



**PUBLIC RECORD OFFICE**

**CONTINUED FROM PREVIOUS FILM**

SUMMARY OF ACTION TAKEN ON COMMISSION'S RECOMMENDATIONS.

50

SECTION.	SUBJECT.	RECOMMENDATION.	ACTION TAKEN.
591 & 622	Pangani.	<p style="text-align: center;"><u>KIKUYU PROVINCE.</u></p> <p style="text-align: center;"><u>NAIROBI MUNICIPALITY.</u></p> <p>Natives to be removed by sections to Pumwani. Compensation to be paid.</p>	<p>Accommodation in new Native Village completed and demolition of houses in Pangani resumed.</p>
680-682	<p>Mile Railway Zone and Chyulu Triangle.</p>	<p style="text-align: center;"><u>MASAI DISTRICT.</u></p> <p>Not to be included in Masai Reserve but either of the following courses to be followed:-</p> <ol style="list-style-type: none"> <li>(1) Masai to take out annual lease until alternative watering places are available in the Reserve; or</li> <li>(2) Agricultural land in the Reserve to be ceded in exchange for Chyulu Triangle or other desired land.</li> </ol>	<p>The inclusion of these areas in the Masai Reserve in exchange for other lands approved.</p>
757-9	Yatta Plateau.	<p style="text-align: center;"><u>UKAMBA PROVINCE.</u></p> <p>300 sq. miles to be added to Machakos Native Reserve as B1.</p>	<p>Reclassification of 'C' areas as B2 for a period of ten years approved.</p>

SECTION.	SUBJECT.	RECOMMENDATION.	ACTION TAKEN.
1215-6	Duruma.	<p style="text-align: center;"><u>COAST PROVINCE.</u></p> <p>Mwachi Forest Exchange.</p>	Revised proposal for exchange of land with Forest Reserve approved by Secretary of State.
CHAPTER XVI.	Coast Land.		Many detailed recommendations in this Chapter await Sir Ernest Dowson's Report.
1790	Native Lands Trust Ordinance.	That a new Ordinance be enacted to supersede the existing law.	The draft Native Lands Trust Ordinance and the Crown Lands (Amendment) Ordinance were approved by the Secretary of State for introduction into Legislative Council.
1854 and 1858	Extinguishment of certain existing native rights.	That this be effected by Order in Council.	Orders in Council drafted ready for promulgation upon the enactment of the new Native Lands Trust Ordinance and Crown Lands (Amendment) Ordinance.
1979	Highlands Boundaries.	That the boundaries of the Highlands be safeguarded by Order in Council.	

Extract from letter from the Secretary of State  
to the Governor of Kenya , dated 1st July, 1938.

\* \* \*

Francis Scott came to see me recently and we had a certain amount of general talk. I enclose a note which I had made of the discussion and, apart from the topics mentioned in it, there is nothing of substance for me to report to you about what took place. He referred to the draft legislation which is being prepared to carry out the recommendations of the Lands Commission. I told him that I had recently approved the drafts and understood from you that the Bills will be brought before the Legislative Council at the forthcoming session.

\* \* \*

Extract from Note of Interview between  
Secretary of State and Lord Francis Scott  
on 17th June, 1968.

White Settlement.

Lord Francis Scott inquired whether, if a scheme for settlement assisted by Government funds was worked out locally, the Secretary of State would regard it with favour. The class of settler which such a scheme would be designed to attract would be not public school boys but farmers' sons. The Secretary of State said that he could not commit himself to approval of a scheme as his attitude must depend upon the nature of the proposals put forward. The scheme would have to be considered on its merits. But if a scheme were put forward with the Governor's support he would certainly approach it with an open mind, and he felt favourable in principle.

C. O.

Mr. Gostley (with) 21.5

Mr. Deane

Mr. Deane 20.5  
Sir H. Moore.

Sir G. Tomlinson

Sir C. Bottomley 30 7/8

Sir J. Shuckburgh

Perms. U.S. of S

Partly. U.S. of S

Secretary of State

Downing Street,

May Road.  
2 JUN 1958

Sir,

(7)

I have etc. to acknowledge the receipt of your Confidential despatch No. 83 of the 30th of April forwarding copies of Revised drafts of the Order in Council and other legislation required to give effect to the recommendations of the Kenya Land Commission.

2. The Draft bills have been carefully considered in the light of the observations contained in your despatch and in the accompanying memorandum and, subject to the alterations suggested below, I am now prepared to approve them for introduction into Legislative Council.

NATIVE LANDS TRUST BILL.

3. Clause 30. I note that you are in agreement with my view as to what this clause should provide, but I am advised that

DRAFT.

K E N Y A.

CONFIDENTIAL.

GOVERNOR.

Memorandum

Revised draft. Highways Order

Revised draft. Native Areas Order

2 drafts.

**FURTHER ACTION.**

that the addition to the Proviso to sub-section (2) which has ~~now~~ been made does not carry out the intention. I suggest that, for the words "but without" to the end there should be substituted, after a semi-colon, the words "but a native who is entitled to compensation under sub-section (1) of this section and who exercises his right under that sub-section to reside in ~~the added area~~ <sup>shall</sup> not by reason thereof be taken to have exercised his option so as to deprive him of the right to receive compensation under sub-section (2) of this section".

4. With regard to Clause 47 (3) which has been added to the draft Bill, I note that, in paragraph 2 of Sir Armigel Wade's letter of 13th April, which was enclosed in your despatch, that the Chairman of the Elected Members Organisation was informed that I do not consider it necessary to prescribe any special procedure for setting in motion a proposal to add to the area of one Native Land Unit by diminishing another such Unit. I consider it undesirable that such procedure should be laid down in the Ordinance. As sub-section (3) is drafted, it might well be argued that the Secretary of State is given

C. O.

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

DRAFT.

**FURTHER ACTION.**

given the power to order a major adjustment of the boundaries. It is of course intended that only an Order in Council can effect this, but it cannot be provided in the Ordinance that the Secretary of State is to obtain an Order in Council. I consider therefore that sub-section (3) should be deleted.

5. I note the alterations which have been made to clause 9 (formerly clause 16) and I consider ~~this~~ <sup>the new clause to be</sup> an improvement in some respects. On the other hand it does not now seem to be very clear that the purposes for which land can be set apart are only those expressly laid down in the Ordinance. I should be glad if you will consider whether some such clause as "Notwithstanding..... Colony, land in the native lands may be set apart in accordance with the provisions of this Ordinance", might be substituted.



6. The reference, at the beginning of Clause 49 (1), to the provisions of Section 70 appears to be redundant. The first ten words of the sub-section should accordingly be deleted, and the sub-clause begin: "The Governor may, by....."

7. Clause 53 (1). The words "done in good faith and without negligence" should qualify both parts of this sub-section, and I suggest therefore that they should appear after the words "for any act", and the second "done" omitted.

8. Clause 70 (1). I suggest that Clause 70 (1) be amended by substituting for the words "all existing native rights" in the second line of the sub-section the words "all native rights existing at the commencement of the Ordinance"; and the first eight words might be deleted.

9. Clause 70 (1) Second Proviso.

I take it that you are satisfied that this Proviso as now worded will not prevent the powers of removal under section 12 of the Native Authorities Ordinance 1937 from being exercised in a case where a native having once been removed under Clause 49

C. O.

Mr.

Mr.

Mr.

Sir H. Moore.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Perm. U.S. of S.

Parly. U.S. of S.

Secretary of State.

**DRAFT.**

**FURTHER ACTION.**

of the Bill has again appeared outside his native area.

CROWN LANDS (AMENDMENT) BILL.

10. New Clause 58A (c) specifies name amongst

others, Section 47 of the Native Lands Trust Ordinance as <sup>a section</sup> ~~one~~ which is not to apply to the Native Reserves or to the Temporary Native Reserves. It is, however, for consideration whether it would be desirable to insert in this Bill a provision, similar to that of Section 47 (1) of the Native Lands Trust Bill, empowering you to make minor adjustments to the boundaries of the native reserves and temporary native reserves, and possibly to the native leasehold areas. It is also suggested that the reference to section 60 of the Native Lands Trust Ordinance should be deleted from paragraph (c).

11. I observe that whereas in Clause 68 of the Native Lands Trust Bill

~~specific provision~~  
~~explicit reference~~ is made ~~to~~ the rights of natives

in the Native Lands, no similar clause is included  
in the Crown Lands (Amendment) Bill, referring to  
the rights of the natives in the native reserves.

I find it difficult to appreciate, from a reading  
of this legislation, what these rights are to be,  
and you will no doubt arrange for a suitable clause  
to be included in the Bill should you consider it  
desirable. It will be observed that the similar  
clause in the Order in Council relates only to the  
Native Lands, and that the rights in the Native  
Reserves are to depend on the provisions of the  
Crown Lands Ordinance.

12. My advisers have reviewed the terms of the  
draft Orders in Council and they consider that certain  
drafting alterations can conveniently be made. I  
enclose a memorandum dealing with these and I should  
be glad to hear in due course whether your advisers  
are in agreement with these alterations of the revised draft Orders.

*also fair copies of the draft Orders incorporating  
the suggested alterations. I shall*

I am, etc.

(Sgd.) MALCOLM MacDonald

Draft Highlands Order in Council.

Clause 2(1) and 4(2)(b). As the office of Commissioner for Lands and Settlement will shortly cease to exist, it will be necessary to specify some other officer as a member of the Board.

A subsection should be added to Clause 2 in the same terms as Clause 2(2) of the Native Areas Order in Council.

Clause 4(2), paragraph (a). The reference should be to the Chief Secretary instead of Colonial Secretary.

It is suggested that paragraph (c) should be replaced by the following provisions:

"(c) four persons, not holding office in the public service of the Colony, appointed from time to time by a majority of European Elected Members of the Legislative Council of the Colony present and voting at a meeting of the European Elected Members convened for the purpose;

(d) a person nominated from time to time by the Governor.

(3)(a) The names of the persons from time to time appointed in accordance with paragraph (c) of subsection (2) of this section shall be submitted to the Governor who shall cause notice thereof to be published in the Gazette.

(b) Such persons need not themselves be European Elected Members of the Legislative Council.

(c) The appointment of such persons shall not

be affected by any dissolution of the Legislative Council, and the persons who are members of the Board at the time of the dissolution by virtue of such appointment shall continue to be members of the Board until the first session of the new Legislative Council, or until new members are appointed by the European Elected Members, whichever shall first happen".

The word "<sup>Said persons</sup>who need not themselves be European Elected Members<sup>of the Council</sup>" have been added to make this fact quite clear. See paragraph 8 of Lord Bledsoe's

17 on 38005/3/27. Confidential despatch No.(4) of 28th October, 1937.

Subsections (3) and (4) to be re-numbered (4) and (5).

Clause 5. As a matter of drafting, paragraph (c) should end with the word "Highlands" to be followed by a semicolon; and the words "and the Governor shall consult the Board in all such matters as are referred to in paragraph (c)" should end the clause, being brought to the outer margin.

Native Areas Order in Council.

Clause 1. - It is suggested that the title should be altered to the Native Areas Order in Council, since the <sup>Native Areas</sup> ~~Order now deals with~~ ~~Order~~ <sup>now deals with</sup> four different kinds of native land.

Clause 2(1). Since it has been decided to retain the post of Chief Native Commissioner there is no need for this definition, which was inserted to enable another officer to be substituted, and it should be deleted.

Clause 5. This section could with advantage be inserted as subsection (7) of Clause 4, since the Order now makes provision for the native reserves, and it is now apparently desired that the Order should contain a similar clause relating to the native reserves. See paragraph 11 of the despatch on this point. Subsections (1) and (6) of Clause 4 should be renumbered subsections (6) and (7) and the words "for the time being" should be deleted from the new subsection (7) since the point is to make it clear that nothing in the Order affects the operation of existing Ordinances. Provision cannot very well be made that nothing in the Order is to affect any future Ordinances.

Clauses 6, 7 and 8. should be combined to make one Clause 5, which will run as follows:-

"5(1). The native reserves shall be the areas of land the boundaries of which are set out in the Fourth Schedule to the Crown Lands Ordinance.

(2) The Temporary Native Reserves shall be the areas of land the boundaries of which

are set out in the Fifth Schedule to the Crown Lands Ordinance.

(3) The Native Leasehold Areas shall be the areas of land the boundaries of which are set out in the Sixth Schedule to the Crown Lands Ordinance.

(4) Except as provided in the Crown Lands Ordinance the areas of land comprised respectively within the Native Reserves, the Temporary Native Reserves, and the Native Leasehold Areas shall not be altered.

(5) The Native Reserves, the Temporary Native Reserves and the Native Leasehold areas shall continue to be Crown lands, and shall be subject to the provisions of the Crown Lands Ordinance."

Clause 9 (renumbered 6). Subsection (2)(a) should read:-

"The person for the time being lawfully discharging the functions of Chief Native Commissioner etc" - owing to the deletion of the definition.

Paragraph (c), second sentence, should be deleted, and the following provision substituted for this sentence and subsection (7) of the draft.

"(3) The two Nominated Unofficial Members who are members of the Board by virtue of paragraph (6) of subsection (2) of this section at the time of any dissolution of the Legislative Council shall continue to be members of the Board notwithstanding such

dissolution

4

dissolution until new Nominated Unofficial members of the Legislative Council are appointed in accordance with that paragraph.

(4)(a) The name of the European Elected Member from time to time chosen in accordance with paragraph (c) of subsection (2) of this section shall be submitted to the Governor who shall cause notice thereof to be published in the Gazette.

(b) The European Elected Member so chosen who is a member of the Board at the time of any dissolution of the Legislative Council shall continue to be a member of the Board notwithstanding such dissolution until the first session of the new Legislative Council, or until a new European Elected Member is so chosen as a member of the Board, whichever shall first happen".

The remaining subsections to be renumbered.

Clause 11 (renumbered 8) should read "..... all native rights existing at the commencement of this Order whether such rights.....". See comment in paragraph 8 of the despatch.

Clause 12 (renumbered 9), paragraph (b). The reference should be to Section 4(6).

Colonial Office,  
May 1938.

4

DRAFT HIGHLANDS ORDER IN COUNCIL

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

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

1. This Order may be cited as the Kenya (Highlands) Order in Council, 1938
2. (1) In this Order unless the context otherwise requires-

"Colony" means the Colony of Kenya;

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

"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, 1938.

"Gazette" means the Official Gazette of the Colony.

