, several clauses being put into both the draft Order-in-Council and the draft Ordinance. This procedure is of course wrong as it might lead to ^{the same clauses} ~~to doubt about the validity of the clauses which were reproduced in both.~~ Mr. Dale has submitted a memorandum showing the various changes in the draft which are contemplated, and I do not want to add anything to them. In four points Mr. Dale suggests that some things which Kenya wanted to put into the Order-in-Council should be put into the Ordinance, and in all ^{these} cases the proposed action seems to be a distinct improvement since the Ordinance is the most suitable place for such matters.

There is, of course, a lot of politics connected with this legislation. Up to now the Kenya Native Lands Trust Ordinance of 1930, with its amendment introduced in 1936, has been in force. The Ordinance in question was very rigid in form. In particular, it prescribed that the areas of land which had been gazetted as Native Reserves were set aside for the use and benefit of the native tribes "for ever", and no land in a Native Reserve could be leased or disposed of unless the Trust Board were satisfied that the natives had been

informed about it, that the natives would derive benefit from the grant of the lease apart from any revenue which might accrue therefrom, and that the land was not likely to be required for native use during the currency of the lease. In addition, licences might be granted for such things as grazing cattle, removal of timber (i.e. in practice cutting down a tree), and taking sand or stone. Further, the Governor could exclude from a Reserve any land required for various public purposes, provided that everybody concerned consented, subject to reference to the Secretary of State if the Government wanted to exclude the area and the local Board objected, but when land was excluded for such purposes the Governor had to add to the Reserve from suitable and, if possible, contiguous unalienated and unreserved Crown Land an area equal in extent and as far as possible equal in area.

The results of this were strange and I am not sure that they were altogether foreseen. It was pointed out at the time the Ordinance was being enacted that it was very rigid, but I remember seeing a minute by Lord Passfield or Dr. Drummond Shiels to the effect that the idea was to make it rigid and awkward to work as far as alienation of native lands was concerned. The object was no doubt laudable in preventing native lands being likely to be alienated, which has been the source of much trouble elsewhere, but in

practice

practice it led to stagnation.

To begin with, land could not be leased unless the native got some advantage out of it in addition to rent. The result of that was that it was impossible to grant a lease of one-quarter of an acre for a pump house to supply water to an estate just outside a Native Reserve because the site of the pump house was technically within the Reserve and it could not be contended that the natives were getting anything out of it except the rent.

When it came to mining development this proved much more serious. It could not be argued, or at least it wasn't argued, that the grant of leases for mining purposes would benefit the natives apart from the revenue which would accrue to them, and therefore there was a sort of deadlock.

Secondly, it was not possible to exclude land temporarily from the Native Reserves. There had been an idea that the land wanted for mining purposes in the Kavirondo should be excluded, but then if it had been an area of land of equivalent extent and equivalent value, if possible, would have had to be added to that Reserve, and then when the land was no longer required for mining there was no provision by which it could revert to the reserves and the added substitute revert to being Crown Land. This was got over by amendments to the Land Trust Ordinance allowing the Governor to make a temporary exclusion for mining purposes with a temporary counterbalancing addition, and also by providing for the procedure known as "setting apart". This

setting

31

setting apart arrangement was the idea of the Kenya Land Commission and the difference between it and exclusion was that land set apart for the purpose of mining continued to be part of the Native Reserves and when the mining lease was up the setting apart automatically expired.

The Land Commission have devoted a whole chapter (Part III, Chapter 5, Sections 1698-1825) to the working of the Lands Trust Ordinance. First of all they pointed out that the inclusion of the words "for ever" in the Ordinance did not give any sanction against amendment and their proposal to guarantee the native lands by an Order-in-Council was in their opinion less pretentious but far more effective. This point has been discussed elsewhere and there is no need to elaborate it further.

The proposals now put forward deal with the revision and re-enactment of the Lands Trust Ordinance in order to provide fully for the rights of the natives and for the powers of Government in relation to alienation - whether permanent or temporary - of land which has been declared to be native lands. It is as well to make it clear at the outset that, though it is necessary to provide for the acquisition of land within Native Reserves by people who are not natives, yet it is not very likely that there will be many instances of such

applications

applications. The machinery proposed is highly elaborate but I, for one, have much doubt as to whether it will be used on anything like a large scale. Instances may arise where a small plot of land is required for a pump house (to take the case I have mentioned) or for a school or a hospital or something of that kind, and it may be noted that under the arrangements proposed it is necessary to go through the procedure of setting apart and payment of compensation for land set aside for a township, trading centre, market, Government school, hospital, station or camp (see Section 30 of the Ordinance). It appears that safeguarding native rights cannot go very much further since even the Government is to have no power to take a plot of land except by going through the recognized performance. Provision is made for compensation to any natives affected and where any native has private rights in land affected additional compensation calculated on the full value of the land plus 15% is to be payable in cash.

The power of setting apart is vested in the Provincial Commissioner in accordance with the recommendations of the Commission (see Sections 1226 and 1541). In the latter section the Commission expressly recognise that financial advantage can be brought in as well as other things since they say that no leases should be issued which are unlikely to benefit the natives, regard being had not only to the purpose for which the land is to be leased but also to the revenue to be derived. Under Section 18 of the Ordinance as drafted when the area of land

does

does not exceed 10 acres the Provincial Commissioner, subject to the approval of the local Board, may set it apart. An applicant whose application is refused may appeal to the Governor, whose decision is final. If the application is over 10 acres then the Central Trust Board has to approve the application and if it does not approve there is a reference to the Secretary of State (Section 19). If the area does not exceed 50 acres the Chief Native Commissioner may have power, if delegated to him by the Central Trust Board, to deal with the applications. Under Section 20 compensation must be paid before the application goes through, and the setting apart has to be gazetted in accordance with Section 23. Full compensation for disturbance, in accordance with the provisions of the existing law, is provided for under Section 24, and Section 25 deals with the extra compensation for private right holders. Section 27 deals with the payment of rent for mining leases, which rent is payable to the District Commissioner on behalf of the local Board in a lump sum to be assessed by the Provincial Commissioner as representing the total rent payable over the period of years for which the mining lease is to be granted, and the District Commissioner is responsible for making payments to individual natives who may be entitled thereto either as compensation for disturbance or compensation for right-holding.

32

Section 31 provides for setting apart land for public purposes such as reservoirs, water courses, aerodromes, electric power, telegraphs or any other purpose, and even here, too, the procedure of setting apart has to be gone through. Compensation in this case is to be payable by Government.

Section 32 provides for setting apart for railways, tramways and roads, including both public railways and roads and ~~possibly private tramways~~ or roads to give access to other properties. Here also the same procedure has to be followed.

Section 33 provides for the compensation in regard to railways, roads, etc. The Commission recommended in Section 1613 that the Lands Trust Board should not be able to veto proposals to set apart land for roads, bridges, railways or tramways, though it should have the power of making representations to the Governor and the Secretary of State, and it went on to say that the method of annual compensation was not applicable to such cases (obviously since the land would be permanently wanted), and they went on to argue that in the case of a road kept up by Government out of its general revenues compensation should be payable by the Central Government. If the cost of the road or any part of it was borne by the local Native Authorities then any compensation should be payable by them, provided that if a native road afterwards became a Government road there should be provision for repayment to the local Native Council of any sums which it might have paid as compensation for setting apart.

AN

An important matter in connection with native lands is forest reserves. This is dealt with by the Commission in Section 1618 and in Section 34 of the draft Ordinance. The existing Ordinance provides that the Central Board has to agree to the declaration of any land in a Native Reserve to be a forest. With this the Commission is in agreement since if all the Native Reserves were turned into forest there would be hardship to the inhabitants. But the law at present provides that no rules should be made about any forest area without the consent of the Board and the Commission very sensibly are of opinion that this reference is unnecessary and if the Board once agrees to the declaration of the area as forest it should not bother further about it.

Part IV of the Ordinance provides for permanent exclusions of land for public purposes. The Commission was generally of opinion that setting apart is much more suitable than exclusion for securing land for public purposes (see section 1517), but thought that exclusion should still remain a possibility. Apparently the draft Ordinance provides for permanent exclusions for public purposes and for temporary exclusions for mining purposes. In the case of exclusions the existing provision that an equivalent amount of land shall be added to the native lands is retained, and there is a proviso that land in the Highlands must not be added unless the

Highlands

Highlands Board consents. As drafted, the section provides that if the Highlands Board did not agree to the addition of Highlands to the Reserve the Governor might refer the matter to the Secretary of State for final decision. It seems ~~better~~^{smarter}, however, in view of ~~possible~~^{good} feeling among the Europeans, to ~~leave~~^{grant} them an absolute power of veto to the transfer of their lands to Native Reserves. It is not to be expected that there will be many cases where Government will want to add land included in the Highlands to Native Reserves as compensation for something taken away elsewhere, and if any do arise there would almost certainly be cases of exchange where the Highlands Board would not be expected to prove unreasonable. ~~but agreed over it~~

Part V of the Ordinance provides for the grant of leases and of licences. It is provided that the Chief Native Commissioner may execute leases, that buildings erected on leased land shall at the end of the lease return to the Trust Board if not removed by the lessee under certain conditions, and Clause 42 provides against lessees alienating the land covered by their lease without the consent of the Provincial Commissioner, subject to appeal to the Governor against the Provincial Commissioner's decision. If the lessee wants to change the purpose for which the land was leased to him he has to apply in writing and the Provincial Commissioner has to consult the local Board and seek the approval of the Governor, and where the land exceeds 10 acres the Governor must consult the Trust Board. Clause 45 maintains the existing provisions in

regard

which could be done
by omitting the reference
to the 5th of 8

finally thought it
best to retain the reference
but I have put the same
in the draft despatch

regard to licences for grazing cattle, removing timber, etc., but it is thought well to add the existing provision that such licences can only be issued for a period of twelve months at any one time.

The miscellaneous provisions in Part V are very important in one or two instances.

Section 47 as originally drafted was in three sub-sections. The first one provided that notwithstanding anything contained in any other law the Governor at any time may do all things necessary for the purpose of giving full effect to the provisions of this Ordinance. This may mean anything, everything or nothing, but in discussion it was considered that the powers conferred thereby were far too wide and general in terms, and really unnecessary. It is therefore suggested that it should be deleted.

Sub-section 2 is the one which will give a good deal of trouble. It is the power required to implement Section 10 of the Native Lands Order-in-Council, which provides for the extinguishing of native rights outside the Reserves, and the way in which it is done is to give the Governor power to order any native who is not resident in the native land unit provided for his tribe to remove himself forthwith into such native land unit.

It will be seen at once that the result of this is to empower the Governor to direct any natives to clear out of wherever they may be and betake themselves into the Native Reserve provided. This power is necessary unless the recommendation about extinguishing native rights is to become a dead letter, and it will unfortunately have to be exercised in a few cases. It may be expected that the cases in question will cause an immense amount of trouble and noise, but I do not see what else can be done. The Commission considered the point very carefully, as I have said in the note about the Order-in-Council, and it is necessary to provide this power if any settlement is to be reached in regard to this question.

It occurred, however, to us that it might easily be the case that there would be no land available within the native land unit, and we therefore suggest the addition of a proviso to the following effect:-

"Provided that no such order shall be made unless the Governor is satisfied that sufficient land for the accommodation of the native in such native land unit is available and that provision for compensation for disturbance has been made".

The insertion of this proviso will at least prevent the awkward case where a native is ordered to remove himself into a Native Reserve which is already full up, and should prevent any unduly arbitrary actions. It will also, be it noted, enable resident native labourers to be removed back to their Reserves at the end of their term of occupancy, whether they want to go or not.

The power conferred is certainly wide and sweeping, but I think that Government can be relied upon to exercise it with due caution and without inflicting hardship except in so far as some degree of hardship is inevitable, and if such power is not conferred it will be impossible to implement the Commission's recommendation in one of its most important points. They do not specifically recommend in Section 1854 of the Report that the natives shall actually be removed, but the contemplated removal is perfectly clear from their statement that existing right-holders should not be disturbed until they have reaped their crops, and in Section 1853 they say that the number of persons who come under Section 86 of the Crown Lands Ordinance and are still living on the farms is not more than two or three hundred all told, and Section 1856 says that the disturbance likely to take place in other areas is almost negligible. It is clear, therefore, that the Commission did face the consequence of their recommendation that rights should be extinguished outside the Reserves and that they did contemplate the removal of the natives affected.

It will, of course, be said that the Governor is not to have power to hound any natives from anywhere into Reserves. This is not so. It will be noted that the section only deals with a native who is not resident in the native land unit provided for his tribe. The

*That is the Commission's view
It is now known that
there are many more
to be removed about 400
families as that is the
number affected will be
somewhere about 1000 of
more. As a result the
Commission's report will be
imperfect.*

effect

effect of this is that it is only natives belonging to tribes for whom land is specially reserved who can be turned out: a native belonging to another tribe for whom a Reserve is not provided would not be affected at all, since he would have no native land unit to which to go. There cannot, however, be very many such, since, outside the Reserves, most of the natives involved will be in the Northern Frontier Province and the Turkana Province. It is not very likely that anybody will want to interfere with them, nor will there be any good reason for doing it.

Section 50 gives power to Government to remove stone and other minerals and carry pipe-lines and things across native lands, subject to payment of compensation where any damage is done.

Section 52 gives wide indemnity to authorized persons performing acts in good faith for the purpose of carrying into effect any of the provisions of the Ordinance. It is suggested that the words "and without negligence" should be inserted.

Section 53 gives a tremendously wide indemnity for any acts done by Government before the coming into force of the Ordinance in regard to any matter relating to its purpose. This is probably necessary because in the course of the various adjustments which have been going on for the last two years a good many things may have been done which, though quite legal under the Ordinance, would savour rather of arbitrary executive action if challenged in Court without the cover of the Ordinance. I am thinking of such things as

adjustments

adjustments of boundaries, granting way-leaves and so forth, a good many of which must have been done.

In Section 57 it was provided that no appeal shall lie from any decision given or order made or matter done under the Ordinance except where provision to the contrary is expressly made. This is wide enough, but they went on to say that the Ordinance "shall be final and shall not be liable to be contested by suit or otherwise". This seems far too wide as it would completely oust the jurisdiction of the Court and therefore we suggest that it should be omitted.

Section 61 reproduces the existing provisions against the unauthorized occupation of land in the native lands, with an added provision that nobody shall be deemed to be a trespasser unless he could be proceeded against for trespass or unlawful occupation of land under the provisions of the Ordinance or any other law. This is a curious provision in itself but is explained by Section 1667 of the Commissioner's Report. They pointed out that a tendency had arisen, notably, of course, among the Kikuyu, for natives to tell Europeans who happened to be in the native lands fishing or picnicking to get off them. The Commission's view is that while natives are entitled to protection under the ordinary law of trespass, any person should have the right

to go along any footpath or any uncultivated land and to picnic or camp on any land not fenced or planted, provided that any damage done is made good, and that there should be a limit of occupation for camping purposes of 48 hours without a permit, and they also considered that fishing should be allowed. This seems sensible and reasonable.

Rule making power conferred on the Governor in Section 64 is wide. The existing Lands Trust Ordinance provided that the Governor, with the advice and consent of the Central Board, might make rules "for the purpose of carrying this Ordinance into effect". The draft as originally produced provided that the Governor might make rules of his own but without consulting anybody so we think it well to add the words from the present law "with the advice and consent of the Trust Board". The reason for this is that the powers conferred are so wide and may touch native life so closely that we think the Board ought to be consulted and give its approval. In order to remove any possible doubts it is expressly provided that the Governor may make rules for controlling the occupation and use of the lands for grazing stock, for compulsorily reducing numbers of stock, calculating the re-conditioning of land and the use and conservation of any area in the native lands. These powers may seem very wide, but they are absolutely essential if the Government is to be able to take on any comprehensive campaign against soil erosion. It will not be the slightest use preserving the rest of Kenya from erosion and over-grazing

over-grazing if in the Native Reserves the accumulation of stock was allowed to get to such a point that the country would become desert and erosion continue. The Native Reserves are very large in area and occupy a great part of the most fertile land in Kenya, and it would be impossible if they became badly eroded to prevent the evil spreading to the much smaller European Highlands. There is also the danger of cattle disease and the risk that by the undue multiplication of stock the natives will eat up reserves so that they will not be able to contain themselves within their borders, which will lead to incursions into the highlands, the forest Reserves and other areas. Accordingly there can be no doubt that this rule making power is necessary, and it seems advisable to mention these specific objects in these cases of major importance. The draft provides that all rules should be forwarded to the Secretary of State with whom shall lie the power of disallowance, but we think this is unnecessary. There is far too much Secretary of State and far too little Governor about things in Kenya.

The final part of the Ordinance, Part VIII, also has a few interesting provisions. Section 67 provides that in respect of the occupation, use, control, inheritance, etc., of any land in the native lands, every native tribe, group, family or individual shall have all the rights which they enjoy by virtue of existing native law or any subsequent

modifications

31
modifications thereof. This is a curious looking provision but it is taken from the Commission's Report in Section 1796. What the Commission was after was that the tribes grouped within any particular land unit would normally have very much the same customs in regard to the use or disposal of land, but they had to envisage the possibility of other tribes or groups settling in the native lands and having different land customs. Accordingly they suggested the insertion of this express provision allowing for evolution, modification and the retention of particular customs by immigrants. Mr. Harragin explained to us that there was quite a good deal of infiltration going on, especially by Kikuyu who were settling in other Native Reserves and indulging in trading. There thus are springing up small settlements of Kikuyu in various places, with the full knowledge of the surrounding inhabitants, and it would be inevitable that those Kikuyu would wish to retain their own arrangements in regard to the devolution of land and not adopt the wholly unfamiliar forms dear to the other tribe among which they might be living. Mr. Harragin said that it was not generally realized how far this process was spreading, but he assured us that it was on the increase.

Section 68 deals with the forfeiture of land in the case of treason or rebellion. This is in accordance with the expressed recommendation of the Commission in Section 1796 where they recommend a clause that native land may be escheated in the event of treason or rebellion and that such escheatment should apply either to tribal land or to land held by

groups

groups or families or even individual right holders. Accordingly Section 68 provides that in case of proved treason or rebellion the Governor may, in addition to any other punishment, order that the land is forfeited and reverts to the Crown, subject to the approval of the Secretary of State. We think that this provision may be left in the Ordinance, though it is, of course, perfectly useless since nobody could possibly deprive a native tribe of its land, thereby creating at once a problem of what to do with them, and if the land did revert to the Crown the only thing to do would be to allow the natives to go on living on it just as they were before. It is true that in 1915 the Kasigao were removed from their home and settled somewhere else on suspicion of assisting the Germans (they have now been allowed to go back), but I do not think that a similar process could be applied now.

Section 69 reproduces and gives further effect to the provision of the Order-in-Council extinguishing native rights, and provides that a private right holder shall have permission to reap his crops before removal, to which we suggest the addition of the further proviso that no native shall be compelled to remove himself except by order of the Governor made under Section 49. This serves to protect further the case of natives whom it is desired to remove, since Section 49,

if

38

if amended as we suggest, provides that the Governor must be satisfied that they have land to go to. There is a further proviso that nothing in this part of the legislation affects rights enjoyed by individual natives under any specific title, the rights of resident labourers, rights of grazing in forest conservations, where such exist, and we suggest ^(following the recommendation of the Commission) the addition of native rights in the Protectorate as distinct from the Colony. The kind of individual right contemplated is that where natives may have taken leases of Crown Land. We have come across one or two such cases and they are not as infrequent as might be expected. Indeed, with the improvement of native prosperity it may very well be that natives will take up unoccupied Crown Lands outside the Reserves.

There is a further proviso saying that this does not affect any native tribal community for whom no specific Reserve has heretofore been set aside and for whom no specific land unit is provided by the Ordinance, and preserves their right to occupy the areas of unalienated Crown Land in which they are resident at the date of the coming into operation of the Ordinance. This is intended to safeguard the rights of the Burkana, Galla, and other tribes in the Northern Province. There may be some doubt as to what the areas in which they are resident means since they are generally, or at least many of them are, nomadic. Does the area in which they are resident mean the whole area over which they roam, or only the particular area in which they happen to be at the time of the

Commission
3 1854
806 806

Ordinance

Ordinance? I think it obviously must mean the former, but the point is not really material, ~~though it should be mentioned in the Ordinance.~~

In Kenya's draft of the Order-in-Council they put in various provisions which seem unnecessarily meticulous for an Order-in-Council and more suitable for incorporation in the Ordinance. Mr. Dale deals with these matters at the end of his memorandum. As he says, it is particularly important to see that the Governor's general powers are not interfered with more than is expressly desired. In the draft Order-in-Council Section 11(c) preserves the Governor's rights under any other Ordinance, and Section 58 of the draft Ordinance says that nothing in this Ordinance shall be deemed to affect any other law relating to land or mining in the Colony, save in so far as other provision is expressly made. The Commission points out that it is important to retain the idea of sovereignty, and it is equally important to retain the Governor's powers under the various Ordinances which regulate the use of land.