"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;

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

(insert (2) from next page)



<sup>2</sup>  
 (1) In this Order references to the Native Lands Trust Ordinance, 1938, and the Crown Lands Ordinance shall include any Ordinance which <sup>may be</sup> 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. (1) The Highlands of Kenya shall consist of the areas of land the boundaries of which are set out in the Seventh Schedule to the Crown Lands Ordinance.

(2) Except as provided in the Native Lands Trust Ordinance, 1938, and the Crown Lands Ordinance, the boundaries of the Highlands shall not be altered.

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

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

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

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

(c) four persons, not holding office in the public service of the Colony, appointed from time to time by a majority of <sup>of</sup> European Elected Members of the Legislative Council of the Colony present and voting at a meeting of the European Elected Members convened for the purpose;

(d) a person nominated from time to time by the Governor.

(3)(a) The names of the persons from time to time appointed in accordance with paragraph (c) of subsection (2) of this section shall be submitted to the Governor who shall cause notice thereof to be published in the Gazette).

(b) Such persons need not themselves be European Elected Members of the Legislative Council.

(c) The appointment of such persons shall not be affected by any dissolution of the Legislative Council, and the persons who are members of the Board at the time of the dissolution by virtue of such appointment shall continue to be members of the Board until the first session of the new Legislative Council or until new members are appointed by the European Elected Members, whichever shall first happen.

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

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

- A
5. It shall be the function of the Board -
- (a) to protect the interests of the inhabitants of the Highlands in the land situate in the Highlands and in particular to make representations to the Governor when in the opinion of the Board anything in relation to the administration, management, development or control of the land in the Highlands is not in the best interests of the inhabitants of the Highlands;
  - (b) to give or withhold its consent in all matters in which its consent is required by any Ordinance for the time being in force in the Colony;
  - (c) to advise the Governor in all matters relating to the disposition of land within the Highlands; and
- and* the Governor shall consult the Board in all such ~~matters~~ *matters as are referred to in paragraph (c).*

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

Final copy, with suggested amendments

AREAS  
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 Settlement 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 Areas Order in Council, 1938'.

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

~~"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 in place of the Chief Native Commissioner;~~

"Colony" means the Colony and Protectorate of Kenya;

"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 1938.

Except in Section 8 where it means the Colony only.

"Gazette" means the Official Gazette of the Colony.

"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;

"Trust Board" means the Native Lands Trust Board established in pursuance of section 9 of this Order;

(2) In this Order references to the Native Lands Trust Ordinance, 1938 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 Native Reserves, the Temporary Native Reserves, and the Native Leasehold Areas.

4. (1) The Native Lands shall be the areas of land the boundaries of which are set out in the First Schedule to the Native Lands Trust Ordinance, 1938, and they are hereby vested in the Trust Board.

(2) The Native Lands are hereby divided into nine Native Land Units described in the Second Schedule to the Native Lands Trust Ordinance, 1938, and the Trust Board shall hold the Native Land Units in trust for the native tribes specified in the said Schedule.

(3) Except as provided in the Native Lands Trust Ordinance, 1938, the areas of land comprised within the Native Lands and the Native Land Units shall not be altered.

(4) The Native Lands shall be administered in accordance with the provisions of the Native Lands Trust Ordinance, 1938, and shall be subject generally to the provisions of that Ordinance.

(6) ~~(4)~~ 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.

(7) ~~(5)~~ Nothing contained in this section shall be taken to affect the provisions of the Mining Ordinance, 1933, or of any other Ordinance for the time being in force in the Colony, whereby the property in minerals and mineral oils is vested in the Governor in trust for His Majesty, or in the Crown, 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 from time to time in force in the Colony.

(1) The Native Reserves shall be the areas of land the boundaries of which are set out in the Fourth Schedule to the Crown Lands Ordinance.

(2) The Temporary Native Reserves shall be the areas of land the boundaries of which are set out in the Fifth Schedule to the Crown Lands Ordinance.

(3) The Native Leasehold Areas shall be the areas of land the boundaries of which are set out in the Sixth Schedule to the Crown Lands Ordinance.

d  
le  
the  
areas  
th  
rovided

(4) Except as provided in the Crown Lands Ordinance the areas of land comprised respectively within the Native Reserves, the Temporary Native Reserves, and the Native Leasehold Areas shall not be altered.

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

altered.

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

6 (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  
 functions (a) *The person for the time being lawfully discharging the*  
 (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) One of the European Elected Members of the

Legislative Council of the Colony who shall be chosen from time to time by a majority of the European Elected Members present and voting at a meeting of the European Elected Members convened for the purpose; ~~The name of the European Elected Members so chosen from time to time shall be submitted to the Governor who shall cause notice thereof to be published in the Gazette.~~

(d) A person from time to time nominated by the Governor.

~~(3)~~ (3) The two Nominated Unofficial Members who are members of the Board by virtue of paragraph (b) of subsection (2) of this section at the time of any dissolution of the Legislative Council shall continue to be members of the Board notwithstanding such dissolution until new Nominated Unofficial Members of the Legislative Council are appointed in accordance with that paragraph.

(4)(a) The name of the European Elected Member from time to time chosen in accordance with paragraph (c) of subsection (2) of this section shall be submitted to the Governor who shall cause notice thereof to be published in the Gazette.

(b) The European Elected Member so chosen who is a member of the Board at the time of any dissolution of the Legislative Council shall continue to be a member of the Board



notwithstanding such dissolution until the next session of the new Legislative Council, or until a new European Elected Member is so chosen as a member of the Board, whichever shall first happen".  
Legislative Council.

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

(6) ~~(6)~~ 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.

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

7. ~~(1)~~ (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, 1938, 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, 1938, or the Crown Lands Ordinance so provides delegate its powers and duties to the Chief Native Commissioner.

8. ~~11~~ Except as provided by the Native Lands Trust Ordinance, 1938 and by sections ~~55~~ J of the Crown Lands Ordinance, all ~~existing~~ <sup>existing at the commencement of this Order,</sup> 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.

9. ~~12~~ 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 (6) hereof, the provisions of the Kenya Colony Order in Council, 1921

10. ~~13~~ This Order shall come into operation on a day to be appointed by the Governor by Proclamation published in the Gazette.

C. O.

R-244V  
B-116

33005/38.

Mr. Paskin. 21/5.

Mr. Dale. 23.5.

Mr. Dawe. 30 5.38.

Sir H. Moore.

Sir G. Tomlinson.

X Sir C. Bottomley. 30/5-6

Sir J. Shuckburgh.

Perms. U.S. of S.

Party. U.S. of S.

Secretary of State.

Semi-official for Sir C. Bottomley's signature.

Dowling Street.

10<sup>th</sup> June 1938.

Sam Brooke-Popham

DRAFT.

AIR CHIEF MARSHAL  
SIR ROBERT BROOKE-POPHAM,  
G.C.V.O., K.C.B., C.M.G.,  
D.S.O., A.F.C.

Kenya.

By bag.

To go by same mail  
as despatch in  
accompanying draft.

2 drafts.

**FURTHER ACTION.**

A despatch is being sent  
by this mail approving the draft  
lands legislation, subject to a few  
drafting amendments all of which have  
been agreed with Stacey. I hope that  
the way will now be clear for you to  
finish off the Bills at the July  
session. It will certainly be a  
great relief to everyone concerned  
when they are finally committed to the  
Statute Book.

The purpose of this letter  
is to suggest that during the Council  
proceedings the Government spokesman  
should make a statement which will

remove

remove any possibility of misconception arising from paragraphs 4 and 8 of the explanatory Memorandum. These two paragraphs purport to summarize the provisions of the proposed Orders-in-Council and they accordingly <sup>indicate</sup> ~~state~~ that it is proposed to provide that the boundaries of the Native Lands and of the highlands shall not be altered. The boundaries will, of course, be alterable by Order-in-Council and the words "except by an Order-in-Council" originally appeared in the draft of paragraph 4. They were taken out at the suggestion of the Secretary of State in paragraph 17(e) of the despatch of the 18th March because the Order-in-Council which the paragraph purported to summarize did not contain those words. But it is possible that to the plain man with his untechnical mind, paragraphs 4 and 8 may convey the impression that the boundaries are not to be altered at all and that the provisions of the Orders-in-Council will have the

legislative

*W. H. G. does not make a new para.*

(5).

C. O.

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

DRAFT.

legislative finality attributed to the laws of the Medes and Persians. There ought perhaps to be no real ground for misunderstanding as on ~~so~~ many occasions the Government have clearly stated their position on the point - <sup>that the intention is</sup> i.e. that, subject to minor refinements, the provisions ~~shall~~ <sup>will</sup> not be altered except by Order-in-Council. But it is obviously important that Governments in the future should not be exposed to any charge of a breach of faith in this vital matter, and it does seem desirable that at the Council meeting the position should be stated and recorded in such a way as will put ~~the matter~~ <sup>it</sup> beyond peradventure and afford a complete answer to any accusation that might be made in future that the paragraphs in the memorandum <sup>are being interpreted in a different sense</sup> ~~mean something different~~ from what was intended.

**FURTHER ACTION**

I will add a word on another point that bears on this question. The boundaries are now to be set out in Schedules to the Ordinances. As a matter of legislative machinery the normal way of altering those boundaries would therefore be by an amending Ordinance. Any such Ordinance would have to be reserved for His Majesty's pleasure and the practical effect would be the same as if the amendment were made by Order-in-Council. A Bill (reserved for the signature of His Majesty's pleasure) would give the same safeguard as an Imperial Order-in-Council: and it would be logical for us now to take the position that the intention is that the boundaries should only be altered by an Order-in-Council or by such a Bill. But it is thought here that if at the eleventh hour we now tried to introduce this new refinement into the situation it might be misunderstood and

give

C. O.

Mr.

Mr.

Mr.

Sir H. Moore.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Perms. U.S. of S.

Parly. U.S. of S.

Secretary of State.

give rise to the suspicion that we were going back on our former word. It seems best, therefore, to stick to what has been said and not to introduce any question of amendment by a reserved Bill. There is, of course, no legal objection to altering by an Order-in-Council the boundaries set out in the Ordinance, even though that would not be the normal way of doing it.

DRAFT.

*Yp. Lane*

*(Sign) W. B. Bottomley*

FURTHER ACTION.

30th May, 1938.

Dear Harragin,

Thank you very much for your letter about the Kenya land legislation. We had two talks with Stacey about the drafts and we were quickly able to settle a few outstanding points. Actually we find very little indeed for criticism in the drafts, and such comments as we have have been, or are being, sent out to you by despatch. You will see that I have shortened the draft of the Native Lands Order in Council to avoid a certain amount of repetition.

You will, I know, be very glad when you have got your Ordinances on the Statute Book, and the Orders in Council are made. It has been a tremendous business, and we here have had by far the easier task - criticising rather than constructing!

Yours sincerely,

W. HARRAGIN, ESQ.

LND.20/12 A.II/54

17.11  
THE SECRETARIAT,  
NAIROBI,

14th May 1938.

Dear Sir,

9. His Excellency wrote to Sir Cosmo Parkinson  
privately on the 30th April about the Native Land  
legislation and the Orders in Council, and an official  
7 despatch left on the same day forwarding copies of  
the revised drafts of all the measures.

The debate in Legislative Council on Major  
Cavendish-Bentinck's motion to which reference was  
made in that despatch took place on the 28th and 29th  
and an undertaking was given that representations would  
be made to the Secretary of State on the matters raised  
in the debate.

As some time must elapse before the official  
record can be ready I enclose a copy of the "East  
African Standard's" Report from which you will see that  
the principal points raised in the debate had reference  
to the Highlands.

These were briefly:-

- (a) The European Elected Members pressed for  
statutory discrimination in favour of  
Europeans and requested the insertion of  
the word "white" or "European" before the  
word "Highlands" wherever it appeared in the  
Order/

SIR CECIL BOTTOMEY, K.C.M.G., C.B., O.B.E.,

Order in Council.

- (b) As regards the constitution of the Highlands Board the Europeans requested that the Order in Council should provide that the additional member to be appointed by His Excellency should invariably be European.
- (c) The functions of the Board should, in the opinion of the European Members, be extended to include the right of veto on land transactions between parties of different races, at present exercised by the Governor in Council.
- (d) The Indian Elected Members, as was to be expected, whilst expressing no objection to the definition of the Highlands as such, objected to the institution of a Highlands Board and to the continuance of the administrative practice of reserving land in the Highlands for European ownership and occupation.
- (e) The Indian Members also pressed for the Member of the Native Lands Trust Board appointed by the Governor to be an Indian in order that the Indian Community might take an adequate share with the Europeans in the trusteeship of the native.

All these points were adequately dealt with on behalf of Government in the course of the debate by the Acting Commissioner for Local Government, Lands and Settlement and myself. The opportunity was taken of explaining in some detail the general proposals of Government for giving legislative effect to the recommendations of the Land Commission Report and of allaying any uneasiness/



uneasiness on the part of the European community by repeating the assurances given from time to time by the Secretary of State that there was no intention of departing from the policy of preserving the privileged position of Europeans in the Highlands.

The major point that was stressed throughout the debate was the need for the earliest possible action in enacting the necessary measures, particularly to enable Government to deal effectively with the native claimants of right on European farms in the Limuru area. The situation there is becoming increasingly acute and it is of importance that there be no unnecessary delay in dealing with the problem.

I shall be very grateful, therefore, if you will have the draft bills examined as soon as possible and inform me of the Secretary of State's views. Legislative Council was informed during the debate that it was proposed to publish the Bills for longer than the statutory period of 14 days, and then to bring them before Council for consideration during a July session.

The acceptance of Major Cavendish-Bentinck's motion on behalf of Government was qualified by the statement that, whilst there was no objection to informing

the/

the Secretary of State of the views expressed during the debate, it must be clearly understood that as all the points raised had been previously considered no alteration in matters of principle could be expected.

Yours sincerely,

W. H. A. G. M.

**G.R.**

# 'LAND LAW PROPOSALS NOT PROPERLY QUALIFIED'

## Council Motion by European Unofficials

### HIGHLANDS NOT CALLED "WHITE"

THE ABSENCE OF SUCH A QUALIFICATION AS "WHITE" OR "EUROPEAN" APPLIED TO THE HIGHLANDS OF KENYA IN THE MEMORANDUM DEALING WITH THE CARRYING OUT OF THE CARTER COMMISSION REPORT WAS STRONGLY DEPLORED IN A DEBATE IN LEGISLATIVE COUNCIL YESTERDAY.