With regard to the Native Lands Order-in-Council, the draft of which has been prepared, there is unfortunately a good deal to say. The original draft was prepared in Kenya and, of course, followed the phraseology of the Carter Report as closely as possible, even though the draftsmen had grave misgivings as to the necessity or desirability of doing so.

The recommendations of the Commission in this regard are worth looking at. First of all, having in Sections 1433-1440 recapitulated their main proposals, they proceeded in Section 1439 to say that the duties of the Land-Trust Board should be to maintain the integrity of the boundaries of the native lands and to make representations to the Governor or the Secretary of State if the area was not being administered and controlled for the use and benefit of the natives. In Section 1440 they proceeded to recommend that the native reserves proper should cease to be Crown Land and be called native lands. They then went on to say that the trust which the Board might have to discharge might conceivably involve the protection of the boundaries against the Government of Kenya. Therefore, the Commission ~~proposed to~~ recommend that the Board must be protected against the contingency that Government might amend the Ordinance at will and thereby alter the conditions of the trust. Accordingly, they recommended in Section 1441 that an Order-in-Council be sought "to protect against amendment those clauses of the Ordinance which:

- (i) declared the external boundaries of native reserves; and
- (ii) defined the conditions on which such

boundaries may be altered or amended." This is the first mention of the Order-in-Council idea. The idea has been accepted in the conclusions reached, since in Section 10 of the White Paper it is stated that if the boundaries are declared by Order-in-Council they could not thereafter be altered by local ordinance. "H.M.G. approve of this recommendation and propose that in due course these boundaries shall be declared by Order-in-Council." That pronouncement settles the situation as far as the policy is concerned, but it really is unnecessary. It is based on the assumption that neither the Land Trust Board nor the Government of Kenya is really to be trusted, and of course if we go on like that nobody can be trusted because you cannot provide by legislation for the complete finality of anything against amending legislation. That, however, is not a point, since it has been decided that there is to be an Order-in-Council and nothing else will satisfy the native population, while it is also very necessary for the purpose of extinguishing rights outside the reserves.

On this point, the relevant section is 184 of the Report where the Board recommended that, provided their recommendations for adding to native reserves and for paying compensation in other forms where they have recommended it were adopted, they advised the extinction of all native rights in land other than land gazetted as areas "A", "B" or "C". In paragraph 184B they stated that

final

final settlement would probably be best effected by Order-in-Council.

In the summary of their recommendations, they advised that the new Native Lands Trust Ordinance should be "safeguarded by Order-in-Council; not as to all its clauses but in all cardinal matters". What exactly this means is doubtful, and I do not think that the Commission was really very clear. In the case of a Colony (where there is no question of His Majesty making Orders in Council under the Foreign Jurisdiction Act) it is not possible to "safeguard" an Ordinance by an Order-in-Council, since the Colonial Legislature has full power, in accordance with the terms of the constitutional Instruments, to make Ordinances; and any amendment which it made of the original Ordinance would have full effect, notwithstanding the fact that it was contrary to the terms of an Order-in-Council. Accordingly, the draft does not attempt to follow out this particular recommendation, since to do so would have no effect so far as Kenya Colony is concerned. The policy has however been adopted of incorporating in the Order in Council the important general provisions, and leaving the detail to be worked out by the Ordinance.

The Commission also recommended that the Order-in-Council should define the boundaries of the nine areas of native lands which they recommend. Provision is made accordingly in the draft; and people will think that to alter boundaries would require an amendment of the Order-in-Council so that it is not necessary to say so in so many words. In any case if alteration is required it would be such the best course to have an amending Order.

The draft also provides for the definition of the "Native leasehold areas" and lays down that those

*In case of front
H.M.G. and
2/10/50 with an
O.C.*

Yes

*It may be
effected by an amendment
of the Commission
Order-in-Council
H.M.G.*

those areas shall be dealt with as provided in the Crown Lands Ordinance.

As regards the definition of the areas of the native lands, the only thing to do has been to follow the existing Native Lands Trust Ordinance and the procedure recommended for the Highlands Order-in-Council, and to say that the boundaries of the areas will have to be published in a Gazette Notice with a view to their being declared the boundaries under the Order-in-Council. In this connection, Kenya has recommended that what the Commission described as class "B.1" lands should all be added to the native lands just as if they were class "A". It is as well to set out what they meant by the various classes. Class "A" were lands which were considered by the Commission to be native lands, in that they never at all have been alienated and ought to be restored. Class "B" is sub-divided into "B.1" and "B.2". "B.1" are lands which the Commission thought should always be required by the tribes for their own use, and "B.2" will be areas which have been reserved but may not be required when the reserves have got re-conditioned, so as to be able to carry more people. They are called the "Temporary Native Reserves". Class "C" is what is called "Native Reserves Areas", and after all the other things, it amounts to three areas totalling 939 square miles. Class "A" is the rest of the place which is described as in the Highlands, and in it native and non-native are supposed to have equal rights in regard to the acquisition of land. The Government recommends that the Class "B.1" lands should be added to the native reserves, just as if they were Class "A", and seeing that on the Commission's own proposals "B.1" lands will be permanently required

41

required for the use of the tribes, there seems no reason why this recommendation should not be accepted. The result would be to simplify things considerably. The total amount of land involved is not very great. The Commission's proposals involve an addition to native reserves of Class "A" land amounting to 1474 square miles net, while the total in Class "B." is 1896 square miles, and in "B.2", only 259. The Commission's proposals why the Commission went to the trouble of this and did not simply recommend the addition to the native lands of the whole "A" and "B" areas together without any distinction.

Going through the draft Order-in-Council, the following comments may be made:

In Section 7(1) words ^{have been} ~~should be~~ added to make it clear that the Chief Native Commissioner means and includes anybody who is appointed to be Secretary for Native Affairs or whatever the animal the Chief Native Commissioner may afterwards turn into. In order to get round all the other variations, it is proposed that the Governor may have power to issue a notice declaring that for the purposes of these Orders and the Ordinance has assumed the functions of Chief Native Commissioner.

Section 3 describes the existence of native lands (i.e. existing native reserves, Class "A", plus Class "B.1"), temporary native reserves (i.e. Class "B.2"), and native leasehold areas (i.e. Class "C" - the 939 square miles specified in paragraph 1679 of the Report).

Section 4(1) refers to the Governor's notice to be published and vests the land in the Trust Board. The effect of this provision is to take

the lands so vested away from the Crown and vest them in the Board. The Board will then be the owner in trust for the natives, and that is further expressly defined in ^{Section} ~~Clause~~ 4(2) which divides the native lands into nine native land units (in accordance with the Commission's recommendation) and states that the Trust Board shall hold each unit in trust for the native tribe mentioned in the notice. The effect of this is that the native land units will be defined equally with the native lands as a whole, and the boundaries between one unit and another cannot be altered ~~except by Order-in-Council~~. This is in

accordance with the express recommendation of the ^{Commission} ~~Board~~ in Section 449 of their Report, though it will be seen that minor adjustments are recommended to be within the power of the Governor (Section 1450), ~~see also Section 4(3)~~.

^{Section} ~~Clause~~ 4(3) imports the provisions of the Native Lands Trust Ordinance, i.e. the Ordinance to be enacted concurrently with these documents, and lays down that, except as provided by that Ordinance, the ^{areas comprised within} ~~boundaries of~~ the native lands and the native land units shall not be altered. This provision would seem to carry out as far as may be possible the Commission's idea that the Order-in-Council should safeguard the provisions of the Ordinance against amendment.

^{Section} ~~Clause~~ 4(5) expressly removes the native lands from the definition of Crown lands; and Clause 4(6) has been added expressly to reserve the control of minerals and mineral oils in the native lands. This is very necessary

since

since it might be argued that the Crown had divested itself of any rights whatever over the native lands or the minerals thereunder which, of course, is not the intention of the Commission.

^{Section} ~~Clause~~ 5 is put in to give effect to the Commission's express recommendation in Section 1796 of their Report and is intended to provide for the case of natives with one variety of customs moving into and occupying land in an area belonging to another party.

Section 6 allows of the ~~gazette~~ ^{Transfer of Native Reserve} ment of areas of land from time to time as ~~land~~ ^{land}, subject to the provisions of the Crown Lands Ordinance. This fact should make it clear that the land in question still remains ^{Crown} ~~native~~ land, even though it may be wanted by the native reserve for perpetuity. Yet the idea at the back of it is that some time or other the tribe may cease to want the areas in question which ought then not to be native reserve but revert to the Crown. The situation is not a bit likely to arise, but it may as well be provided for.

Section 7(1) lays down that the boundaries of the native leasehold areas shall not be altered save as provided by the Crown Lands Ordinance, though the areas in question shall continue to be Crown lands.

Section 8 sets up the Trust Board. As to this, the existing Native Lands Trust Ordinance has a somewhat unwieldy board consisting of the Governor as President, the Colonial Secretary as Vice-President, the Attorney-General, the Chief Native Commissioner, the Commissioner of Lands, a senior Commissioner selected by the Governor,

and

and four unofficial members to be nominated by the Governor; while it was carefully laid down that when they could find an African sufficiently capable of representing and speaking for the native community, then the Governor would as soon as possible appoint at least one such to be a full member of the Central Board (presumably as one of the four unofficial members).

The composition which we have recommended follows upon Kenya's draft and provides that the Chief Native Commissioner shall preside and that the members shall be the two nominated unofficial members appointed to represent native interests on the Legislative Council, a European chosen by the Euro. Elected Members, and somebody nominated by the Governor who is not to be a person holding office of a Member of the Executive or Legislative Councils. There may be some criticism about this.

The point of having a European unofficial member on the Board is because there may be areas of controversy, adjustment or conflict of interest between the Highlands and the native lands. Then it will be expedient that there should be a European Unofficial available to ^{assist the rest of} ~~consult with~~ the Trust Board when they are making their recommendations. Further, there are cases where the Highlands are not involved but European Unofficial interests are involved (many a case of setting apart would come under this head). It therefore seems that to leave the European Unofficials

Unofficials off the Board would be unpolitic and further, since they are always claiming that they only take part in the work of protecting and improving the native, they ought to be allowed to do so by serving on the Board which more than any other has charge of an important interest of the native population. The point of having the last person is to allow the Governor to nominate an Indian or African if there is one suitable. Kenya had provided that the nominee should be a European, but it is obviously desirable to give more elasticity.

^{Section 9} ~~Section 10~~ of the functions of the Trust Board are described generally. Kenya's draft had gone into vast detail following upon the recommendations of the Commission; and it seemed to us that such detail was quite ^(see 2 & 3) ~~unwarranted~~ for the Order-in-Council and that the wide powers of advising the Governor upon any matter concerning the areas of land (i.e. all the native lands, etc.) which he may refer to them, to protect the interests of the natives, and to make representations when anything in relation to the administration, management, development or control of the areas is not in the best interests of the said natives, ^{and} ~~should discharge~~ ^{any powers or duties conferred upon them by the various Ordinances, ^{with sufficient} It is considered that these powers cover everything that can be imagined.}

^{Section 10} ~~Section 11~~ ^{Section 12} of the Order prescribes that nothing in it shall be taken to affect the constitutional Orders-in-Council whereby Kenya was annexed to His Majesty's dominions. The purpose of that is to carry out the recommendation of the Commission which stated (Section 164) that the Order-in-Council must make it clear that Government

retains full power to control and direct a system of land tenure, and in Section 1648 it points out that there is some risk of the Kikuyu thinking that they had ceased to be part of the British Empire. The Commission said that there was something in that apprehension, but that something should be devised to make it clear that His Majesty continues to rule the whole Colony. The draft section appears to effect this purpose.

I have come to ^{Section} ~~Section~~ 10 which is the one about which there will be more trouble than any other. That section provides that, except as provided by the Native Lands Trust Ordinance and existing native rights, whether relative to tribal groups, family or individuals, no rights of any kind shall be acquired by any native ^{temporary} ~~native~~ ^{residence} ~~residence~~ ^{and the native} ~~residence~~ ^{interests} ~~interests~~ ^{and hereby extinguished.}

This is a serious recommendation, and it is necessary, in order to understand it, to look at the carefully considered words of the Commission. The Commission is to be found in Section 1648 which I have already quoted briefly, provided that their recommendations for ending the native lands are adopted and their other proposals implemented, then all native rights outside "A", "B" and "C" land should be extinguished. In the following section they stated very definitely that the number of natives affected would not be great, that the only place where the problem has arisen in anything like an acute form is Kikuyu, where it is believed that the number of people involved would not be more than two

or three hundred, and that in other areas the disturbance likely to take place was negligible.

In Section 1857 they went on to point out that while the Kikuyu had certain proper grievances, yet their claims had been exaggerated out of all proportion to the truth, that it was necessary for the future well-being of the tribe in particular and Kenya in general that the settlement proposed should be definite and final, and that therefore it was necessary to get rid of such sources of trouble as native right holders outside the native lands. In the case of the Kikuyu the additions to the native lands are pretty considerable. The additional Class "A" lands, which they recommend, amount to 1865 square miles with a further 383 as Class "B.1", giving a total addition of 1,246 square miles and bringing the reserve (Class "A" and Class "B.1") up to 6575 square miles. Of course, the objection is that this will be turning out natives from their ancestral homes. So it will; but the fact has to be faced and the White Paper quite definitely accepted the "proposal" in paragraph 13, stating that "it follows as a necessary counterpart that the Order-in-Council should declare that all claims have been satisfied and extinguished by the settlement which is now recommended and approved."

Of course, the main place where the extinction of native rights will cause any trouble is in the Highlands, since there are odd farms with natives on them whose original holders did not mind having natives about. With changing conditions, however, the successors in title of the original European holders may not like to have natives on their land, especially natives who can go on cultivating a piece of ground which

near enough way)
they want to turn into a golf course and then find that they cannot remove them. With the recommendation of the Commission it will be possible for such natives to be removed; though, as the Commission say, it is not very likely that there will be many of them. I understand, however, that the numbers who might be affected are, in point of fact, greater than the Commission thought, though whether they could actually be moved depends upon the state of affairs in each particular area and upon the availability of sufficient land for them to go to.

Outside the Highlands, I do not think that the problem will be serious, though it may be represented that the Order-in-Council is extinguishing every kind of native title everywhere outside the Highlands and the native lands. In a sense this would be true, but it is nowhere intended, nor would it be possible, to interfere with the occupation of the land by the tribes who are there, and Government will still have to exercise proper control in regard to any proposals for alienation in such areas.

20 6
Native
Memorandum on the Kenya Land Legislation.

General.

The Native Lands Order in Council has been entirely redrafted. The object has been to put in the Order in Council the important general provisions which the Commission recommended should be the subject matter of an Order in Council. The rest will go into the Native Lands Trust Ordinance.

Native Lands Trust Ordinance.

The following amendments will be necessary in this draft Ordinance:-

Clause 2.

Definitions will be required of the Trust Board, the Highlands Board, the Highlands, the Native Lands, and the Native Land Units, by reference to the two Orders in Council. It will also be convenient to incorporate definitions of the Temporary Native Reserves and the Native leasehold areas. (See clause 69 amended)

Clauses 4 to 8 inclusive.

Will be omitted (see Order in Council)

Clause 9 (1)(d).

The words "in accordance with the provisions of this Ordinance" are not understood. It will probably be sufficient to say simply "co-opted at any time by the Board".

Clause 10 (line 1).

For "duty" substitute "function".

(line 3).

Omit "and responsibilities".

Clause 13. Proviso.

Insert between "may and "effect" the words
"by Notice published in the Gazette".

Clause 14.

In view of Clause 54.0 of the Crown Lands
draft Ordinance this can be omitted.

Clause 15.

The word "European" could be omitted from this
and all similar references to the Highlands Board.

Clause 16 (2).

It appears that it will be necessary where
land is required for public purposes and is not to be
leased that the Governor's declaration must come first
before the setting apart; compare Clause 31.

Clause 16(3).

The words "~~save as is provided in Section 16~~
~~of this Ordinance~~" ~~are unnecessary~~ and "be deemed to
form" should be altered to "remain".

Clause 17(1)

This sub-section should apparently begin with
the words:-

"when it is desired that land should be set
apart in accordance with the provisions of ~~the Ordinance~~
~~Section 16~~, application shall be
made to the Provincial Commissioner

Sub-sections 2 and 3 should be transposed and the new sub-section 2 should run as follows:-

"residential sites engaged in any trade or industry may be included in the area to which the application relates". (This alteration is made because it is thought that it may be necessary to set apart residential sites for purposes, for example, of a factory as well as for mining).

Clause 21.

Paragraph (a), which should begin with the words "where the land is to be used for a purpose other than residential purposes" should be transposed to come after paragraph (b)

Clause 22.

Omit "under this part".

omit for presentation as above (see page 46)

Clause 25(2) (line 6).

Substitute "awarded" for "paid". Insert "and" before "subject"; substitute a comma for full-stop after "Ordinance"; omit "such".
"and" understood only in relation to "subject" to the purpose of sub-section 2 of the ordinance

Clause 25(b).

Should run "All sums of money awarded as compensation".

Clause 27(4) (line 5).

Clause should end "to such notice as may be entitled thereto under Section 24".

Clause 27(4) The words "I am an authorised person" are unnecessary.

Clause 28.

Clause 29.

For Sections 27 and 28 substitute "this Part of". "It will then be ^{open}necessary for the District Commissioner to decide that any lump sum may be paid over to the native in instalments".

Clause 30 (1) (1) This gives the Provincial Commissioner power to set apart for any purpose...
The Provincial Commissioner...
...to be a...
...to...
...to...
...to...

Clause 30.

The marginal note should be:-

"Setting apart for local public purposes."

Clause 30(3).

It appears that... Should be "In respect of the setting apart of any land under this section, compensation shall be payable in accordance with the provisions of Sections 24 and 25 of this Ordinance save that" etc.

Clause 31 In any case where... general... public

Clause 32(1).

Should read "Notwithstanding anything in this Part contained, but subject to the provisions of Sections 24 and 25, a Provincial Commissioner may set apart from the Native Lands any land which is required for a public railway, tramway or road, or for a tramway or road of access. For the purposes of this special section and tramway or road of access ^{shall} can mean a tramway or road which gives access -"

At the end of paragraphs (a) and (b) "and" should be "or" and omit "contiguous" from paragraph (b).

Clause 33(1).

For "settled by one outright payment" substitute "payable in accordance with the provisions of this section".

Clause 34

Clause 34.

It is understood that where land is to be declared to be a forest area there will be no need to set apart the land under this Ordinance. If this is so, Clause 34 could more conveniently be placed in Part VI of this Ordinance.

Clause 34(1).

Should then be altered to read "Notwithstanding anything contained in this Ordinance land in the Native Lands may with the consent of the Trust Board be declared to be a forest area", etc.; and the first twelve words of sub-section (2) should be omitted.

Clause 36(3).

There is a further proviso to come here, see despatch on 38005/4/36.

Clause 36(5).

This sub-section should run "In any case under this section the Governor may refer the matter to the Secretary of State whose decisions ^{shall} then be final".

Under sub-section (5) of clause 36, the words "whose decisions shall then be final" should be substituted by the words "whose decisions shall be final" in order to conform with clause 36(3) which reads "The Secretary of State shall be deemed to be the Governor for the purposes of this Ordinance."

Clause 36(4) line 7.

Insert after "entitled" the words "so far as may be practicable".

Clause 36(2) Proviso.

Insert after "reside" the words "if practicable".

Clause 39(1).

As the Native Lands are vested in the Trust Board there seems to be no need for the words "for and on behalf of the Governor", and they should be omitted. But insert after "lease" the words "of Native Lands to be".

Clause 41, line 7.

Omit "always".

Clause 42.

For "Governor" substitute "Provincial Commissioner"

throughout

throughout this Clause and add a new sub-section (4) as follows:-

"An appeal shall lie to the Governor from any refusal of the Provincial Commissioner to give his consent under this section".

Clause 43(1).

Should read "Where a lessee under this Ordinance desires to change the user of any land comprised in his lease" etc.

Sub-section (3) should run "Where the land in respect of which any such application is made exceeds 10 acres in extent the Governor shall, before making his decision, consult the Trust Board". It is felt that it is unnecessary to bring in the Secretary of State here.

Clause 44.

In line 6 after "implied" insert "or any change of user not authorised under Section 43", and in line 10 after "committed" insert "or the change of user which is alleged".

Clause 45(1).

Add a proviso that any licence granted under paragraphs (a), (b) or (c) shall be granted for a period not exceeding twelve months at any one time.

Clause 46(7) Proviso.

Omit the provision requiring reference to the Secretary of State.

Clause 49(1).

This sub-section is felt to be too wide and should be omitted.

Clause 49(2).