The debate was on a motion proposed by Major Cavendish-Bentinck urging speed in the introduction of the enactments necessary to give effect to the Report, and urging also that the enactments should be so framed as to conform strictly to the Imperial Government White Paper of 1934 and the recommendations accepted by the Kenya Government later in that year.

The chief fault that they had to find throughout the portion of the Memorandum which dealt with the Highlands, said Major Cavendish-Bentinck, lay in the "studied ambiguity" of its phraseology which, in a few years' time would permit of arguments as to the precise meaning and intention of these enactments.

There was a lengthy debate in the Kenya Legislative Council yesterday on a motion by Major F. W. Cavendish-Bentinck, Elected Member for Nairobi North, on the subject of the Kenya Land Commission Enquiry, stressing that it was essential that local legislation and all other proposed enactments formulated for the purpose of giving effect to the Report should be brought into force without delay.

The motion read as follows: "That if the objective of the Kenya Land Commission Enquiry is to be achieved and the existing sense of insecurity which prevails in both European and Native minds is to be at long last terminated, it is essential that local legislation and all other proposed enactments formulated for the purpose of giving effect to the Kenya Land Commission Report should be brought into force without further delay, and be so framed and worded as to conform strictly with the conclusions reached and accepted by His Majesty's Government in the White Paper Command 4586 published in March 1934 and to the recommendations accepted by this Government in October 1934 and that urgent representations be taken to the Secretary of State to that effect.

Most Important Questions

sion Report, in spite of the sacrifices which they entailed by the European community, were apparently not going to be complied with.

#### "Somewhat Serious Allegation"

"This is a somewhat serious allegation to make" said Major Cavendish-Bentinck, adding that he must therefore substantiate his grounds for making it. In the first paragraph of the Memorandum they were informed that two Bills would shortly be introduced, a new Native Lands Trust Bill and a Crown Lands Amendment Bill. They realised that the introduction of these was a necessary prelude to the promulgation of the Orders in Council, but they would, however, press that the "somewhat longer period" referred to in paragraph II would not be too protracted, as he would again repeat that the complications and difficulties which were accumulating owing to the tremendous delay which had taken place, were manifold, and surely by now Government must have had time to make up its mind as to the form the legislation should take. He realised there were complications but was sure that Government would do all it could to implement them as soon as possible.

With regard to the paragraph of the Memorandum relating to the definition of the boundaries of the Highlands, the speaker said this was perhaps the most important part of the Memorandum from their point of view.

#### Not Described as "White"

"I must stress" he said "that this paragraph has occasioned intense disappointment and a justifiable sense that we have been misled." The first obvious criticism is to draw attention to the careful omission in all references to the areas of which a definition of the boundaries is to appear in a Schedule to the Crown Lands Amendment Ordinance of any such qualification or adjective as "White" or "European." In referring to these areas in the past, it has always been customary to refer to them as the "White Highlands." European Highlands" or the "areas in which a European privilege obtained."

"Indeed, in the very terms of references given by the Secretary of State to the Kenya Land Commission, the areas were referred to as the 'area generally known as the Highlands within which persons of European descent are to have a privileged position in accordance with the White Paper of 1934 and in their report the Commission consistently referred throughout to the 'European Highlands.'"

"This definition also appears in the Command Paper, etc. the Summary of Conclusions published by H. M. Government, published in May 1934. In the memorandum presented to Parliament by the Duke of Devonshire on July 23, 1923, reservation of the Highlands to the Europeans" is referred to, reiterating adherence to "the policy of the reservation of the Highlands for Europeans" which was definitely laid down by the Earl of Balfour when Secretary of State for the Colonies in 1908. Similar references were made in the Joint Select Committee's Report in 1931:

#### "Studied Ambiguity"

past few years, and in view of the attempts made to assist Government in implementing the Carter Commission recommendations, both in principle and in detailed readjustments that the European community has not made, and willingly made many sacrifices. It has made them because it recognises the rights of other races. But apparently, in return, judging from such information as is vouchsafed in the Memorandum, the rights of the Europeans, who have been encouraged to come out here and play their part in the development of this part of the British Empire, are going to be conveniently overlooked."

#### "Not Far Enough"

They noted, he added, with some slight compensatory satisfaction, that the boundaries of an area which will in due course be defined, and will appear as a schedule to the Crown Lands (Amendment) Ordinance, would be unalterable, but that did not go far enough. That a block of land should merely be called "Highlands" as opposed to "Native Lands" did not give them the security to which they were entitled, and which, they had been given distinctly to understand they should be accorded, more especially, when it was recalled that the "Native Lands" ceased to be Crown Land, whereas the Highlands remained Crown Land.

Major Cavendish-Bentinck mentioned the fact that the end of his speech on the Motion that he proposed in 1934 be dealt with the Commission's recommendations regarding the White Highlands and he proceeded to quote a lengthy extract from that speech. At the end of the extract it was stated:

"I must however add quite definitely that in our opinion no Order in Council can furnish the same measure of security in regard to land as is given to Natives unless Order in Council specifically provides for the grant to a statutory body composed of the representatives of the whole of the European Highlands (as recommended by the Commissioners) absolute power of veto over all land transactions whatsoever within the boundaries of the European Highlands on similar terms to the power accorded to the Native Lands Trust Board in regard to transactions in Native lands."

"Without this security we regard the whole work of the Commission as pointed out by themselves, will have been a waste of time."

#### 1934 Statement

After completing that quotation, Major Cavendish-Bentinck stated that their conditions had been reiterated by every single European Elected Member speaking in the debate in order to make their attitude on this subject abundantly clear. The Elected Members' speeches were replied to by the Commissioner for Local Government, who stated "I would endorse every word of appreciation of the work of the Commissioners uttered in this House, and to state that in my humble opinion the Colony owes a great debt of gratitude to them if and because they have brought finality to the problems which they were considering, and for which no solution had appeared to Government for a number of years. They have dispelled our hope for ever—the unhappy phantom of uncertainty and disquietude."

"I can only say" said Major

# The Delamere Memorial Fund

## FIRST RESPONSE TO NEW APPEAL

The "East African Standard" is glad to be able to publish to-day the first list of subscriptions in response to the renewed appeal by the Delamere Memorial Committee.

As will be seen the list is headed by His Excellency the Governor and one of the principal items records a generous donation by the Kenya Government.

As already announced the Committee's aim is to raise a total of £2,000 for the purpose of erecting a statue of the late Lord Delamere in a prominent situation in the capital. Approximately half of this sum is now in hand and it is hoped that people of every class and race in East Africa will show an eagerness to be associated with this scheme by contributing as liberally as possible.

All subscriptions should be addressed to the Editor "East African Standard," P.O. Box 380, Nairobi; cheques being made payable to the Lord Delamere Memorial Fund.

### LORD DELAMERE MEMORIAL FUND—LIST No. 1

Balance of previous appeal	Shs. 1,382 00
His Excellency Sir Robert Brooke-Popham	250 00
The Kenya Government	6,000 00
Nairobi Branch of the Royal Society of St. George	500 00
Lord and Lady Erroll	500 00
Shapley Schwartz and Barret (second donation)	200 00
Mr. Hakim Singh	50 00
Col. F. Stewart Moberg	100 00
	Total Shs. 8,982 00

# Kampala Honours St. George

## "ENGLAND'S DAY" IS CELEBRATED

"STANDARD" CORRESPONDENT

This week-end has been devoted to the celebration of England's Day by the Uganda Branch of the Royal Society of St. George.

On Friday afternoon the children's party, which was a special feature of last year's celebrations and has now become a permanent institution, was held on the Sports Club Grounds. After an enjoyable tea served on the verandah of the Club House, the hundred-odd children present formed themselves into a ring and the Princess (Mrs. Hopwood) laid them all about her rescue from a horrid dragon by the brave St. George.

The Bishop of Mombasa has asked the "East African Standard" to announce that he suggests that it would be appropriate and desirable to use in the Churches of the Diocese and privately at this time the prayer for rain in the Prayer Book, the following prayer which he authorises for use in public worship:

Almighty God, who has blessed the earth that it should be fruitful and bring forth abundantly whatsoever is needful for the life of man: Prosper, we beseech Thee, the labour of the husbandman, and grant such seasonable weather that we may gather in the fruits of the earth, and ever rejoice in thy goodness to the praise of thy holy name; through Jesus Christ our Lord.

"Retreat," a spectacle enjoyed not only by the juveniles.

Governor At Ball

On Saturday morning the





was going to say and would like to ask for a reassurance from Government that what had been stated by Mr. Gurney in 1926 was not intended to be a permanent policy. It would be his policy in future that Government would be able to give that assurance in terms incapable of being misinterpreted. It was no use talking about increased settlements and development unless they definitely knew what Government's policy really was.

Lord Erroll (Kiambu) seconded dealing particularly with the Chikwa claims in the Nairobi area. "A long ago as 1919, he said, the then District Commissioner, Mr. A. C. W. Gurney had issued a circular to District Officers stressing that the Chikwa rights were to be rights of usage only and not rights of ownership.

In regard to the position on the European farms, he was about to mention all the frequent unsatisfactory state of affairs was generally well-known but the position had deteriorated to an alarming extent during the past two years and more so during the last few months. And it was only natural that if Government allowed the Natives to think they were "getting squares with it" they would attempt to do so. Worse still, they told their friends, who in turn "tried it on the dog." Having seen the farms himself he had seen the damage which had been done.

#### Nine Farms—45 Claims

He referred to nine farms which had 45 claimant families residing on them to-day and when he told them that some of these farms consisted of only 60 to 180 acres, and one claimant's family numbered 45 persons, and two persons on one of the farms were occupying 150 acres of land, he thought hon. members would realise the serious situation. Some of the claimants were not resident on the farms but kept "dummies" on them and also employed a number of Natives to tend their cultivation.

The younger Natives had become extremely truculent and took no notice of the wishes of the farmer and were extending to such an extent that they were unable to cultivate properly, their whole area and were leaving behind them an area of dust which it would take years to recondition.

He knew of a farmer who had remonstrated with the natives. As a result one of his persons (his better) had died of arsenical poisoning, this had been proved by what she

#### Wattle Cut Down

And the damage now was not only confined to squatted natives in the adjacent reserves were beginning to encroach the position, but the other day natives had come from the reserve to an adjacent farm and cut down one of a half acre of wattle. The land had offered compensation. She 70. The estimated damage was Shs 140. Three Natives had been secured and each fined Shs 15. She 45 for 175 worth of damage.

He could quote interminable instances of the mischief that was being done by the delay.

Was Government here to govern, or to be governed by a handful of truculent Natives?

Could not government understand the growing sense of injustice of impotence among the settlers? They could feel proud that they had among them people who had shown such forbearance, for so long. But it could not go on. These people had letters from District Commissioners dated twenty months back asking them to wait, and they were still being asked to wait.

mitted that from that point of view the Indians also had a claim to nomination on the Board.

#### "No Parochial Matter"

When it came to the question of the Highlands, he submitted it was not a parochial matter. They could not forget that the Empire was composed of various races, who had rights in this country. Indians were not getting a fair deal. In the proposed Order in Council an administrative practice would be continued but they had to remember that that administrative practice was based on unjustifiable racial rights in this country. Indians were not getting a fair deal. It was most galling to their sense of self-respect to find that in this, a Colony of the Empire, they were disqualified from holding land in the Highlands, particularly when they would find that the bar was not against foreigners.

Even Indian Princes would be refused a few acres of land in Karen Estates.

He reminded Council that the Central Government in India was not yet controlled by Indians, yet that body had passed a resolution protesting against the implementation of the proposed Order and the discrimination against Indian settlers in Kenya; that had been a resolution accepted by the Government of India.

Referring to the world changes which were taking place, he believed that the Imperial Statesmen at home had a far better conception of the issues than European Elected Members.

#### Division Unwise

The hon. Member had said he would like to see the rights of each race specially recognised but he the speaker did not think it would be statesmanlike or in the interests of the country to divide it into small groups of various races, for the purpose of economic benefit such a division would be most unwise.

But while not claiming any special reserves for themselves, Indians did claim that in the unity of the country the special interests of every race ought to be recognised and in regard to land the interests of the Indians had not been recognised.

Concerning the claim that in view of Indian interests an Indian should be on the Highlands Board

#### "European Sacrifices"

He recalled how E. C. Long acting for the R. F. V. supported the motion. The European community had given up land which should have been part of the White Highlands. He referred to land given

to the hon. Member for Rift Valley to the effect that if the word "White" was omitted they would be left with nothing. Had they not their 999 year leases signed on behalf of the Crown? "I wish I was in the happy position that they are," went on the hon. Member "if I had as heads of departments, as my Governor, as Secretary of State, men of my own race I think unless there was something wrong with my mentality—that I would not have the slightest fear of any change".

Continual harping on this question of the Highlands was doing a disservice to the Empire. The debate on the motion—and on the Squatters Bill—had revealed a skeleton in the cupboard. He the speaker, had not realised until then that there was a very large number of natives in the European Highlands for whom even the Carter Commission had made no specific provision for settlement. And he had been surprised to hear the Chief Native Commissioner saying that he was trying to find a hundred square miles on which to settle these people. A hundred square miles on which to settle 150,000 people was a poor solution of the whole problem.

#### "Insult to India"

The present position was a gratuitous insult to Indians. He felt it as a personal insult when they found that a person such as His Highness the Aga Khan was unable to acquire land which could be acquired by, say, any person from Czechoslovakia.

Actually the refusal of land in residential areas was a violation of the White Paper of 1933 in which it was laid down that although an Indian could not acquire agricultural land in the so-called Highlands, they would be allowed to take part in the development of commercial and industrial undertakings in the Highlands and could acquire land for residential purposes.

Speaking without the English Hansard, he was certain that the Secretary of State had never mentioned "White" or even ordinary Highlands. He had said there would be a definition of non-Native lands and that there would be no legal disability affecting any Indian subjects of His Majesty. The memorandum was definitely a recognition of an immoral practice which had been going on in the past years by defining the particular area in which that immoral practice will continue for all time.

#### "Why Not British?"

He was getting sick of hearing about "European" Highlands. Why? (Continued in next column).