The words "more particularly" at the beginning should be omitted and there should be added the following proviso

proviso "Provided that no such order shall be made unless the Governor is satisfied that sufficient land for the accommodation of the native in such Native Land is available and that provision for compensation for disturbance has been made".

Clause 50(2).

Insert after "provisions of" "Sections 24 and 25 of", and after "damaged" in line 6 delete the semicolon and substitute "and".

Clause 52(1) and (2).

Insert the words "and without negligence" after "in good faith".

Clause 54(1).

Omit "by or on behalf of the Governor".

Clause 57.

The last two lines should be omitted since the jurisdiction of the Courts must clearly not be excluded altogether.

Clause 64(1), second line.

After "may" insert "with the advice and consent of the Trust Board".

Clause 64(1), paragraph (iv).

Should be "The method of collecting the rents for leases and the persons or bodies to whom such rents are to be paid.

Sub-section 3) should be omitted.

Clause 66.

Should begin with the words "Except as expressly provided in this Ordinance nothing herein contained".

Clause 69(1), line 4.

After "Native Lands" add "the Temporary Native Reserves and the Native Leasehold Areas." Add the

following

following further proviso after the first proviso:-

"Provided further that no native shall be compelled to remove himself from such land except by order of the Governor made in accordance with Section 49 of this Ordinance."

Paragraph (b). Labour-tenants should be

resident labourers, ^{also} and there should be added as paragraph

(d) "Native rights in the Protectorate".

Clause 69(2).

The words "for whom no specific Native Reserve has heretofore been set aside and" appear to be irrelevant, the question being solely whether a Specific Native Land Unit has been provided under the Ordinance. If this is so the words should be omitted.

The following further points arise:-

1. It has been thought unnecessary to incorporate in the Order in Council Clause 16 of the Kenya draft Order in Council, except for the first phrase. The rest of this Clause should therefore be inserted in the Ordinance.

(it will probably conveniently come in Part VI, but it is for consideration whether sub-section (2) is necessary, but if so, it is suggested that sub-section (2) should read "Any costs incurred by or damages awarded against the Trust Board in connection with any legal proceedings shall be paid" etc.

2. In the same way it has been thought unnecessary to incorporate in the Order in Council Clause 15 ^{of the Kenya draft} and therefore this Clause should also appear in the Ordinance. The words "by virtue of the trusteeship of the Native Lands" seem however to be redundant, and it is for consideration whether the word "landowner" is the appropriate one; in view of the provisions of the Water Ordinance possibly "landholder" would be better, and a reference to that Ordinance may be thought

history

3. Clause 9(2) of the draft Order in Council gives a general power to the Trust Board to delegate, and it will be necessary to provide in the Ordinance for the occasions on which the Trust Board may delegate. Clause 20 of the draft Ordinance contains a power to delegate in one particular respect but it will probably be considered necessary to incorporate in the Ordinance Clause 17 of the draft Order in Council as drafted by Kenya.

4. Clause 14 of the Order in Council as drafted by Kenya should also be incorporated in the Ordinance (compare Clause 45(3) of the draft Ordinance).

5. It is important to take care that neither the Order in Council nor the Ordinance will restrict the powers of the Governor which already exist to control the development etc. of land, for example, under the ^{Produce} Native Crops and Livestock Ordinance and all similar powers. Clause 58 of the Ordinance contains a saving in this respect, and Clause 11(c) of the draft Order in Council has been framed to meet this point. It should be carefully considered whether the wording in both cases is appropriate.

Crown Lands Amendment Ordinance.

Clause 2.

Definitions will have to be inserted as suggested in the case of the Native Lands Trust Ordinance.

New Clause 54(1).

It is suggested that sub-sections (1) and (3) be run together to read "Subject shall be temporarily reserved for the use and enjoyment of the native tribes specified in the fourth Schedule, and shall be known as "The Temporary Native Reserves".

Sub-section

Sub-Section (7) of the New Clause 54.

Should read "if any such area of Crown land is situate in the Highlands it shall not be set aside except with the consent of the Highlands Board."

New Clause 55.

Sub-sections (1) and (2) appear in the Order in Council and should be omitted.

Sub-section (8). In the references to Highlands "European" should of course be deleted and paragraph (c) should be omitted.

New Clause 56(1).

Insert after "may" the words "with the advice and consent of the Trust Board".

Paragraph (a) "and for prescribing conditions relating to" substitute "including", and for "any breaches of any such conditions" substitute "failure to comply with such rules".

Paragraph (b). It is suggested that it is unnecessary to set out all these particular subjects and that the rule making-power under this paragraph should be conferred in general words.

Sub-section (2). It is suggested that the penalties imposed under this sub-section should be brought into line with the penalties imposed under Clause 59 of the Native Lands Trust Ordinance.

Sub-section (3) should be deleted.

New Clause 57(1).

The reference here should be to the Native Lands Order in Council.

New Clause 58(2).

It is suggested that provision should be made for compensation for disturbance. Compare section 16(3)(11)(c) of Ordinance 9 of 1930.

ORDER-IN-COUNCIL

The idea of the Order-in-Council is that if the land is to be reserved by means of an Order-in-Council, the land should be reserved by the Carter Land Commission, and not by the Land Commission of fancy. The idea is that if the land is to be reserved by an Order-in-Council, the land should be reserved by the Land Commission, and not by the Land Commission of fancy. The idea is that if the land is to be reserved by an Order-in-Council, the land should be reserved by the Land Commission, and not by the Land Commission of fancy.

If it is possible to have a separate Order-in-Council for the land that the preservation of the land is to be reserved by the Land Commission, the preservation of the various additions and exchanges referred to in the Order-in-Council should be made a condition of the preservation of the land. The idea is that if the land is to be reserved by an Order-in-Council, the land should be reserved by the Land Commission, and not by the Land Commission of fancy.

The various tables in pages 304 and 305 of the Order-in-Council are, however, not particularly clear, and it will be necessary for someone or other to define the separate reservations which are now to be made. It is suggested that this should be done in a separate Order-in-Council, to which reference is made in the Order-in-Council.

The idea is that the Order-in-Council should stop at the word "reservation" and not go on to say it does that only as Order-in-Council. The idea is that the Order-in-Council can vary the word "reservation", since that is, in fact, not the case.

Clause 4 is taken from the Commission, but it is suggested that it is not necessary. In particular, if the 'b' land is to be added to the 'a' land, there is no need for it, since all the native lands will be treated alike under the Ordinance and the Order-in-Council, and the reason for adding certain bits of land is not a suitable thing for inclusion here.

What exactly paragraph 5 means is not quite clear. The nine units are specified in the table on page 384. But the Commission recommended that the boundaries of the nine units should be defined by the Order-in-Council. It is not necessary, I think, to define them with meticulous accuracy and it can be done by reference to gasetted boundaries, but we must find out what is meant.

Boundary adjustments of a minor character can be done in the Commission's proposals by the Governor, but when it is a case of the alteration of a boundary by taking a piece of land from one tribe and adding it to another, the Commission think that the Lands Trust Board ought to be consulted and that any alteration should be made by Order-in-Council. This seems to be to be over-elaborating the Order-in-Council requirements, and it should be enough to provide that the Lands Trust Board must be consulted and must agree.

Clause 6 appears to be all right.

Clause 7 is meant to carry out the proposals of the Land Commission and, in point of fact, is really meaningless. You can put in an Order-in-Council a clause to that effect, but if the Kenya legislature does

proceed to alter the Lands Trust Ordinance, it is fully competent to do so and no Order-in-Council would be necessary. It is suggested then that Clause 7 might well be omitted, unless it is considered advisable to leave it in for window dressing.

Clause 8 is rather extraordinary. It is based on the Commission's proposal that Government must have the power to control direct and, where necessary, modify the system of land tenure, both as regards the acquisition of land for public purposes, and for purposes of trade and development, and also in respect of the tenure of land as between natives themselves, and they said it would be necessary that the Order-in-Council should make this abundantly clear. Further up they had suggested that it might be found that the Crown had parted with rights essential to the proper control and guidance of land tenure among primitive peoples, and finally, in Section 1649 they proceeded to recommend that the rights of the Crown to control and dispose must be adequately safe-guarded in every respect, and that it must be made perfectly clear to the natives that the Crown has these rights. Accordingly paragraph 8 of the Order-in-Council has been drafted which is designed to make it clear that the native lands remain part of Kenya, and that the Crown retains power to control the system of land tenure and to acquire land for public or social purposes, or for purposes of trade or industry. To this section ought to be added something reserving expressly to the Crown its rights as regards minerals. As things are at present mineral rights are expressly vested in the Crown by the Mining Ordinance, and it is advisable to maintain expressly that right as a matter of precaution.

Paragraph 9 dealing with forfeiture or rebellion can stay, but I cannot imagine it ever being used. Anyhow, the land, if forfeited, only reverts to the Crown and would, I imagine, go on being used just as it is at the present.

The 10th Section refers to the so-called sea areas which are to be called "native leasehold areas", and declared to be such under the Orders-in-Council, so that they may not be diminished without the authority of a further Order. Some better means of defining the areas in question will have to be found than the table in the report and the remarks made in the despatch about the difficulty of applying the term "leasehold" are very much in point. A tribe cannot very well hold a lease, and the Commission in Section 1882 appear to contemplate individual natives applying for leases. In 1886 they discuss group tenure, individual title, and corporate bodies, in the last case recommending that if several groups wanted to lease land they should be made to enrol themselves as a corporate body with a view to applying for a lease. The example they have in mind is where a group of natives want to build a church and lease the site for doing it, but the Commission say that leases should not be issued in this category until much more experience has been gained.

In this Section also there is a reference to the Highland Board.

Section 11 establishes the Native Lands Trust Board and Section 12 defines its composition.

23802/1/3

There is also a smaller Bill to amend the Crown Lands Ordinance. The reason for that Bill is this. The Ordinance as it stood prior to 1930 contained a Part VI providing for the reservation of land for the use of native tribes. When the Native Lands Trust Ordinance of 1930 was enacted it was considered that these provisions were superfluous and Section VI was accordingly repealed. In view, however, of the creation, in accordance with the Commission's recommendations, of temporary Native Reserves and native leasehold areas which, though occupied by natives, are to remain Crown Land, it becomes necessary to re-introduce provisions dealing with Crown Land which is to be temporarily reserved for natives. Accordingly the Bill provides for the designation of certain lands as temporary Native Reserves. The lands are to be solemnly specified and will include all those which the Commission recommends should be classified as B2. The total involved is only 259 square miles. The draft also provides that the Governor may from time to time set aside other areas of Crown Land, subject to the approval of the Legislative Council, for the satisfaction of temporary economic needs. In such cases a rent shall be payable. It is provided that if any such land is in the Highlands then the consent of the Highlands Board is to be required.

The new Section 55 deals with the proposed native leasehold areas. There are only three of these areas and the total of them is 939 square miles. One of them is Yatta, for the use of the Kikuyu, totalling 170 square miles. The biggest is 700 square miles in the Northern Frontier Province to

deal with the complicated arrangements of the Suk and the Loroki Plateau. The Commission could not recommend that this be proclaimed native lands because they did not think that the conditions in the Turkana and Northern Frontier Provinces justified the declaration of native lands, which they considered would be an unjustifiable locking up if it were devoted in perpetuity to the exclusive use of the occupant tribes. The third area, of about 70 square miles, is in the Masai Reserve. The Commission thought very highly of it, but the Governor in his despatch pointed out that the area in question was unwatered and not suitable for anything except grazing - and not much of that. The Governor also thought that it was not very likely that much of the land would be taken up in individual small-holdings since it was not at all suitable for them, and Mr. Harragin told us that the Commission formed their opinion of at least one area by climbing up on a hill and looking at it through glasses.

The draft provides for unnecessarily elaborate powers to enable the Governor to make rules, but we consider that the wide general wording will be quite sufficient. Here also we advise that the reference to the Secretary of State should be deleted. This Ordinance is, as I have said, necessary because of the over-refinement of the Commission in introducing what they called native leasehold

areas

areas. As the Governor pointed out, these areas will probably never be leased, certainly not to individual holders, and will probably continue in practice to form part of the native lands. In theory, of course, they will be Crown Lands, but the difference between the two is very hard to follow in practice unless somebody proceeds to invoke the famous Bath Judgment. Since, however, the Commission has so recommended it seems advisable to carry out its recommendation, especially as the purpose of it is ostensibly to give more land to the use of the natives.

61
5

Draft Native Lands Order in Council.

Whereas a Commission was appointed in the year 1932 to enquire into and report upon the claims and needs in respect of land of the native population in the Colony and Protectorate of Kenya, ^{and certain other territories} and the Commission has made certain recommendations ^{and certain other territories} to which it is expedient to give effect in manner hereinafter appearing:

Now, therefore, His Majesty, in pursuance ~~so far as relates to the Colony~~ of the powers vested in him by the British Settlements Act, 1887, ~~and so far as relates to the Protectorate of the powers vested in him by the Foreign Jurisdiction Act, 1890, and as respects both the Colony and the Protectorate~~ 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 (Native Lands) Order in Council, 1937.
2. (1) In this Order unless the context otherwise requires -

"Colony" means the Colony and Protectorate 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;

"Chief Native Commissioner" means the person for the time being lawfully discharging the functions of Chief Native Commissioner in the Colony, and includes the person for the time being lawfully discharging the functions of any officer whom the Governor shall by Notice in the Gazette declare to be

A "Crown Lands Ordinance" means the Crown Lands Ordinance, Chapter 140, of the revised edition of the Laws of Kenya, as amended by the Crown Lands (Amendment) Ordinance, 1929, the Crown Lands (Amendment) Ordinance, 1934, and the Crown Lands (Amendment) Ordinance, 1937, Colony.

B (2) In this Order references to Native Lands Trust Ordinance, 1937, and the Crown Lands Ordinance shall include any Ordinance which may be enacted to amend or replace the same provided that such Ordinance shall have been reserved for the signification of His Majesty's pleasure thereon and His Majesty's assent shall have been given thereto.

area or land described in Government Notice No. _____ published in the Gazette dated _____ and they are hereby vested in the Trust Board.

(4) The Native Lands are hereby divided into the nine Native Land Units specified in the said Government Notice and the Trust Board shall hold the Native Land Units in trust for the native tribes as set out in the said Notice.

(3) Except ~~the areas for which~~ ^{as provided} ~~express provision is made in the Native Lands Trust Ordinance,~~ ⁽¹¹⁷⁾ the areas of land comprised within the Native Lands and the Native Lands Units shall not be altered: Provided

Provided that the Governor may with the consent of the Trust Board make adjustments of the boundaries of the Native Land Units where the Board is satisfied that any such adjustment is of a minor character and in the interest of the native population.

(4) The Native Lands shall be administered in accordance with the provisions of the Native Lands Trust Ordinance, ⁽¹³⁷⁾ and shall be subject generally to the provisions of that Ordinance.

(5) The definition of "Crown Lands" contained in Section 2 of the Kenya Colony Order in Council 1921 shall no longer apply to the Native Lands.

(6) Nothing contained ~~herein~~ ^{in this Order} shall be taken to affect the provision of the Mining Ordinance, ⁽¹¹³⁾ whereby the property in minerals and mineral oils is vested in the Governor in trust for His Majesty, nor the provisions of the water Ordinance, ⁽¹¹⁷⁾ whereby the property in water is vested in the Crown.

5. The Native Lands shall be subject at all times to all such rights in respect of land as are or may be enjoyed by native tribes, groups, families or individuals by virtue of existing native law and custom, or any subsequent modification thereof in so far as such rights are not repugnant to any law from time to time in force in the Colony.

6. (1) The Temporary Native Reserves shall be such areas of land as are temporarily reserved for the use and enjoyment of the native population in accordance with the provisions of the Crown Lands Ordinance

(2) The Temporary Native Reserves shall continue to be Crown lands and they shall be subject to the provisions of the Crown Lands Ordinance.

be appointed in place of the Chief Native Commissioner;

"Trust Board" means the Native Lands Trust Board ^{established} appointed in pursuance of Section 8 of this Order;

"Gazette" means the official Gazette of the Colony.

Table A
B (2) In this Order references to an Ordinance are to an Ordinance enacted or to be enacted by the Legislature of the Colony, and include any Ordinance amending or replacing the same.

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

3. There shall be areas of land in the Colony to be known as the Native Lands, the Temporary Native Reserves, and the Native Leasehold Areas.

4. (1) The Native Lands shall be the areas of land described in Government Notice No. ^{published} in the Gazette dated and they are hereby vested in the Trust Board.

(2) The Native Lands are hereby divided into the nine Native Land Units specified in the said Government Notice and the Trust Board shall hold the Native Land Units in trust for the native tribes as set out in the said Notice.

(3) Except ^{as provided} ~~the cases for which~~ a special provision is made in the Native Lands Trust Ordinance, ⁽¹⁹¹⁷⁾ the areas of land comprised within the Native Lands and the Native Land Units shall not be altered:

Provided that the Governor may with the consent of the Trust Board make adjustments of the boundaries of the Native Land Units where the Board is satisfied that any such adjustment is of a minor character and in the interest of the native population.

(4) The Native Lands shall be administered in accordance with the provisions of the Native Lands Trust Ordinance, and shall be subject generally to the provisions of that Ordinance.

(5) The definition of "Crown Lands" contained in Section 2 of the Kenya Colony Order in Council 1921 shall no longer apply to the Native Lands.

(6) Nothing contained ^{herein} shall be taken to affect the provision of the Mining Ordinance whereby the property in minerals and mineral oils is vested in the Governor in trust for His Majesty, nor the provisions of the Water Ordinance, whereby the property in water is vested in the Crown.

5. The Native Lands shall be subject at all times to all such rights in respect of land as are or may be enjoyed by native tribes, groups, families or individuals by virtue of existing native law and custom, or any subsequent modification thereof in so far as such rights are not repugnant to any law from time to time in force in the Colony.

(1) The Temporary Native Reserves shall be such areas of land as are temporarily reserved for the use and enjoyment of the native population in accordance with the provisions of the Crown Lands Ordinance

(2) The Temporary Native Reserves shall continue to be Crown lands and they shall be subject to the provisions of the Crown Lands Ordinance.

7 (1) The Native Leasehold Areas shall be the areas of land described in Government Notice No. _____ published in the Gazette dated _____ and except as provided by the Crown Lands Ordinance the areas of land comprised within the Native Leasehold Areas ~~as defined in the said Government Notice~~ shall not be altered.

(2) The Native Leasehold Areas shall continue to be Crown Lands and shall be subject to the provisions of the Crown Lands Ordinance.

8. (1) There is hereby established in the Colony a Board which shall be known as the Native Lands Trust Board.

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

(a) The Chief Native Commissioner, who shall be President of the Board;

(b) The two Nominated Unofficial Members of the Legislative Council of the Colony who are appointed from time to time in accordance with any Instructions issued by His Majesty under the Royal Sign Manual and Signet to the Governor to represent the interests of the African community on such Council;

(c) ~~Two~~ ^{one of the European Members of the Legislative Council of the Colony} ~~representative~~ chosen from time to time from among themselves by the European ^{is a member} ~~selected~~ Members of the Legislative Council; of ~~the Colony~~

(d) A person from time to time nominated by the Governor, who shall not be a person holding office in the public service of the Colony nor a member of the Executive or Legislative Councils of the Colony.

(3) The Trust Board shall not be disqualified from acting by ⁶³ ~~reason of any vacancy or vacancies among the members~~

(4) The President and two other members of the Board shall form a quorum, and the Board may regulate its proceedings as it thinks fit provided that on any matter upon which the votes of the Board are equally divided the President shall have a second or casting vote.

(5) The Trust Board shall be a body corporate with power to hold lands in the Colony and may sue and be sued.

9. (1) It shall be the function of the Trust Board -

(a) to protect the interests of the natives of the Colony in the areas of land mentioned in ~~1.3~~ and in particular to make representations to the Governor when in the opinion of the Trust Board anything in relation to the administration, management, development or control of the land in the said areas is not in the best interests of the said natives;

(b) to advise the Governor upon any matter relating to the areas of land mentioned in ~~1.3~~ which he may refer to the Board;

(c) to exercise any power or perform any duty which may be conferred or imposed on the Board by the Native Lands Trust Ordinance, ⁽¹⁷⁾ the Crown Lands Ordinance or any other law for the time being in force in the Colony.

(2) The Trust Board may in any matter in regard to which the Native Lands Trust Ordinance ⁽¹⁷⁾ or the Crown Lands Ordinance so provides, delegate its powers and duties to the Chief Native Commissioner.

10. Except as provided by the Native Lands Trust Ordinance ⁽¹⁷⁾ all existing native rights, whether such rights relate to tribal, group, family or individual holdings, in any land in the Colony (but not in the

Protectorate) situate outside the areas of land mentioned in §.3 are hereby extinguished.