1/10 per lb. F.O.R. Nakuru.  
Local Broomcorn Seed -/50 per lb. F.O.R. Nakuru.  
Morocco Linsced Seed 2/50 per 200 lbs. F.O.R. Nakuru.  
Woolly Pod Vetch Seed -/35 per lb.  
Purple Vetch Seed -/45 per 1 lb. per 1 lb. F.O.R. Nakuru.  
Irrigated Maize 8/75 per 180 lbs. net. F.O.R. Nakuru.  
Tobacco Seed 2/50 per oz.  
Barley 8/- per 180/lbs. F.O.R. Nakuru.  
Poultry Laying Meal 0/00 per 112 lbs. F.O.R. Nakuru.  
Mixed Beans 11/00 per 200 lbs. F.O.R. Nakuru.  
Corn and Cob meal 6/- per 180 lbs. F.O.R. Nakuru.

**ROYAL TYPEWRITERS**  
**ROYAL WINS AGAIN**  
ANOTHER GREAT TYPING VICTORY FOR THE WORLD'S NO. 1 TYPEWRITER.  
In the International typing contest held at the Hague, Holland, on January 7th, 1938, Royal Operators won 1st place, 2nd place, and 3rd place to add another outstanding triumph to the long list of Royal contest victories.  
Again Royal demonstrates the sensational speed and ease of operation that has won it the 1935, 1936, and 1937 worlds typing championships and has given it the world's typing record of 141 net words per minute.

Sole Agents for Kenya and Uganda  
**THE ANGLO-BALTIC TIMBER Co., Ltd.**  
NAIROBI  
Distributors:—  
NAKURU DISTRICT:  
P. R. Warner, Stationer, Nakuru.  
KITALE DISTRICT:  
Lessies Nzola Press, Kitale.  
UGANDA:  
H.M. Syndicate, Kampala.  
You can buy a Royal Typewriter at any of our stockists at the same price as if you ordered direct from us; we guarantee service, etc.

Read an unbiased opinion of the new  
**CHRYSLER PLYMOUTH**  
on page 18.

# THE BLUE and SILVER WAY

## SOUTH AFRICAN AIRWAYS

new three-engined planes  
can now take you from  
**NAIROBI TO THE RAND**  
IN 30 HOURS

Breakfast in Nairobi on THURSDAYS  
Tea in Johannesburg on FRIDAYS

Particulars obtainable at  
Messrs. WILSON AIRWAYS, NAIROBI, 07:—  
THE SOUTH AFRICA OFFICE,  
Memorial Hall,  
NAIROBI.

## BRITISH INDIA STEAM NAVIGATION CO. LTD.

### FOR SERVICE AND COMFORT

TRAVEL

# B.I.

SAILINGS TO MARSEILLES & LONDON VIA SUEZ  
For Agents and further particulars see page 8.  
**BRITISH INDIA STEAM NAVIGATION CO. LTD.**

# HIGHLANDS MOTION PASSED IN COUNCIL

## Government's Qualified Acceptance

**IN LEGISLATIVE COUNCIL YESTERDAY THE MOTION BY MAJOR CAVENDISH-BENTINCK ON THE CARRYING OUT OF THE RECOMMENDATIONS OF THE CARTER LAND COMMISSION WAS PASSED, ONLY THE INDIAN MEMBERS VOTING AGAINST.**

The debate was marked by two outstanding speeches, the first by the acting Commissioner for Local Government Lands and Settlement (Hon. C. E. Mortimer, M.B.E.) and the other the maiden speech of Kenya's first woman Member of Legislative Council, Lady Sidney Farrar (Nyanza). Lady Sidney received congratulations from all sides of the House, including those of His Excellency the Governor.

On behalf of Government, the acting Commissioner made it clear that whilst Government had no objection to forwarding to the Secretary of State the representations made by members, every matter that had been raised during the debate had already been fully considered both by the local Government and the Secretary of State. No alteration of the proposals in matters of principle could be expected.

The debate was resumed yesterday morning on the motion by the Member for Nairobi North, Major Cavendish-Bentinck reading:

"That if the objective of the Kenya Land Commission Enquiry is to be achieved and the existing sense of insecurity which prevails in both European and Native lands is essential that local legislation is essential and all other proposed amendments formulated for the purpose of giving effect to the Kenya Land Commission Report should be brought into force without further delay and be so framed and worded as to conform strictly both to the conclusions reached and accepted by His Majesty's Government in the White Paper (Command 4588) published in May 1934 and to the recommendations accepted by this Government in October 1934 and that urgent representations be again made to the Secretary of State to that effect."

**Government Statement**  
Government's qualified acceptance of the motion was announced by the Acting Commissioner of Local Government Lands and Settlement (the Hon. C. E. Mortimer, M.B.E.) who at the beginning of a 40 minute speech said that the motion before the Council dealt not so much with matters of principle as with the necessity for immediate action to carry into effect principles already approved.

"I would first of all emphasize," he went on, "that this Government yields first place to no person in its desire to foster and encourage in every way that sense of security in land matters without which no permanent progress can be of course possible." (Applause.)

Reviewing the attention of the Kenya Land Commissioner, he recalled that the recommendations dealt not only with matters of great principle, but also with matters of intricate details.

importance must of course be carefully prepared and submitted to close scrutiny. These facts accounted for the long lapse of time.

Referring to the Memorandum and to the proposed legislation, he pointed out that it was divided into two parts, the first dealing with Native areas and the second with the Highlands.

The object of the motion was to ensure finality.

"The word permanent used to have a meaning but since the hasty drafters have got hold of it the meaning has been somewhat abused." (Laughter)

But using the word in its real sense the settlement was intended to be permanent as was humanly possible to be embodied in two Orders in Council.

It was not in accordance with constitutional practice for Orders in Council, which lay within the prerogative of His Majesty, to be published in draft form, but the Secretary of State had authorised the statement contained in the Memorandum setting out the substance of what would be contained in those Orders.

He could assure members that the Memorandum accurately reflected the intention of H.M. Government so far as the Orders in Council were concerned.

**Native Lands Board**  
Dealing at length with that portion of the Memorandum and the Order to be promulgated in regard to Native Lands the speaker, replying to points raised in the debate, made it clear that in regard to the Member to be nominated by His Excellency to the Native Lands Trust Board, there would be no delegation of the Governor's power of nomination and his unlimited right of choice of the person best suited to carry out the obligations.

With regard to the Highlands Order in Council he said that the sixth term of reference of the Commission had been: "To define the area, generally known as the Highlands, within which persons of

not tolerate any racial discrimination in legislation on the occupation of land in Kenya."

**Administrative Practice**  
On the other side, he would take the opportunity of affirming with emphasis that there was no intention whatever of departing from the administrative practice which had been in force for 30 years whereby no Crown Land in the Highlands was alienated to non-European, and whereby the will of the Governor in Council was used to protect and preserve the privileged position held by the European race by reason of long usage and definite pledges, a privileged position confirmed from time to time by H. M. Government and especially in the White Paper of 1923.

**Previous Pronouncements**  
In this connection he quoted the words of two Secretaries of State for the Colonies.

In February 1935 Sir P. Cunliffe-Lister (now Lord Swinton) had said:

"Ever since 1906 the alienation of agricultural land in the European Highlands has been granted only to Europeans. That policy is tantamount to a pledge and it has been followed by every Government since and I have no intention of changing it."  
In November 1937 Mr. Ormsby-Gore had said:

"It is not intended that the Order-in-Council defining the boundaries of the Highlands area shall include any provision involving legal or administrative discrimination on the basis of race or nationality in connexion with the occupation of land in that area. The issue of the Order will not affect the policy which has been followed since 1906."

**No Shadow of Doubt**  
"Such an unequivocal statement leaves the policy of H. M. Government on this point beyond all shadow of doubt," went on the Commissioner, "and I trust that the hon. mover will accept that statement as the declaration which he desires and that it will go far to dispelling the unhappy phantoms of uncertainty and disquietude to which reference has been made."

He wished at this point to emphasize his own conviction that there was in the Colony ample land for all present and future and for all reasonable extension.

"I would plea for the co-operation of all sections of the unofficial community—to pull together and to develop to the fullest possible extent the areas open to their development and to drop this old controversy and get on with certain feasible energy and ability towards filling up the unoccupied spaces and developing this bright gem of the Colonial Empire."

Referring to one of the functions of the Highlands Board—its consent to any existing or future land in the Highlands in connexion with exchanges—the power of the Governor in Council to veto could not be divested in favour of the Highlands Board.

**Kiambu Difficulties**  
Dealing with the proposed extinguishment of certain Native rights which would be carried into effect he referred to the remarks of the Member for Kiambu (Lord Erroll) who had made special reference to the difficult position of farmers in Lamuru and other Kiambu areas. He said that in certain of these areas were difficult to deal with and it had transpired that the number of claimants concerned was more

No Alterations in Principle

Whatever the Government's objection to submitting to the Secretary of State representations made during the debate, he would inform members that every matter that had been raised during the debate had already been closely considered by the local Government and H. M. Government and no alteration of the proposals in principle could be expected.

Subject to this qualification which would require no alteration in the wording of the motion, he was authorised on behalf of Government to accept the motion. (Applause.)

**"Unfounded Fear"**  
Associate himself with what had been said by Mr. Parfitya and Mr. Shams-ul-Deen, the Hon. Rahumtala Kassim said:

"There are millions of acres of uncultivated and unalienated agricultural land in the Kenya Highlands, and according to the Agricultural Department only 1% of the land has been cultivated."

This fear in the minds of the European Community that if Agricultural land were allotted to the Indian Community in the Kenya Highlands, a large portion of the land would be taken up by the Indians was unfounded, he said. "There is no ban against Indians acquiring land in Tanganyika or Uganda Highlands. Still there is no conflict of interest in those Territories," said Mr. Kassim. "Such a ban against the Indians in Kenya is a great insult to the Indians, who are not only our British Subjects but are recognised by the British nation as equal partners in the British Commonwealth. The Kenya Highlands question has become a national question in India."

**Woman Member's Support**  
Lady Sidney Farrar (Nyanza) supported the motion.

"The hon. mover had voiced the feelings of the whole of the European unofficial community very conclusively, and they all greatly appreciated the fact that he had voiced those views bravely and without political verbiage."

It was with great regret that she had heard the hon. Commissioner for Lands state that Government had any reservations in supporting the motion before them, and she still hoped that these reservations might not prove unshakable.

She thought that all sections of the House were satisfied that the Order in Council as regards Native interests was satisfactory and had their warmest support. But she was afraid the same could not be said of the Government as applied to the White settler community in the Highlands. She referred to the unfortunate omission of the word "White" or "European" before the word Highlands.

**"White Settlement Necessary"**  
The hon. mover had set before them the past history but she would like to bring forward one plea—one claim for the unanimity of all sections of Council.

The British Government had been in the first place the white settlers and urged to the truth development of Kenya. That, she thought, was conclusively shown by its readiness to alienate land for settlement before the War, and by the Soldier Settlement Scheme after the War whereby men were sent to Kenya and urged to come out to Kenya to bring their families to settle here and invest all their financial resources in the country.

She did not believe that the



and worked out to the conclusions reached by both to the conclusions reached by and accepted by His Majesty's Government in the White Paper Command 4580 published in May 1934, and to the recommendations accepted by this Government in October 1934, and that urgent representations be again made to the Secretary of State to that effect.

#### Government Statement

Government's qualified acceptance of the motion was announced by the Acting Commissioner of the Settlement, Lands and Survey Department, (the Hon. C. Mortimer, M.B.E.), who at the beginning of a 40 minute speech said that the motion before Council dealt not so much with matters of principle as with the necessity for immediate action to carry into effect principles already approved.

"I would first of all emphasise," he went on, "that this Government yields first place to no person in its desire to foster and encourage in any way the necessary security in land matters without which no permanent progress can of course be possible". (Applause). Reviewing the action taken, and proposed to be taken to carry out the intention of the Kenya Land Commissioner, he recalled that the recommendations dealt not only with matters of great principle, but also with minute and intricate details. There were over a hundred of minute detailed recommendations requiring attention.

#### Details Carried Out

He was happy to say that with the exception of those few recommendations to be put into effect, they practically all had now been carried out. As members were aware, the sum of £50,000 had been voted by the Imperial Parliament to assist the Kenya Government to carry out the intentions of the Commissioner, but that sum practically all had been spent in the purchase of land to be added to Native areas, in compensation and in a reserve for definite commitment and only £200 remained unallocated.

The intention of Government with regard to legislation had been fully explained in the Memorandum now in the possession of hon. Members, and conformed strictly with the terms of Command Paper No. 4580 and would with some minor alterations rendered necessary carry out the recommendations of the Commissioner as accepted by H. M. Government.

The motion accepted by Government in 1934 requested that full consideration should be given to locally expressed views in regard to detailed recommendations.

That motion had been accepted by Government and had been meticulously carried out. The local Government and the Secretary of State had fully considered all the locally expressed views.

#### Reasons for Delay

He was bound to admit that there had been delay in carrying out the recommendations, much longer than was anticipated, but the Commissioner had suggested that there had been definite reasons for that delay, which might be accepted as adequate.

The Report had recommended a number of acquisitions and purchases of lands from various parties for additional Native areas. Negotiations had taken a long time. Some of them were delicate and some cases the parties were outside the local boundaries. Months and months of negotiations. Then there had been boundary alterations and the Forest Reserves, and necessitating a long wait in order to ensure that the boundaries were determined in the Order in Council were fully known and accurately described.

He was able to say that practically all this work had now been completed.

So far as legislation itself was concerned, measures of so far reach-

ing as the settlement was intended to be as permanent as was humanly possible to be embodied in two Orders in Council.

It was not in accordance with constitutional practice for Orders in Council, which lay within the prerogative of His Majesty to be published in draft form, but the Secretary of State had authorised the statement contained in the Memorandum setting out the substance of what would be contained in those Orders.

He could assure members that the Memorandum accurately reflected the intention of H.M. Government so far as the Orders in Council were concerned.

#### Native Lands Board

Dealing at length with that portion of the Memorandum and the Order to be promulgated in regard to Native Land, the speaker, replying to points raised in the debate, made it clear that in regard to the Member to be nominated by His Excellency to the Native Lands Board, there would be no question of nomination by the Governor's power of choice of the person best suited to carry out the obligations.

With regard to the Highlands Order in Council he said that the sixth term of reference of the Commission, generally known as the European descent are the persons of privileged position in accordance with the White Paper of 1923."

The Commission had defined the Highlands and that definition was accepted by the local Government and by the Imperial Government.

#### Highlands Boundary

But the Commission had a colossal task and it was not to be expected that its report would be without any error or not require closer examination.

In fact that had proved to be the case and certain alterations in detail became necessary in setting the boundaries of the Highlands. On every one the accredited representatives of the Highlands were consulted and he would like to pay tribute to the reasonable spirit with which those proposals were met.

The Order in Council would define the boundaries recommended by the Commission subject to the small alterations agreed to by the representatives of the Highlands.

This final definition would be unalterable except in accordance with the Crown Lands Ordinance and the new Native Lands Trust Ordinance.

There was nothing sinister in the reservation. The provisions of the two Ordinances mentioned covered the necessity which might arise from time to time of making small alterations in the boundaries of the Native Reserves and Native lands in order to provide for exchanges with the Highlands area for compensatory areas to be added for exclusions from Native Reserves.

Provision would be made that in no case will such alterations be made affecting the Highlands within the consent of the Highlands Board.

#### "No Racial Discrimination"

As had been repeatedly affirmed the Order-in-Council would contain no discrimination either against or in favour of any particular race and the other side of the House that there should be no notices of a qualifying adjective—"white" or "European"—before the word "Highlands" could not be accepted.

Referring to the speech of the Member for Kiambu (Lord Eroll) the acting Commissioner challenged the statement made by him that the country had been promised by a succession of broken promises by successive Secretaries of State.

"That I challenge," said the Commissioner, "as a statement not founded on fact, as successive Secretaries of State have made it abundantly clear that H. M. Government could

only an unwillingness to widen representation. He wished at this point to emphasise his own conviction that there was in the Colony ample land for all races resident therein and for all reasonable extension.

He would plea for the co-operation of all sections of the official community—to put together and to develop to the fullest possible extent the areas open to their development and to drop this old controversy once and for all, devoting their energy and ability towards filling up the unoccupied spaces and developing the bright gem of the Colonial Empire."

Referring to one of the functions of the Highlands Board—its consent to any excision or diminution of the Highlands in connexion with exchanges—the power of the Governor in Council to put together and to divide in favour of the Highlands Board.

#### Kiambu Difficulties

Dealing with the proposed extinguishment of certain Native rights which would be carried into effect if he referred to the remarks of the Member for Kiambu (Lord Eroll) who had made special reference to the difficult position of farmers in Limuru and other Kiambu areas. Native rights in certain freehold areas were difficult to deal with and it was inspired that the number of claimants concerned were more than the Commission had envisaged. He would like to pay a warm tribute to the farmers in that area for their patience and forbearance under what must have been almost intolerable circumstances. He pleaded with them to continue that patience and forbearance for a little while longer until the matter could be dealt with in a constitutional manner and to refrain from any precipitate action which would serve no useful purpose.

#### Justice First

There was one matter which was even of greater importance than expedition, and that was justice. The Governor must be satisfied that justice had been done to the Native who was removed and whose rights were extinguished. The Commission had made a survey of a sum of £2,000 was made available for Parliamentary grant for compensation for disturbance. In view of the fact that the number affected was far in excess of what the Commission had had in view it might be necessary at a later date to come to the Council and ask for funds to provide adequately for that disturbance.

The Native Lands Trust Ordinance would provide that the extinguishment, contained in the Order in Council, could not be brought into effect without an order from His Excellency the Governor, and that Order could not be given unless His Excellency was satisfied that there was sufficient available land for the accommodation of the Natives concerned and provision had been made for compensation for disturbance. That provision for land was not an easy task.

#### Noble Lord Situation

The Noble Lord also referred to Tigon and had said that Natives were coming back and existing in the extension of already existing shambas. He, the speaker, was in a position to deny that statement. The District Commissioner, Kiambu, had reported that the cultivation which was now going on and was being carried out only had refused to move when the other voluntary movement of seven and a half clans had taken place.

The necessary Bills had to be brought before Council before the Order in Council could be promulgated. They had been sent in draft form to the Secretary of State and it was the intention of Government that the Bills should be before Council during the July session.

It was with great regret that she had heard the hon. Commissioner for Lands state that Government had any reservations in supporting the proposed Order in Council, and she still hoped that those reservations might not be unshakable.

She thought all sections of the House were satisfied that the Order in Council as regards Native interests was satisfactory and had their own support. But she was afraid the same could not be said of the Order in Council as applied to the White settler community in the Highlands. She referred to the unfortunate omission of the word "European" before the word "Highlands".

#### "White Settlement Necessary"

The hon. member had set before them the past history but she would like to bring forward one plea—no claim for the unanimity of all sections of the House.

The British Government had believed in the first place that the settlement was necessary to the development of Kenya. That she thought, was conclusively shown by its readiness to alienate land for settlement before the War and by the Soldier Settlement Scheme after the War whereby men were encouraged and urged to come out to Kenya to bring their families to settle here and invest all their financial resources in the country. She did not believe that the British Government had lost its belief in White Settlement, and she could not believe that the British Government did not realise that in order to encourage this settlement, in which they believed, it was necessary to give security of tenure.

#### Peace For Ananifty

"I beg hon. Members, on both sides of the House, to give unanimity to this motion to strengthen the hands of the Secretary of State when he comes to drawing the final Order in Council; drafted so that it is not a document of political expediency phrased in diplomatic language but straight-forward assurance that you have the right to expect, without the omission of that word that makes a very great difference to our reception of and belief in the genuineness of that Order in Council—omitted because it is feared that it may give offence to another section of the community."

The lack of such an assurance would breed fear, and fear was the parent of distrust and suspicion. She contended that until this fear was allayed there could be no hope of honest co-operation between races in this Colony.

#### Security First

In para. 1979 of its report the Kenya Land Commissioners had said:

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

"I contend" continued Lady Sidney, "that once we have been given that measure of security it will be natural for us to turn to the solving of problems confronting our Asiatic neighbours in a spirit of co-operation which is hardly possible in present circumstances."

(Continued on Page 6)

# Minutes

Mr. Souffert: It would have been of great wisdom if you had an instruction of that nature, and if it had been carried out on this occasion. Certainly. There was no dilatoriness by my firemen.

Witness denied that he made out one report for the Council and another for the inquest proceedings.

He did not hear firemen calling for hose or ladders. The straps of the equipment were not stiff and came off easily.

"I must confess I had the worst 20 minutes of my career with the brigade," he said. "We were hard pushed. I had the extra exertion of having to supervise and to carry out an extra-fireman's duties.

"It is not an officer's place to lay lines of hose. I did not have the men at the early stages.  
"If we had received the calls at the time they were supposed to have been made we could have rescued the child and confined the fire to where it started."

"Crowd was Enormous"

Answering further questions the Station Officer said the crowd was enormous. They tried to help but they hampered the brigade. He was directed to the wrong house first of all to rescue the child.

At this remark there were cries of disappointment from the public seats and the Commissioner called for order.

Station Officer Stimpson added that the firemen could not enter the house within ten minutes of arrival but that was not due to lack of equipment.

"Our practice is to have the men in breathing apparatus working in pairs," he said.

Mr. Souffert: Then why didn't you follow the practice this time?—We have not had a fire for months, or years, where we required the use of respirators. There has been proper training in the use of the equipment."

# AN EARL SHORTENS HIS NAME

["STANDARD" CORRESPONDENT] London, April 20

The Earl of Buckinghamshire—John Hampden Hobart-Hampden-Mercer-Henderson—changed his name last night by Royal licence dropping the Hobart (pronounced "Hobart") and one Hampden (pronounced "Hamden").

In a future, announced the London Gazette, he will be known as plain John Hampden Mercer-Henderson.

The Earl, thirty-two-year-old Etonian, unmarried, is head of a family which has changed its surname several times.

First it was just Hobart. Then the fifth Earl, in 1824, made it Hampden instead.

His brother, the sixth Earl, bought back the Hobart and made it Hobart-Hampden. That was in 1838.

In 1903 the seventh Earl added two more surnames—Mercer-Henderson.

They were some of the names of the woman she married. Her full modern name was Georgina Willhelmina Haldane-Duncan-Mercer-Henderson.

Another Royal licence allowed the Haldane-Duncan to be abandoned.



THINGS WHICH MAKE LIFE WORTH WHILE



SPECIAL RESERVE and FIVE STAR VERY OLD LIQUEUR

**CRAWFORD'S**  
LIQUEUR SCOTCH WHISKY

... ONE OF THE GOOD THINGS IN LIFE!

## TO LET

MODERN STONE HOUSE IN MUTHAIGA. RENT SHS. 300 PER MONTH ON LEASE.

Apply to  
**J. POLLOK**

Sadler Street  
P.O. Box 809  
Phone 2259  
NAIROBI



This week's bargain:

**1935 Morris "8"**

Two Seater

**£75**

Overseas Motor Transport  
Co. (E.A.) Ltd.

Sadler Street, NAIROBI.

# SCHWEPPE'S

The King of  
Table Waters and Squashes.

AN UNRIVALLED  
HOT WEATHER DRINK

If you want the very Best

Insist on

**SCHWEPPE'S**

BEST FORM OF TRAVEL TO-DAY

AIR

The King of  
Table Waters and Squashes.

AN UNRIVALLED  
**HOT WEATHER DRINK**

If you want the very Best  
Insist on

**SCHWEPPE'S**

Two Seater

**£75**

**Overseas Motor Transport  
Co. (E.A.) Ltd.**  
Sadler Street, NAIROBI.

**BEST FORM OF TRAVEL TO-DAY**

**AIR**

*with the greatest care.*

*Consider the following advantages offered to*

**AIRWAYS LINERS**

One of which is Powerful enough to maintain altitude;  
anic, and a Wireless Operator form the crew;  
instruments ensuring the utmost safety in dirty weather;  
ed **Through-out** the flight;  
exceptional in these big liners; [directions;  
Nairobi to Johannesburg in 30 hours once a week, in both  
n an overland route, at the present time, (180-200 miles  
reduced to the absolute minimum; [per hour; )  
ys Planes is Automatically Insured for £1,000.

AIRWAYS, SHOULD BE DIRECTED TO—

Rhodes House, Nairobi.

**AFRICA OFFICE,  
NAIROBI.**

# HIGHLANDS MOTION PASSED

(Continued from page 5.)

## "Main Difficulties"

The Attorney General referred to the main difficulties in implementing the report of the Carter Commission. He mentioned particularly the spurning of the rights of Natives in the Highlands. This, he thought, might be considered an easy matter, but the Commission had added provided that suitable land be provided for them. Therein lay the most difficult task that could have been set.

Mr Harragin added that some people appeared to think it was an easy matter to get Orders in Council through. But these Orders had to be scrutinised not only by the Secretary of State for the Colonies and by the authorities in Kenya, but by various other Secretaries of State concerned who might not always see eye to eye as regarded the wording.

The Attorney General thought that the time taken in putting into effect the Commission's recommendations would not in any way lessen their effect. He thought the time had allowed people to realise that it was not so serious as when the recommendations first came to light. He thought it was a little hard that a motion of this kind should have been moved just when the memorandum was laid stating that the legislation concerned was practically complete.

## Right-Holders and Squatters

Mr Harragin proceeded to refer to certain points raised by the Earl of Eroll. He associated himself with the appreciation of the patience and restraint shown by settlers.

The Earl of Eroll, he stated, had made out a good case from the inquiries he had quoted but the speaker would join issue with him in certain respects. There was, he said, a difference between right holders and squatters. The latter were definitely not there as a matter of right, but he admitted there were difficulties about them until extra land had been found.

With regard to the point that Natives were cultivating more land in the hope of obtaining increased compensation, the speaker stated compensation would be paid for the amount they had always had and no more.

The Earl of Eroll had mentioned a case where a poisoned heifer but that could have happened under many circumstances, and bore no relation to the matter they were at present discussing.

The Attorney General proceeded to deal with the case of the cutting down of some one and a half acres of wattle. The culprits were suspected but there was no proof and the three people fined Shs 15/- each.

were three old women who happened to pass that day and collected a few pounds valued at 15 cents each, but were not.

Mr Harragin referred to the excellent speech by the Member for Nyamya and then to the main objection to the memorandum—the omission of the word "White" or "European"—and stated that they had been informed that racial discrimination could not enter into Orders in Council.

Lieut.-Col. Kirkwood, supporting the motion, complimented the mover on the restraint he had exercised and on putting up what he considered was an unanswerable case.

## Indians Attacked

Colonel Kirkwood referred to the attitude of the Indian Members in coming on this occasion, as on all others, the opportunity to turn the issue into a racial one and discuss it from that angle. He referred to Mr Shams-ud-Deen having stirred up racial feeling in India and stated that to his mind, such action did not conform to the oath taken by Members in the Legislative Council.

Colonel Kirkwood could not admit, and never had admitted that Indians had any right to sit in Council; neither could he admit that they had any right to have a member of their race on His Excellency's Executive Council. Gentlemen sitting on that Council must be able to consider questions in an unbiased and impartial manner and to discuss matters on their merits. "How Indians can conform to these principles I leave it to you to say" he added.

Mr Shams-ud-Deen had referred to the matter as a quarrel between the Elected Members and His Excellency and his government. There was no such thing, said Colonel Kirkwood. They were doing their best to prevent it becoming a quarrel.

They were trying to point out that the promises made and reiterated over a period of more than 30 years apparently were not going to be implemented, and they were asking that representations be made to the Secretary of State asking him to agree to alter the paragraph in the memorandum relating to the definition of the "Highlands".

## Europeans and Natives

He maintained it was intentional and wilful that no mention had been made of "European" or "White" Highlands. As regards the Native legislation the Europeans welcomed it. They had always endeavoured to do justice to the Native. If the Native was not given just treatment he would be discontented and if that were so there would be neither a contented European nor Indian population.

In 1934 Elected Members had declared themselves ready to make sacrifices and they agreed to the implementation of the Carter Commission report in toto. Every European Elected Member emphasised that the recommendations must be carried out in toto, but now he failed to see how the report was going to be implemented as they had a right to have it implemented. As he understood it the principle laid

down at home would not allow racial discrimination in Orders in Council, yet the Government speaker had stated there was going to be no variation of principle or practice. Was that racial discrimination or not? he asked. He submitted it was and he failed to see why it could not be put into plain English in the Order in Council.

## Strategic Importance

Col Kirkwood stated he still had faith that the Secretary of State would listen to their appeal. Kenya, geographically and strategically, was very important, and relied on the European population to hold the fort until help arrived in time of trouble. Once Kenya went there was nothing to stop the road to the Cape except the forces further south. Concluding he stated that if logic and reason no longer prevailed European Elected Members could not compromise on this particular issue.

## Mover's Reply

Opening his reply to the debate, Major Cavendish-Bentick stated that the subject was a most important one to the Elected Members, and expressed the opinion that several official members greatly sympathised with them.