11. Nothing in this Order shall be taken to affect -

(a) the provisions of the Kenya (Annexation) Order in Council, 1920, the Kenya Colony and Protectorate (Boundaries) Order in Council 1921, and the Kenya Colony and Protectorate (Boundaries) Order in Council 1926, whereby the territories forming the Colony of Kenya were annexed to and made to form part of His Majesty's dominions, and the boundaries of the Colony and Protectorate defined;

(b) except as provided by Section 4(4) hereof, the provisions of the Kenya Colony Order in Council, 1921;

(c) Except as expressly provided herein, the provisions of any law in force in the Colony relating to land.]

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

4
Draft Native Lands Order in Council.

Whereas a Commission was appointed in the year 1922 to enquire into and report upon the claims and needs in respect of land of the native population in the Colony and Protectorate of Kenya, and the Commission has made certain recommendations to which it is expedient to give effect in manner hereinafter appearing:

Now, therefore, His Majesty, in pursuance, so far as relates to the Colony, of the powers vested in him by the British Settlements Act, 1887, and so far as relates to the Protectorate of the powers vested in him by the Foreign Jurisdiction Act, 1890, and as respects both the Colony and the Protectorate 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 (Native Lands) Order in Council, 1927.

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

"the Colony" means the Colony and Protectorate of Kenya;

"the Governor" means the Governor and Commander-in-Chief for the time being of the Colony and

"Chief Native Commissioner" means the person for the time being lawfully discharging the functions of Chief Native Commissioner in the Colony, and includes a person for the time being lawfully discharging the functions of any officer whom the Governor shall by Notice in the Gazette declare to be appointed in place of the Chief Native Commissioner;

Protectorate) situate outside the areas of land mentioned in §.3 are hereby extinguished.

11. Nothing in this Order shall be taken to affect -

(a) the provisions of the Kenya (Annexation) Order in Council, 1920, the Kenya Colony and Protectorate (Boundaries) Order in Council 1921, and the Kenya Colony and Protectorate (Boundaries) Order in Council 1926, whereby the territories forming the Colony of Kenya were annexed to and made to form part of His Majesty's dominions, and the boundaries of the Colony and Protectorate defined;

(b) except as provided by Section 4(4) hereof, the provisions of the Kenya Colony Order in Council, 1921;

(c) Except as expressly provided herein, the provisions of [any law in force in the Colony relating to land.]

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

Draft Native Lands Order in Council.

Whereas a Commission was appointed in the year 1938 to enquire into and report upon the claims and needs in respect of land of the native population in the Colony and Protectorate of Kenya, and the Commission has made certain recommendations to which it is expedient to give effect in manner hereinafter appearing:

Now, therefore, His Majesty, in pursuance, so far as relates to the Colony, of the powers vested in him by the British Settlements Act, 1887, and so far as relates to the Protectorate of the powers vested in him by the Foreign Jurisdiction Act, 1890, and as respects both the Colony and the Protectorate 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 (Native Lands) Order in Council, 1937.

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

"the Colony" means the Colony and Protectorate 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 Chief Native Commissioner" means the person for the time being lawfully discharging the functions of Chief Native Commissioner in the Colony, and shall include any person whom the Governor shall by Proclamation to be published in the Gazette declare to be~~

appointed in place of the Chief Native Commissioner;

"the Trust Board" means the Native Lands Trust Board appointed in pursuance of Section 8 of this Order;

"the Gazette" means the official Gazette of the Colony.

(2) In this Order references to an Ordinance are to an Ordinance enacted or to be enacted by the Legislature of the Colony, and include any Ordinance amending or replacing the same.

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

3. There shall be areas of land in the Colony to be known as the Native Lands, the Temporary Native Reserves, and the Native Leasehold Areas.

4 (1) The Native Lands shall be the areas of

Except in the case of land referred to in the Native Lands Trust Ordinance

(3) The areas of land comprised within the Native Lands and the Native Land Units shall not be altered ~~except where land is excluded from, and an equivalent area added to, the areas in accordance with the provisions of the Native Lands Trust Ordinance, or where land is forfeited for treason or rebellion as provided by that Ordinance;~~

Provided that the Governor may with the consent of the Trust Board make adjustments of the boundaries of the Native Land Units where the Board is satisfied that any such adjustment is of a minor character and in the interest of the native population.

(4) The Native Lands shall be held and administered in accordance with the provisions of the Native Lands Trust Ordinance, and shall be subject generally to the provisions of that Ordinance.

~~is~~ appointed in place of the Chief Native Commissioner;

"the Trust Board" means the Native Lands Trust Board appointed in pursuance of Section 8 of this Order;

"the Gazette" means the official Gazette of the Colony.

(2) In this Order references to an Ordinance are to an Ordinance enacted or to be enacted by the Legislature of the Colony, and include any Ordinance amending or replacing the same.

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

3. There shall be areas of land in the Colony to be known as the Native Lands, the Temporary Native Reserves, and the Native Leasehold Areas.

4 (1) The Native Lands shall be the areas of land described in Government Notice No. published in the Gazette dated and they are hereby vested in the Trust Board.

(2) The Native Lands are hereby divided into the nine Native Land Units specified in the said Government Notice and the Trust Board shall hold ^{the} ~~each~~ Native Land Units in trust for the native tribes ^{as set out} ~~mentioned~~ in the said Notice.

[See vol.] (3) The Native Lands shall be subject to the provisions of the Native Lands Trust Ordinance and, except as provided by that Ordinance, the boundaries of the Native Lands and of the Native Land Units as defined in the said Government Notice shall not be altered.

(5)(a) The definition of "Crown Lands" contained

in Section 2 of the Kenya Colony Order in Council 1921 shall no longer apply to the Native Lands.

(6) (3) Nothing contained herein shall be taken to ~~the provisions of the Mining Ordinance which~~ affect the property in and ~~control of~~ minerals and mineral oils ~~in, under or upon the Native Lands which said minerals and mineral oils shall continue~~ to be vested in the Governor in trust for His Majesty ~~as provided by the Mining Ordinance, which~~ ^{as provided by the Mining Ordinance, which} ~~is~~ ^{is} ~~provided in the law.~~

5. The Native Lands shall be subject at all times to all such rights in respect of land as are or may be enjoyed by native tribes, groups, families or individuals by virtue of existing native law and custom, or any subsequent modification thereof in so far as such rights are not repugnant to any law from time to time in force in the Colony.

6(17)(1) The Temporary Native Reserves shall be such areas of land as are temporarily reserved for the use and enjoyment of the native population in accordance with the provisions of the Crown Lands Ordinance, ~~and~~

shk (2) ~~(2) The Temporary Native Reserves shall continue to be Crown lands and they shall be subject to the provisions of the Crown Lands Ordinance.~~

(3) The Native Leasehold Areas shall continue to be Crown Lands and shall be ~~subject to~~ the provisions of the Crown Lands Ordinance.

8 (1) There is hereby established in the Colony a Board which shall be known as the Native Lands Trust Board.

(a) The Trust Board shall consist of the following persons -

(a) The Chief Native Commissioner, who shall be President of the Board;

(b)

in Section 2 of the Kenya Colony Order in Council 1921 shall no longer apply to the Native Lands.

(6) (5) Nothing contained herein shall be taken to ^{the provisions of the Mining Ordinance whereby} effect the property in ~~and control~~ of minerals and mineral oils in, under or upon the Native Lands which said minerals and mineral oils shall continue to be vested in the Governor in trust for His Majesty, ^{as the provisions of the Mining Ordinance, whereby the property is} as provided by the Mining Ordinance, ^{vested in the Governor}

5. The Native Lands shall be subject at all times to all such rights in respect of land as are or may be enjoyed by native tribes, groups, families or individuals by virtue of existing native law and custom, or any subsequent modification thereof in so far as such rights are not repugnant to any law from time to time in force in the Colony.

(4) ~~(1) The Temporary Native Reserves shall be the areas of land from time to time specified as such in the Crown Lands Ordinance.~~

7 (1) The Native Leasehold Areas shall be the areas of land described in Government Notice No. _____ and except as provided by the Crown Lands Ordinance the ~~boundaries of the Native Leasehold Areas as defined~~ boundaries of the Native Leasehold Areas as defined in the said Government Notice shall not be altered.

(2) The Native Leasehold Areas shall continue to be Crown Lands and shall be ~~subject to the~~ subject to the provisions of the Crown Lands Ordinance.

8 (1) There is hereby established in the Colony a Board which shall be known as the Native Lands Trust Board.

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

(a) The Chief Native Commissioner, who shall be President of the Board;

(b)

- Nominations*
- (b) The two ^{Nominations} Unofficial Members of the Legislative Council of the Colony who are ^{appointed} ~~nominated~~ from time to time in accordance with ~~the~~ ^{the} ~~Royal~~ ^{instructions} issued by H. M. ~~Government~~ ^{the Governor} to represent the interest of the African community on such Council;
- (c) A representative chosen from time to time from among themselves by the European Elected Members of the Legislative Council of the Colony;
- (d) A person from time to time nominated by the Governor, who shall not be a person holding office in the public service of the Colony nor a member of the Executive or Legislative Councils of the Colony.

(3) The President and two other members of the Board shall form a quorum, and the Board may regulate its proceedings as it thinks fit provided that on any matter upon which the votes of the Board are equally divided the President shall have a second or casting vote.

~~214~~ (4) The Trust Board shall be a body corporate with power to hold lands in the Colony and may sue and be sued, ~~and service on the Board of all legal~~ processes and notices shall be effected by service on the Chief Native Commissioner who in any legal proceedings may be plaintiff or defendant as the case may be in the name of the Board.

(5) Any costs incurred by or damages awarded against the ~~Chief Native Commissioner~~ ^{Trust Board} or the members of the Trust Board in connection with ~~any~~ legal proceedings shall be paid by the Treasurer out of the ~~revenues of the Colony.~~

9.26(1) It shall be the function of the Trust Board -
(a) to advise the Governor upon any matter which he

(6) to advise the Governor upon any matter relating to the ~~management~~ ^{area of land mentioned in s. 3} which he

may refer to the Board;

(a) to protect the interests of the natives of the Colony in the ~~Native Lands~~ ^{area of land mentioned in s. 3} and in particular to make representations to the Governor when in the opinion of the Trust Board anything in relation to the administration, management, development or control of the ~~Native Lands~~ ^{the said area} is not in the best interests of the said natives;

(c) to exercise any power or perform any duty which may be conferred or imposed on the Board by the Native Lands Trust Ordinance, the Crown Lands Ordinance or any other law for the time being in force in the Colony.