The speaker said he would like to try to counteract certain impressions, one of which was that they did not raise their responsibilities and had rushed into debate on a question which might raise racial issues without carefully considering the matter. He could assure Council that that was not the case. Their attitude had been a carefully considered one. They knew perfectly well there had been two courses open to them: they could accept the memorandum and avoid what might be a difficult debate. They had chosen, however, to take the second course, and to begin with service to the Empire as a whole by trying to fight for the well-being of a particularly small part of the Empire. He had no hesitation in saying that the points he had

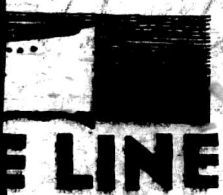
brought up were justified and were for the good of the country.

"Threats . . . Leave Us Cold"  
With regard to the question of having nothing of racial discrimination in Orders in Council, the speaker was of the opinion that perhaps it would be desirable to carry it out in an underhand manner. He thought it was some value to have the statement that the present administrative practice was to continue.

Mr. Paddy had attempted to make the whole thing an Empire issue and had stated it was unfortunate that they were going to alienate sympathies with the Government of India. "As far as White people are concerned, I think the Government of India leave us cold" stated the speaker. "We don't want racial troubles but if they come I know who is going to win."  
—Major Cavendish-Bentick stressed once again that the Highlands Board should consist of Indians only and viewed with alarm any suggestion that Indians should be on the Native Lands Trust Board. He related the statements by Mr. Shams-ud-Deen that Europeans had robbed Natives of their land and also attention to the development of the country and civilisation since the White people came. The Natives had been enabled to live in peace.

## European Privilege

There is one tremendous step forward. I particularly asked whether the Government would be prepared to repeat the statement made in the House of Commons and we have had it repeated. As I understand the present position on this matter what happens with regard to representations which might be made as a result of this debate it has been clearly stated that the policy of this Government is that the Imperial Government is not to be asked that the existing practice will continue and in these particular areas known as the "Highlands" European privilege will in fact obtain.  
The motion was then put to the vote and carried.



Via S. AFRICA

Mombasa Arr.	Southampton
About	About
May 12	June 22
June 9	July 20
July 7	Aug 17
Aug. 4	Sept. 14
Sept. 1	Oct. 12
Oct. 29	Nov. 9
Nov. 24	Dec. 7
Dec. 22	Jan. 4
	Feb. 1

Notice of the Balearic Islands from £36.  
African Year Book 2/50.  
1938 until further notice with these Excursions.

NY, Ltd., Mombasa.  
Kitale, Moshi, Arusha.

AND WEST  
PAN,  
and THE STATES.  
Yapere,  
York.

ON THE  
*World's Highways and Byways*

TRAVEL

# B.I. WAYS

WHATEVER YOUR TRAVEL REQUIREMENTS CONSULT THE

## BRITISH INDIA LINE

NEXT SAILINGS FROM MOMBASA

to BOMBAY		
s.s. TAKLIWA (Calls Porebunder)	May 5th	
s.s. KENYA	May 19th	
to DURBAN		
s.s. TAIREA (Calls Mozambique)	May 7th	
s.s. KARANJA	May 22nd	
to EUROPE via SUEZ		
s.s. MADURA	April 30th	
s.s. MATIANA	May 28th	

Agents: **SMITH MACKENZIE & Co., Ltd.**  
Mombasa and Branches. Nairobi Branch Box 390.

### BRITISH INDIA STEAM NAVIGATION CO. LTD.

## NATIONAL BANK OF INDIA LIMITED

(Incorporated in—United Kingdom)  
Bankers to the Colony and Protectorate of Kenya and Uganda  
Protectorate Government.

Subscribed Capital ... £4,000,000  
Paid-up Capital ... £2,000,000  
Reserve Fund ... £2,200,000

16, Bishopsgate, London, E.C. 2.

#### BRANCHES:

Mombasa, Nairobi, Nakuru, Kisumu, Entebbe, Kampala, Jinja, Zanzibar, Dar es Salaam, Tanga and Mwanza.

Also at: Calcutta, Bombay, Madras, Karachi, Lahore, Amritsar, Delhi, Cawnpore, Colombo, Kandy, Newara Eliya, Tuticorin, Cochin, Chittagong, Rangoon, Mandalay, Aden and Steamer Point, Aden.

AGENTS in New York and throughout U. S. A., Europe, Canada, South Africa, and Australia.

FIXED DEPOSITS.—Deposits are received for fixed periods on terms which may be learned on application.

#### EXCHANGE.

The Bank grants Drafts on the Head Office and Branches at the current rates of Exchange, forwarding first copy of the Bill direct to the payees when required. Every description of Banking business transacted with all parts of the world.

# Shipping and Mails

ARRIVALS	POSTAL ARRANGEMENTS	DEPARTURES																										
<p><b>EXPECTED.</b></p> <p>TO-MORROW:</p> <p>Matiana from Europe. Chenonceux, from Europe. City of Newcastle, from Aden.</p>	<p><b>STEAMERS — INWARD</b> Mails Due at Nairobi</p> <table border="1"> <tr><td>Mogadisho, Dhialmale.</td><td>April 30</td></tr> <tr><td>South, Greylock</td><td>May 2</td></tr> <tr><td>Europe, Matiana</td><td>May 2</td></tr> <tr><td>Europe, Chenonceux</td><td>May 2</td></tr> <tr><td>Arab. Dem., South. Takliwa</td><td>May 3</td></tr> <tr><td>North, Urbino</td><td>May 6</td></tr> <tr><td>Arab. Dem., South. Arabia Maru</td><td>May 6</td></tr> <tr><td>Arab. Dem., South. Llanstephan Castle</td><td>May 7</td></tr> <tr><td>India, Tairea</td><td>May 7</td></tr> <tr><td>Arab. Dem., Lindi</td><td>May 8</td></tr> <tr><td>Europe, Nijkerk</td><td>May 8</td></tr> <tr><td>Europe, Llandowry Castle</td><td>May 11</td></tr> <tr><td>Matiana carries 850 mail and 598 parcel bags.</td><td></td></tr> </table>	Mogadisho, Dhialmale.	April 30	South, Greylock	May 2	Europe, Matiana	May 2	Europe, Chenonceux	May 2	Arab. Dem., South. Takliwa	May 3	North, Urbino	May 6	Arab. Dem., South. Arabia Maru	May 6	Arab. Dem., South. Llanstephan Castle	May 7	India, Tairea	May 7	Arab. Dem., Lindi	May 8	Europe, Nijkerk	May 8	Europe, Llandowry Castle	May 11	Matiana carries 850 mail and 598 parcel bags.		<p><b>PROJECTED.</b></p> <p>TO-DAY</p> <p>Madura, for Europe. Britrea, for Europe. Stratigist, for Europe. Contractor, for Europe. Cassel, for Dutch E. Indies. Saint Angelm, for South.</p> <p>TO-MORROW</p> <p>Chenonceux, for Madagascar. Dumra, for South.</p> <p>★</p> <p>Urbino, for Southern Ports, May 4. Matiana, for South, May 4. Takliwa, for India, May 6. Rouandra for Europe, May 6. Tairea, for South, May 7. Arabia Maru, for Japan, May 7. Llanstephan Castle, for Europe, May 7.</p>
Mogadisho, Dhialmale.	April 30																											
South, Greylock	May 2																											
Europe, Matiana	May 2																											
Europe, Chenonceux	May 2																											
Arab. Dem., South. Takliwa	May 3																											
North, Urbino	May 6																											
Arab. Dem., South. Arabia Maru	May 6																											
Arab. Dem., South. Llanstephan Castle	May 7																											
India, Tairea	May 7																											
Arab. Dem., Lindi	May 8																											
Europe, Nijkerk	May 8																											
Europe, Llandowry Castle	May 11																											
Matiana carries 850 mail and 598 parcel bags.																												
	<p><b>STEAMERS — OUTWARD</b> Mails Due at Nairobi</p> <table border="1"> <tr><td>Arab. Dem., Lindi, Dumra</td><td>April 30</td></tr> <tr><td>Arab. Dem., Mauritius, Chenonceux</td><td>April 30</td></tr> <tr><td>Arab. Dem., Som. Seira, Matiana</td><td>May 3</td></tr> <tr><td>India and Australia, Takliwa</td><td>May 4</td></tr> <tr><td>Mogadisho, Dhialmale, Rouandra</td><td>May 5</td></tr> <tr><td>Arab. Dem., Arabia Maru</td><td>May 6</td></tr> <tr><td>Europe, Llanstephan Castle</td><td>May 6</td></tr> <tr><td>Arab. Dem., South. Tairea</td><td>May 8</td></tr> <tr><td>Arab. Dem., Som. Urbino</td><td>May 7</td></tr> <tr><td>Arab. Dem., Som. South</td><td></td></tr> </table>	Arab. Dem., Lindi, Dumra	April 30	Arab. Dem., Mauritius, Chenonceux	April 30	Arab. Dem., Som. Seira, Matiana	May 3	India and Australia, Takliwa	May 4	Mogadisho, Dhialmale, Rouandra	May 5	Arab. Dem., Arabia Maru	May 6	Europe, Llanstephan Castle	May 6	Arab. Dem., South. Tairea	May 8	Arab. Dem., Som. Urbino	May 7	Arab. Dem., Som. South								
Arab. Dem., Lindi, Dumra	April 30																											
Arab. Dem., Mauritius, Chenonceux	April 30																											
Arab. Dem., Som. Seira, Matiana	May 3																											
India and Australia, Takliwa	May 4																											
Mogadisho, Dhialmale, Rouandra	May 5																											
Arab. Dem., Arabia Maru	May 6																											
Europe, Llanstephan Castle	May 6																											
Arab. Dem., South. Tairea	May 8																											
Arab. Dem., Som. Urbino	May 7																											
Arab. Dem., Som. South																												

10  
85  
Downing Street, S.W.1.

12th May, 1938.

My dear Brooke-Popham,

Thanks for your letter of the 30th April about the draft Native Lands Trust Bill, the Crown Lands (Amendment) Bill, and relative Orders-in-Council. The Department is getting on with the examination of the material which you have sent. There is a good deal of work involved, as you appreciate, but I can assure you that there will not be any avoidable delay here in dealing with it.

Yours sincerely,

*Robert Brooke-Popham*

Air Chief Marshal

Sir Robert Brooke-Popham, G.C.V.O., K.C.B., C.M.G., D.S.O.,  
A.F.C.

✓  
Not yet sent  
5/12/33  
8/9  
GOVERNMENT HOUSE,  
NAIROBI,  
KENYA.

30th April, 1933.

My dear Mr. Robinson,

I am just sending off by air all the draft Native Lands Trust Bill, the Crown Lands (Amendment) Bill, and relative Orders in Council.

2. In the last paragraph of my covering despatch there is a reference to a motion moved in Legislative Council and a statement that a copy of the records of the debate will be forwarded to you. The official record will take weeks, but what I shall do is to send you personally in a few days an unofficial record of the main points of the debate. The object of this will be to save any chance of consideration of the Bills being held up until the official record is received.

Yours sincerely,

R. Brooke-Polham

MR. R. H. J. ROBINSON, F.R.S., F.R.S.E., F.R.S.,  
NATIONAL OFFICE,  
2 MARK LANE,  
LONDON, E.C.3.

In reply please quote

No. L. \_\_\_\_\_

and Date \_\_\_\_\_



LEGAL DEPARTMENT  
ATTORNEY GENERAL'S OFFICE,  
P. O. Box No. 112,  
NAIROBI, KENYA

30th April, 1938.

Dear Dale,

By to-day's Air Mail or per chance the next the Colonial Office will receive our last efforts to implement the Carter Commission. The documents consist of the following -

- (a) The Native Lands Trust Bill;
- (b) The Crown Lands (Amendment) Bill;
- (c) The two Orders in Council.

I have done my utmost to assist you to follow the various amendments, etc. which have resulted from letters and negotiations since we last met and also on account of certain omissions in the legislation and in the recommendations of the Commission.

In addition to my long memorandum, I have sent you a scissors and paste copy of the bill, showing the bill as we saw it in September, with the amendments on the left hand page, but no one knows better than I do how difficult it will be to follow.

On the 14th of May my Legal Assistant, by name Stacey, will be flying home to eat two terms dinners having already passed his exams. He may be regarded as the father and mother of these bills etc. and knows more about them than any living mortal. Might I suggest that you save yourself weeks of work

W.L. DALE, ESQ.,  
LEGAL ASSISTANT,  
COLONIAL OFFICE.



and call him in consultation. His address from the 18th May to the 20th June -

H.E. Stacey, Esq.,  
Ilchester Chambers,  
St. Petersburg Place,  
Bayswater, W.2.

The Elected Members here are raising a dust about the time taken to bring these measures into force and they know that our final drafts are with you. They are most anxious that they should be polished off at the July Session. Do you think that you could vet them in May.

Stacey knows about this letter and is only too willing to assist.

You will probably have heard that the Colonial Secretary (Wade) has had to fly his wife home for a serious operation and His Excellency has insisted on my acting Colonial Secretary. Young Wallace is acting in my stead.

Remember me to Bushe, Duncan and Wray.

Yours sincerely,

*W. H. Stacey*

*dupl. all*



CONFIDENTIAL.

RECEIVED 30 APRIL, 1958  
O. G. REGY

Sir,

5

I have the honour to acknowledge the receipt of your despatch Confidential (2) of the 18th March on the subject of the proposed Orders in Council and other draft legislation to give effect to the recommendations of the Kenya Land Commission.

2. The drafts of the Orders in Council and of the two Bills have now been revised, and I transmit for your consideration

- ✓ (a) two printed copies of the redrafted Native Lands Trust Bill, together with one annotated copy;
- ✓ (b) three printed copies of the redrafted Crown Lands (Amendment) Bill;
- ✓ (c) three copies of each of the revised draft Kenya (Highlands) Order in Council and the revised draft Kenya (Native Lands) Order in Council; and
- ✓ (d) three copies of an explanatory memorandum.

3. Explanations of the main changes made in the course of revision are given in the accompanying explanatory memorandum, but the following observations are offered in reply to separate paragraphs of your despatch under reply:-

THE KENYA (HIGHLANDS) ORDER IN COUNCIL

Paragraph 4(b) of your despatch.

The most convenient procedure for choosing the four members of the Highlands Board who are to be chosen by the European Elected Members is that they should be chosen from time to time by a majority of European Elected Members ...

Members present and voting at a meeting of the European Elected Members convened for the purpose. Provision for this procedure has accordingly been made in article 4(2)(c) of the draft Kenya (Highlands) Order in Council.

In order that there may be conclusive evidence of the fact the names of the Members so chosen will be published in the Official Gazette.

Similar provision has also been made in the Native Lands Order in Council.

THE NATIVE LANDS TRUST BILL.

Paragraph 6 of your despatch.

You have expressed doubt as to whether a Local Native Council would have sufficient funds available to enable it to make a single outright payment of compensation under (new) Clause 38. The liability of the Local Native Council to pay compensation from its revenues is limited to the case of setting apart for a road which is not in effect a public road. This liability represents a very small amount of money, and there is no reason either to anticipate any difficulty on this account or to suppose that any Local Native Council could not be in a position to meet the liability.

Paragraph 7 of your despatch.

An addition has been made to the proviso to (new) Clause 38(2) to give effect to your suggestion that a native who is both a right-holder and an occupier and who moves into a substituted area under sub-section (1) does so without prejudice to any right he may have to receive compensation under sub-section (3).

Paragraph 9 of your despatch.

I agree that it is desirable to review the provisions governing the removal of natives which are contained ...

contained in this Bill, the Native Authority Ordinance and the Resident Labourers Bill, and this review is being undertaken.

THE CROWN LANDS (AMENDMENT) BILL.

Paragraph 13 of your despatch.

For the reasons given in the explanatory memorandum it has been necessary to prepare a complete redraft of this Bill. Sub-clause (5) of Clause 58J has been added to give effect to the suggestion made in paragraph 13 of your despatch.

THE KENYA (NATIVE LANDS) ORDER IN COUNCIL.

Paragraph 14 of your despatch.

The proposed paragraph (c) of Article 11 has been omitted in accordance with your suggestion.

4. In regard to the minority report of representatives of the European Elected Members, referred to in paragraph 15 of your despatch, I enclose for your information a copy of a letter addressed by the Colonial Secretary to the Chairman, Elected Members Organisation on the 13th April. I also enclose a copy of a letter sent to Mr. Pandya, whose memorandum is dealt with in paragraph 16 of your despatch.

Two copies of the Memorandum (paragraph 17 of your despatch) which was laid on the Table of the Legislative Council on the 8th April is also enclosed for your information.

5. The following Motion, moved by Major Cavendish-Bentinck, was debated in the Legislative Council on 28th April :-

" That, if the objective of the Kenya Land Commission Enquiry is to be achieved, and the existing sense of insecurity which prevails in both European and Native minds is to be at long last terminated, it is essential that local legislation and all other proposed enactments formulated for the purpose of giving effect to the Kenya Land Commission Report should be brought into force without further delay, and be so framed and worded as to conform strictly both ...

3 on 23034/1/34

both to the conclusions reached and accepted by His Majesty's Government in the White Paper Cmd 4580, published in May 1934, and to the recommendations accepted by this Government in October, 1934, and that urgent representations be again made to the Secretary of State to that effect."

A copy of the record of the debate will be forwarded to you in due course.

As I authorized acceptance of the motion I trust that I may receive your approval at the earliest possible date of the publication of the two draft Bills in their present form.

I have the honour to be,

Sir,

Your most obedient, humble servant,

Brooker Popham

AIR CHIEF MARSHAL.  
GOVERNOR.

COLONY AND PROTECTORATE OF KENYA



A BILL TO AMEND THE CROWN LANDS  
ORDINANCE

### **A Bill to Amend the Crown Lands Ordinance**

BE IT ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council, thereof, as follows:—

1. This Ordinance may be cited as the Crown Lands (Amendment) Ordinance, 1938, and shall be read as one with the Crown Lands Ordinance (Chapter 140 of the Revised Edition), hereinafter referred to as the Principal Ordinance.

Short title.

Chapter 140.

2. 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 shall thereafter come into operation on such date as the Governor shall by proclamation in the Gazette appoint.

Date of commencement.

*Memorandum enclosed with Secretary of State's dispatch confidential (6) of 28-10-37.*

3. Section 5 of the Principal Ordinance is hereby amended by the insertion therein of the following definitions:—

Amendment of section 5 of the Principal Ordinance.

*Memorandum enclosed with Secretary of State's dispatch confidential (6) of 28-10-37.*

"the Highlands" mean the areas of land the boundaries of which are set out in the Seventh Schedule to this Ordinance;

"Highlands Board" means the Board which may be established as the Highlands Board in accordance with the provisions of any Order of His Majesty in Council;

"Native Lands" mean the areas of land the boundaries of which are set out in the First Schedule to the Native Lands Trust Ordinance, 1938;

No. of 1938

"Native Lands Units" mean the sub-divisions of land into which the Native Lands are divided, which sub-divisions are described in the Second Schedule to the Native Lands Trust Ordinance, 1938;

No. of 1938

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

insertion of Part VI in the Principal Ordinance

4. The Principal Ordinance is hereby amended by inserting therein, next after section 53, the following words and sections as Part VI.

PART VI

LANDS FOR NATIVE USE AND OCCUPATION

Native Reserves and Temporary Native Reserves

Definition of native reserves. Sections 1433 and 1432.

It is desirable to state for what purpose the land is reserved: hence it is defined here instead of in the definitions above.

Definition of temporary native reserves. Section 1456.

It is desirable to state for what purpose the land is reserved: hence it is defined here instead of in the definitions above.

Governor may vary boundaries of native reserves and temporary native reserves. Sections 1453 and 2125.

New. It is desirable that some procedure should be specified.

Sections 1459 and 1794.

54. The areas of Crown land, the boundaries of which are set out in the Fourth Schedule to this Ordinance, shall be reserved for the use and enjoyment of the native tribes specified in the said Schedule, in satisfaction of their economic needs, and shall be known as the native reserves.

55. The areas of Crown land, the boundaries of which are set out in the Fifth Schedule to this Ordinance, shall be temporarily reserved for the use and enjoyment of the native tribes specified in the said Schedule and shall be known as the temporary native reserves.

56. (1) Where the Governor is satisfied that, as a result of a diminution in the numbers of a tribe, or for economic reasons, any area of land in the native reserves is no longer required for the use and enjoyment of the tribes referred to in the Fourth Schedule to this Ordinance, or where the Governor is satisfied that any area of land in the temporary native reserves is no longer required for the use and enjoyment of the tribes referred to in the Fifth Schedule to this Ordinance, he may, by Proclamation, alter the boundaries of the native reserves or of the temporary native reserves, as the case may be, and with effect from the date of publication of such Proclamation any area of land which may be excluded from the native reserves or from the temporary native reserves in consequence of such alteration shall cease to form part of the native reserves or the temporary native reserves, as the case may be.

(2) The Governor shall, before exercising his powers under the provisions of this section, consult the Trust Board and, if the Trust Board refuses to give its consent to the

action proposed, the Governor shall refer the matter to the Secretary of State whose decision shall be final.

57. (1) Where the Governor considers it desirable, he may, from time to time, with the approval of the Legislative Council and subject generally to the provisions of this Ordinance, by Proclamation set aside other areas of Crown land as native reserves or temporary native reserves for the purpose of satisfying the economic needs (whether temporary or permanent) of any of the native tribes of the Colony, and with effect from the date of publication of such Proclamation any area so set aside shall form part of the native reserves or the temporary native reserves, as the case may be, and the provisions of this Part relating to the native reserves or the temporary native reserves, as the case may be, shall thereupon apply to such areas, save that a rent shall be payable for the occupation of such areas, computed on the fair economic value of the land.

Governor's power to set aside land for native reserves and temporary native reserves. Sections 1457, 1473, 1741 and 1794.

(2) 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.

57A. (1) The Governor may, with the advice of the Trust Board, grant to such native tribes for such terms and subject to such conditions regarding occupation, use and development as he may deem expedient or as may be prescribed, permits to occupy the temporary native reserves.

Permits to occupy temporary native reserves. Sections 1456 and 1794.

(2) No permit so granted shall be revoked without the consent of the Secretary of State, to whom any proposal for any such revocation shall be referred by the Governor together with the comments of the Trust Board upon such proposal.

Section 1460.

58A. Save in regard to matters wherein express provision is made in this Part of this Ordinance, and to the exceptions hereinafter in this section contained, the native reserves and the temporary native reserves shall be subject to the provisions of the Native Lands Trust Ordinance, 1938, as if the expression "Native Lands" appearing therein contained a reference to the native reserves or to the temporary native reserves as the case may require: Provided that:—

Application of Native Lands Trust Ordinance, 1938.

No. of 1938.

(a) the native reserves and the temporary native reserves shall be under the protection of, but shall not vest in the Trust Board;

Section 1794.



No. of 1938.

(b) section 22 of the Native Lands Trust Ordinance, 1938, shall not apply to the native reserves or to the temporary native reserves except in regard to the setting apart of land for townships, trading centres and markets.

See memorandum.

No. of 1938.

(c) sections 6, 7 (4), 7 (5), 24, 25, 26, 28, 29, 30, 47, 48, 49 and 68 and the proviso to section 23 of the Native Lands Trust Ordinance, 1938, shall not apply to the native reserves or to the temporary native reserves.

#### Native Leasehold Areas

Definition of native leasehold areas.  
Sections 1467 and 1469.

Leases to natives.  
Sections 1461 and 1462.

Section 1461.

Transfer of leases to non-natives.  
Section 1469.

Leases to non-natives.  
Section 1930.

Sections 1930 and 1932.

58b. The areas of land, the boundaries of which are set out in the Sixth Schedule to this Ordinance, shall be reserved for the use and occupation of natives, and shall be known as the native leasehold areas.

58c. (1) The Governor may grant leases of land in the native leasehold areas to any native group, family or individual for such terms and upon such conditions as may be specified in such leases or as may be prescribed.

(2) Any rental payable in respect of a lease of land in the native leasehold areas shall be paid into the general revenues of the Colony.

(3) Subject to the consent of the Trust Board and to the provisions of sub-section (3) of the next succeeding section, the Governor may, for such term and upon such conditions as he may deem expedient, sanction the transfer of a lease in the native leasehold areas from a native lessee to a non-native.

58d. (1) The Governor may grant, for a term not exceeding ten years, leases to non-natives of land in such areas of the native leasehold areas as, in the opinion of the Chief Native Commissioner after consultation with the Provincial Commissioner, are surplus to the immediate or future requirements of the natives.

(2) Subject to the consent of the Trust Board and to the provisions of sub-section (3) of this section, the Governor may grant, for such term, not exceeding 99 years, and upon such conditions as he may deem expedient, leases to non-natives of land in such unalienated areas of the native leasehold areas as, in the opinion of the Chief Native Commissioner, are available for such purpose. In the selection of such areas

due regard shall be had to the amount of land which is required and is likely to be required for leasing to natives, not only at the time when a lease is granted, but also during the currency of the term of the lease.

(3) The Trust Board shall not in any case consent to—

- (a) the transfer of a lease to a non-native under the provisions of section 58c of this Ordinance; or  
(b) the grant of a lease to a non-native under the provisions of sub-section (2) of this section.

unless the Board is satisfied that such transfer or such lease is desirable in the interests of the natives. Where the Board withholds its consent, the Governor may refer the matter to the Secretary of State, whose decision shall be final.

58e. (1) For the purpose of effecting exchanges of land the Governor may, with the consent of the Trust Board, resume possession of any area of land in the native leasehold areas, which area shall thereupon cease to form part of the native leasehold areas, and in exchange for such area may make an addition of Crown land to the native leasehold areas. The Crown land so added shall in every case be equal in value and, so far as may be possible, equal in size, to the area of land of which possession has been so resumed, and shall form part of the native leasehold areas.

(2) No such addition shall be made of Crown land situate in the Highlands, save with the consent of the Highlands Board.

58f. Notwithstanding anything in this Ordinance contained, the Governor, in cases where the offences of treason or rebellion against His Majesty have been proved to have been committed by any native tribe, group, family or individual, and in addition to any other punishment lawfully inflicted in respect of an offence so committed, may order that any land in the native leasehold areas, held or occupied by any such tribe, group, family or individual, be forfeited to His Majesty. Every such order of the Governor shall be subject to the approval of the Secretary of State.

58g. (1) The Governor may grant to any native tribe permits to occupy areas of Crown land which are adjacent to the Native Land Unit provided for such tribe under the provisions of the Kenya (Native Lands) Order in Council, 1938.

(2) No such permit may be granted for the occupation of any land situate in the Highlands, save with the consent of the Highlands Board.

Section 1469.

Section 1932.

Power to resume possession for purpose of exchange.  
Section 1469.

Section 1496.

Forfeiture for treason or rebellion.  
Section 1921.

Permits to occupy other Crown Land.  
Section 1490.

Section 1494.

Sections 1492 and 1493.

(3) Every permit granted under the provisions of this section shall be subject to such conditions in regard to the occupation, use and development of the land to which the permit relates as may be prescribed.

Power to exclude from temporary native reserves, native reserves and native leasehold areas for public purposes, etc. Sections 1540 and 1921.

58h. (1) The Governor in Council may, by Proclamation, exclude from the native reserves, the temporary native reserves or the native leasehold areas any land which may be required for any of the following purposes—

- (a) public railways, tramways or roads, or for a tramway or road of access;
- (b) public reservoirs, aqueducts, canals, watercourses or water-pipe lines;
- (c) public sewerage works;
- (d) public quays, wharves or landing places;
- (e) public aerodromes and landing grounds;
- (f) the development of electric power for public purposes from any lake, river or stream;
- (g) buildings or works, together with the necessary curtilage thereof, which are to be erected in connexion with any of the foregoing purposes;
- (h) outspans;
- (i) Government stations or camps;
- (j) hospitals, schools, or any other institutions erected by Government;
- (k) afforestation purposes;
- (l) any other purpose which the Governor may declare to be a public purpose;

and in the case of the native leasehold areas the Governor in Council may, in addition, in like manner exclude therefrom any land which may be required for a township, trading centre or market.

(2) The Governor may, by notice in the Gazette, declare what is a public purpose for the purposes of this Part of this Ordinance.

Compensation.

(3) No compensation shall be payable in respect of an exclusion of land under this section except for buildings and crops destroyed or damaged and for disturbance or other loss or expense caused by such exclusion.

58i. The Governor may, with the advice and consent of the Trust Board, make Rules providing for the management, administration and control of the native reserves, the temporary native reserves and the native leasehold areas, including the occupation, use and development of such reserves and areas, and the measures, in addition to the penalties provided in section 58m of this Ordinance, to be taken upon failure to comply with such Rules, and generally for carrying into effect the purposes and provisions of this Part of this Ordinance.