(2) The Trust Board may in any matter in regard to which the Native Lands Trust Ordinance, or ~~Crown Lands Ordinance~~ ^{the} provides delegate any of its powers and duties to the Chief Native Commissioner.

~~(3) The Trust Board shall have all the rights and be under all the liabilities of a private landowner in the Colony in respect of any water flowing into, through and out of the Native Lands.~~

10. Except as provided by the Native Lands Trust Ordinance all existing native rights, whether such rights relate to tribal, group, family or individual holdings, in any land in the Colony (but not in the Protectorate) situate outside the ~~Native Lands, the Temporary Native Reserves and the Native homestead areas~~ ^{area of land mentioned in s. 3} are hereby extinguished.

11. Nothing in this Order shall be taken to affect -

(a) the provisions of the Kenya (Annexation) Order in Council, 1920, the Kenya Colony

and Protectorate (Boundaries) Order in Council, 1921, and the Kenya Colony and Protectorate (Boundaries) Order in Council 1926, whereby the territories forming the Colony of Kenya were annexed to, and made to form part of His Majesty's dominions, and the boundaries of the Colony and Protectorate defined;

(b) Except as provided by Section 4(4), hereof, the provisions of the Kenya Colony Order in Council, 1921;

(b) ^{except as provided, provided herein the provisions of} anything else required of. Clause 8(c)

and (d) of the Kenya draft

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

final settlement would probably be best effected by Order-in-Council.

In the summary of their recommendations, they advised that the new Native Lands Trust Ordinance should be "safeguarded by Order-in-Council not as to all its clauses but in all cardinal matters." What exactly this means is doubtful,

and I do not think that the Commission was really very clear. ^{In the case of a Colony (where there is no possibility of H. H. working)} It is not possible to "safeguard" an

X
Order in Council
with the Foreign
Secretary (not)

Ordinance by an Order-in-Council, since ^{the Ordinance} ~~is passed by~~ the Colonial Legislature, ^{has free power, in accordance} and if its ^{with the terms of} provisions are not repugnant to anything in the consti-

tutional instruments, ^{to make Ordinances and any amendments} ~~an Ordinance is in full~~ force. ^{while it exists. If the original Ordinance could have been altered, but} Even if an Order-in-Council mentions the ^{withstanding the fact that it was contrary to the terms of an Ordinance} provisions of an Ordinance it cannot operate to ~~make those provisions unalterable.~~ Accordingly,

the draft does not attempt to follow out this

particular recommendation, since to do so would ^{no} ~~have little effect~~ and would result in a most ^{to put on the face of the Ordinance, the effecting law} ~~unwise instrument.~~ ^{having been adopted of incorporating in the Order in Council the important}

^{general provisions and leaving the details to be worked out by the Ordinance}

The Commission also recommended that the Order-in-Council should define the boundaries of the nine areas of native lands which they recommend.

Provision is made accordingly in the draft, and ^{people will think} ~~it can be contended~~ that to alter boundaries would require an amendment of the Order-in-Council ^{as that} ~~co-that~~ it is not necessary to ^{say so in so many words} ~~specify this fact.~~ ^{In any case} ~~if alteration is required, it would be usual to have an enabling Order~~

The draft also provides for the definition of the "Native leasehold areas" and lays down that those areas shall be dealt with as provided in the Crown Lands Ordinance.

As regards the definition of the areas of the native lands, the only thing to do has been to follow the existing Native Lands Trust Ordinance

and the procedure recommended for the Highland Order-in-Council, and to say that the boundaries of the areas will have to be published in a Gazette Notice with a view to their being declared the boundaries under the Order-in-Council. In this connection, Kenya has recommended that what the Commission described as Class "B.1" lands should all be added to the native lands just as if they were Class "A". It is as well to set out what they meant by the various classes.

Class "A" were lands which were considered by the Commission to be native lands as of right in that they never ^{should} have been alienated and ought to be restored. Class "B" is sub-divided into "B.1" and "B.2". "B.1" are lands which the Commission thought would always be required by the tribes for economic purposes, and "B.2" would be areas which are required at present but may not be required when the reserves ~~have~~ got re-conditioned

so as to be able to carry more people. *They are needed for Temporary and Reserve*

Class "C" is what is called "Native leasehold areas"; and after all the talk it turns out to amount to three areas totalling 939 square miles. Class "D" is the rest of the place which is not reserved or in the Highlands, and in it native and non-native are supposed to have equal rights in regard to the acquisition of land. The Government recommends that the Class "B.1" lands should be added to the native reserves, just as if they were Class "A", and, seeing that on the Commission's own proposals "B.1" lands will be permanently required

C. O.

38008/6/37.

C. D.
TOMAY
10.

- Mr. Parni *sp.*
- Mr. Flood *sp.*
- Mr.
- Sir C. Robinson
- Sir G. Tomkinson
- Sir C. Bottomley
- Sir J. Shackburgh
- Parli. U.S. of S.
- Parly. U.S. of S.
- Secretary of State

In Mr. Parni's
Dear Harag

DRAFT.

W. Harag *sp.*

(1)

Thank you for your letter about the legislation required to give effect to the Roin Carter recommendation about the Malini Reserves & the boundaries of the Highland in Kenya. I am afraid I must have given you a wrong impression as to my opinion on the question of the desirability of proceeding with the consideration of this legislation. We do in fact recognize that, even when ~~the Co. has~~ when it has emerged from its period of gestation, in the Co. there will

FURTHER ACTION.

Reserve.

necessarily be a further period
of discussion & consideration -
hence, it is desirable
that this period not be
prolonged unduly beyond the
time when the survey &
demarcation of the boundaries
will have been completed.

We therefore hope, very shortly,
to be able to get down to
a final consideration of the various
knotty problems which have been
referred to you, so as to be able
more than likely that we shall
have to make some ~~arrangements~~

Yours sincerely

(Signed) J. J. PASKIN.

Orig. reg. - 38005/7/37

72
2

AIR MAIL.

KENYA
NO. 70.....

E

CONFIDENTIAL.

29th April, 1957.

Sir,

I have the honour to inform you that action has been taken as desired in your Despatch No. 228 of the 15th March, 1957, relating to the removal of certain Kikuyu natives from Tigoni. In making this intimation the Provincial Commissioner told the natives concerned that they should arrange to move in a month's time.

2. The removal of the natives has so far been proceeding smoothly and steadily. Their goods and general effects are being transported for them by lorry and the cost of removal will amount to considerably more than the sum of £400 referred to in Mr. Wade's Despatch No. 4 of the 5th January, 1957.

3. There is, however, little doubt that the recalcitrant class will not move voluntarily, and I am advised that in the circumstances it is not feasible to take action against them either under section 12 of the Native Authority Ordinance, 1957, or section 144 of the Crown Lands Ordinance (Chapter 140), and that legal proceedings must await the issue of the new Native Lands (Order in Council) and the enactment of the new Native Lands Trust Ordinance.

4. You will, I have no doubt, appreciate the administrative difficulties which this position involves. The recalcitrant natives take up an attitude of defiance and, notwithstanding the finding of the Kenya Land Commission, recorded in paragraph 502 of their report,

THE RIGHT HONOURABLE,
S.G.S. CHAMBERLAIN, F.C.S., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON, S.W. 1.

20

we are powerless to enforce the order for removal which has been given. It is feared that the apparent success of this attitude may react on the minds of those who have voluntarily moved and if these returned we should be in the same unfortunate position in regard to them.

b. In paragraph 5 of Kenya Confidential Despatch No. 102 of the 6th December, 1956, Sir Joseph Byrne asked for an early expression of your views on the principal points raised in Kenya Despatch No. 72 of May 21st, 1956, and in Kenya Confidential Despatch No. 10 of January 14th last stress was laid on the importance of early progress being made with the requisite legislative measures from the standpoint of extinguishing native rights on certain farms in the Kikuyu area. Reports have on several occasions been received from the District Commissioner, Nairobi, regarding the difficult attitude adopted (particularly in the Limuru area) by natives resident on farms in respect of which their rights have been acknowledged. In view of the time which has passed since the publication of the Kenya Land Commission Report these natives appear to cherish the view that no action is in fact contemplated by Government, and this opinion is leading them to actions which the European farm-owners find great difficulty in tolerating. In some cases the natives are cultivating in any part of the farm which attracts them - they decline to sign resident native labour agreements with the farmers - and adopt a posture of obstructiveness almost amounting to truculence. Hitherto the Europeans have behaved with forbearance in response to representations made to them by the District Commissioner, but I am advised that they are becoming increasingly restive and that incidents are likely to occur if evident indications of Government's intentions to introduce the legislation contemplated by the

Commission are not given in the near future.

6. I would therefore urge that very early consideration be given to the measures sent to your predecessor with Kenya Despatch No. 72 of May 21st, 1936, and to the points discussed in that despatch.

(1) on 38005/2/35

The land transactions for carrying into effect the Commission's Report are approaching completion. The survey of boundaries common to Native Lands and Highlands is practically finished, the principal outstanding matters being the addition of 40,000 acres of Elgon Forest Reserve to the North Kavirondo Reserve; and the delimitation of a corridor to give access from the Mukogodo Reserve to the Usso Nyiro river. The demarcation of the Kasigao Reserve is also outstanding. This work can, however, proceed concurrently with discussion of the draft legislation. That discussion may be expected to occupy a considerable time, and it is of great importance that it should be initiated as soon as possible.

I have the honour to be,

Sir,

Your most obedient, humble servant,

W. BROOKE POPE, M.

AIR CHIEF MARSHAL
GOVERNOR.

TELEPHONE
NORWICH 141.

71 Thorne Rd END

THE NORFOLK CLUB,

NORWICH

27 4 87

car Parkin

When I was speaking
 of you & of Lord last I talked
 about from you with that
 in Kenya had so many
 adjustments to make this
 process as necessary
 relation, as order in common
 as it were Land first ordering
 the time I said little but
 reflection it occurs to me that
 you may have gathered by way
 all that I said. This is not
 the position at the moment is

as follows. In order to furnish
accurate descriptions for the
"definition of the Islands Order
in Council, it will be necessary
to complete the survey of all the
boundaries which are common
to Newfoundland & Atlantic Provinces.
This work is practically finished

The completion in draft of the
various speculative measures
is not in my view in any way
dependent on the provision of final
& accurate descriptions of the areas.
The work of preparing these can
proceed simultaneously with the
consideration of the drafts.

The fact is that as nothing
abnormal is to happen in 1890 a
speculative spirit of ~~some~~ ^{the} people
both American & British are getting
a little calmer.

I hope you had a good holiday.
Yours sincerely
W. Hannay