Rules. The Secretary of State in the memorandum enclosed to his despatch confidential (6) of 28-10-37 suggested that the rule making powers should be conferred in general words.

The Northern Frontier District and Turkana District

58j. (1) The areas of Crown land, the boundaries of which are set out in the Eighth Schedule to this Ordinance, and which are therein respectively described as the Northern Frontier District and the Turkana District, shall be areas in which the interests of the native tribes at present residing therein shall have priority over all other interests.

The Northern Frontier District and Turkana District.

Sections 805 and 806.

(2) Where the Provincial Commissioner considers it desirable that any specific area of land within these areas should be used for a township, trading centre, market, school or hospital, or for any other purpose which in his opinion is likely to benefit the natives resident in these areas, he may, by notice in the Gazette, set aside such area for such purpose.

Power to set aside land.

Provided that in the case of land required for residential sites or townships the Provincial Commissioner shall not set aside such land save with the consent of the Governor.

(3) Where any land has been set aside under the provisions of sub-section (2) of this section, the Governor may grant a lease of such land for such term and upon such conditions as he may deem expedient.

Power to grant leases.

Provided that, where any land has been set aside for a purpose other than a township, trading centre, market, school or hospital, the Governor shall not grant a lease of such land except with the consent of the Trust Board, and, if the Trust Board does not give its consent to the lease, the Governor may refer the matter to the Secretary of State whose decision shall be final.

(4) No compensation shall be payable in respect of the setting aside and leasing of land under this section except for buildings and crops destroyed or damaged and for disturbance or other loss or expense caused by such setting aside or leasing.

Paragraph 13 of  
Secretary of  
State's dispatch  
confidential (2)  
of 18-3-38.

(5) Notwithstanding the priority of the interests of the tribes in the areas mentioned in this section the Crown shall be entitled to resume any part of the land for any of the purposes specified in section 58H of this Ordinance.

**GENERAL**

Operation of the  
Mining  
Ordinance, 1933.

58K. Nothing in this part of this Ordinance contained shall be deemed to affect the operation of the Mining Ordinance, 1933, save that the native reserves and the temporary native reserves shall, for the purposes of that Ordinance, be deemed to form part of the native lands.

Construction.

58L. Where any of the provisions of this Part conflict or are inconsistent with any of the provisions of any other Part of this Ordinance, the provisions of this Part shall prevail.

Penalties.

58M. Every omission or neglect to comply with, and every act done, or attempted to be done, contrary to, the provisions of this Part of this Ordinance or of any Rules made thereunder, or in breach of the conditions and restrictions subject to or upon which any lease, licence or permit has been issued, shall be deemed to be an offence against this Ordinance, and for every such offence for which no penalty is specially provided the offender shall be liable, on conviction by a magistrate, to a fine not exceeding fifty pounds or to imprisonment for a period not exceeding six months or to both such fine and imprisonment.

Definition of  
"native".

No. 55 of 1934.

58N. For the purposes of this Part of this Ordinance the expression "native" shall have the meaning assigned to it by the Interpretation (Definition of "Native") Ordinance, 1934, save that it shall include a Somali."

Addition of  
Schedules to the  
Principal  
Ordinance

5. The Principal Ordinance is hereby amended by adding thereto at the end thereof the Schedules set out in the Schedule hereto.

Amendment of  
the Principal  
Ordinance and  
the Interpretation  
and  
General Clauses  
Ordinance,  
Cap 1

6. The definition of "Crown land" in section 5 of the Principal Ordinance and the definition of "Crown lands" in section 2 of the Interpretation and General Clauses Ordinance (Chapter 1 of the Revised Edition) are hereby amended by the addition to each such definition of the following words—

"Save only the lands declared to be Native Lands by the Native Lands Trust Ordinance, 1938."

No. of 1938

Repeal of  
section 86 of the  
Principal  
Ordinance,  
Section 1854.

7. Section 86 of the Principal Ordinance is hereby repealed.

SCHEDULE  
FOURTH SCHEDULE  
FIFTH SCHEDULE  
SIXTH SCHEDULE  
SEVENTH SCHEDULE  
EIGHTH SCHEDULE

COLONY AND PROTECTORATE OF KENYA



A BILL TO MAKE PROVISION FOR NATIVE  
LANDS IN THE COLONY

**A Bill to make Provision for Native Lands in the Colony**

BE IT ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as the Native Lands Trust Ordinance, 1938. Short title.

2. 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 shall thereafter come into operation on such date as the Governor shall by proclamation in the Gazette appoint. Commencement.

3. In this Ordinance, unless the context otherwise requires— Interpretation.

the "Highlands" means the areas of land the boundaries of which are set out in the Seventh Schedule to the Crown Lands Ordinance; Cap. 140.

"Highlands Board" means the Board which may be established as the Highlands Board in accordance with the provisions of any Order of His Majesty in Council;

"mining lease" does not include a lease in respect of a subterranean area.

"native lands" mean the areas of land the boundaries of which are set out in the First Schedule hereto;

"native land units" mean the subdivisions of land into which the native lands are divided, which subdivisions are described in the Second Schedule hereto;

"native leasehold areas" mean the areas of land the boundaries of which are set out in the Sixth Schedule to the Crown Lands Ordinance;

"native reserves" mean the areas of land the boundaries of which are set out in the Fourth Schedule to the Crown Lands Ordinance; Cap. 140.

2  
"temporary native reserves" mean the areas of land the boundaries of which are set out in the Fifth Schedule to the Crown Lands Ordinance.

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

#### PART I

##### ESTABLISHMENT AND FUNCTIONS OF LOCAL BOARDS

4. (1) There shall be established in every administrative district in which any native lands may be situate an advisory board to be known as the Local Land Board (hereinafter referred to as the "Local Board") which shall consist of—

- (a) the District Commissioner as chairman;
- (b) four members of the Local Native Council, one of whom shall be chosen by the members of such Council and three of whom shall be selected by the Provincial Commissioner; or
- (c) four members appointed by the Provincial Commissioner from among the native inhabitants of any administrative district where there is no Local Native Council; and
- (d) such additional members as may be co-opted at any time by the Local Board.

(2) The Chairman of a Local Board and two other members shall form a quorum.

(3) A Provincial Commissioner may attend any meeting of a Local Board in his Province and at such meeting may speak but may not vote.

5. It shall be the function of a Local Board generally to exercise the various powers and to carry out the duties assigned to Local Boards by this Ordinance and by any rules made thereunder, and to make written representations to the Trust Board in regard to any matter concerning the protection of the native lands upon which the advice of the Local Board has been rejected by a Provincial Commissioner.

#### PART II

##### INTER-TRIBAL OCCUPATION PERMITS AND EXCHANGES

6. (1) The Governor may, upon such conditions and for such terms as he may deem expedient, issue permits to occupy areas of land in a native land unit to and for the benefit of any native tribe, group, family or individual of any other native land unit.

101  
3  
(2) No such permit shall in any case be issued unless and until the land to which the permit relates has first been set apart in accordance with the provisions of Part III of this Ordinance.

(3) The Governor shall, before issuing a permit under the provisions of this section, consult the Trust Board. If the Trust Board objects to the issue of the permit the Governor shall refer the matter to the Secretary of State, whose decision shall be final.

7. (1) Notwithstanding anything in this Ordinance contained, the Governor may, with the consent of the Trust Board and with the approval of the Legislative Council, grant leases of land in the native lands to any person for the purpose of effecting exchanges of land between land in such native lands and other land. Exchanges.

(2) Every such grant shall be made upon such conditions and for such term as the Governor may deem expedient, and in every case the land to be so leased shall first be set apart and shall be subject to the payment of compensation in accordance with the provisions of Part III of this Ordinance.

(3) Any land in the native lands which is the subject of an exchange by way of lease between native lands and other land shall, by reason of such exchange, cease to form part of the native lands for the currency of the term of such lease.

(4) Any land in the native lands which is the subject of an exchange by way of lease between native lands and Crown lands shall be deemed, by reason of such exchange, to have become Crown land for the currency of the term of such lease.

(5) All land which is the subject of any exchange with land in the native lands under this section shall vest in the Trust Board for the currency of the term of the lease granted under sub-section (1) of this section.

The provisions of this sub-section shall apply to such land irrespective of whether it be Crown lands, or land held under the Land Titles Ordinance, or land alienated under the provisions of any of the following Ordinances:— Cap. 143.

- (a) the Crown Lands Ordinance, 1902;
- (b) the Crown Lands Ordinance; Cap. 140.
- (c) the Crown Lands (Discharged Soldiers Settlement) Ordinance; Cap. 141.

Cap. 140.

Local Boards.

Functions of  
Local Boards.

Inter-tribal  
occupation  
permits.

Provided that, where the circumstances attending any exchange of land are such that the Governor, the Legislative Council, the Trust Board, the Local Board and the Local Native Council concerned are all agreed as to the need for permanency in such exchange, the Governor, in lieu of granting a lease under sub-section (1) of this section, may, by notice in the Gazette, effect the exchange by a permanent exclusion of land from the native lands and a permanent vesting in the Trust Board of the land exchanged.

Exchanges in the Highlands.

8. No exchanges under the provisions of this Part shall be effected in respect of any land in the Highlands, save with the consent of the Highlands Board.

PART III  
SETTING APART

Provincial Commissioner may set apart land.

9. Notwithstanding anything contained in any other law for the time being in force in the Colony, a Provincial Commissioner may, subject to the provisions of this Part, set apart land in the native lands within his Province.

Land set apart remains native land.

10. Save as is provided in section 7 of this Ordinance, any land in the native lands set apart under the provisions of this Part shall, notwithstanding such setting apart and any grant of such land subsequently made, remain part of the native lands.

Application for setting apart.

11. (1) When it is desired that land should be set apart in accordance with the provisions of this Ordinance, application in writing shall be made to the Provincial Commissioner of the Province in which the land to which such application relates is situate.

(2) Residential sites, which are required for the accommodation of persons engaged in any trade or industry, may be included in the area to which the application relates.

(3) Where any such application is made for the purpose of obtaining a mining lease of land in the native lands, the application shall be accompanied by a plan, based on a survey by a licensed surveyor, of the area to which the application relates and shall be addressed to the Provincial Commissioner through the Commissioner of Mines.

Procedure as to setting apart land not exceeding ten acres in extent.

12. (1) Where an application has been duly made to him in respect of the setting apart from the native lands of an area of land not exceeding ten acres in extent, a Provincial

Commissioner may, subject to the provisions of this Ordinance and with the approval of the Local Board concerned, set apart such land.

(2) Where the area of land to which a proposal to set apart relates does not exceed ten acres in extent and the Provincial Commissioner supports the proposal but the Local Board concerned objects thereto, such area shall not be set apart unless and until the approval of the Governor to such setting apart has been obtained.

(3) Where an application to set apart an area of land not exceeding ten acres in extent is made to a Provincial Commissioner and is not supported by him, such application shall be forwarded for the consideration of the Local Board concerned. Should the Local Board support the proposal, the application shall be forwarded for the consideration of the Governor.

(4) Where an application to set apart an area of land not exceeding ten acres in extent is not supported by either the Provincial Commissioner or the Local Board concerned, the Provincial Commissioner shall inform the applicant that the application has been refused. The applicant may appeal in writing to the Governor against such refusal within twenty-one days after the date on which he is notified thereof.

(5) The decision of the Governor upon any of the matters referred to him under the provisions of this section shall be final.

18. (1) Where an application is made to a Provincial Commissioner under this Ordinance to set apart from the native lands an area of land exceeding ten acres in extent, such application shall in every case, subject to the provisions of section 14 of this Ordinance and after being submitted to the natives concerned and to the authorities set out in paragraphs (b) and (c) of section 15 of this Ordinance, be referred to the Trust Board.

Power of Trust Board as to applications to set apart land exceeding ten acres in extent

(2) If the Trust Board approves of such application it shall grant the application.

(3) If the Trust Board does not approve of such application it shall submit the application to the Governor together with the reasons for such non-approval, and the Governor may refer the matter to the Secretary of State, whose decision shall be final.

Power of Trust Board to delegate to Chief Native Commissioner.

14. The Trust Board may, by notice in the Gazette, delegate to the Chief Native Commissioner the power to grant the applications referred to in the last preceding section where the area of land to be set apart does not exceed fifty acres in extent, but the Chief Native Commissioner shall not refuse any such application without the consent of the Trust Board. In any case where the Trust Board supports the refusal of the Chief Native Commissioner the Board shall submit the application to the Governor together with the reasons for such refusal, and the Governor may refer the matter to the Secretary of State, whose decision shall be final.

Conditions to be fulfilled prior to approval of setting apart.

15. Approval of the setting apart of land under the provisions of this Part of this Ordinance shall in no case be granted unless and until all the following conditions have been fulfilled—

- (a) the proposed setting apart must, in the opinion of the Provincial Commissioner, be for the benefit of the natives, either by reason of the use to which the land is to be put or by reason of the anticipated revenue from rents;
- (b) the proposal to set apart the land must have been brought to the notice of the natives concerned and to the notice of the Local Native Council having jurisdiction over the area in which such land is situated, and such natives and such Local Native Council must have had an opportunity of expressing their views upon the proposal;
- (c) the Local Board concerned must have been consulted and representatives of the location or section concerned must have been co-opted as additional members of the Local Board for the purpose of expressing their views upon the proposal;
- (d) when the land is to be leased, then before, or at the time of, the making of the application to the Provincial Commissioner for setting apart, an application for the grant of a lease in respect of the land to be set apart must have been duly lodged with the Provincial Commissioner.

Setting apart to be gazetted.

16. (1) When an application for setting apart has been duly approved by the proper authority in accordance with the provisions of this Ordinance, the Provincial Commissioner shall publish in the Gazette a notice of such setting apart, and

in such notice shall specify the boundaries of the land so set apart and the purposes for which the land is set apart. Such land shall be deemed to be set apart on, and not before, the date of the publication of such notice, save where some other date is therein specified:

Provided that the Provincial Commissioner shall not gazette such setting apart unless and until the sums of money payable by way of compensation in accordance with the provisions of sections 17, 18 and 19 of this Ordinance and calculated as hereinafter provided have first been deposited with the District Commissioner.

Compensation to be paid prior to setting apart.

(2) Where land is set apart preparatory to the grant of a mining lease, the provisions of this section shall be in addition to and not in derogation of the provisions of the Mining Ordinance, 1933.

No. 61 of 1933.

17. (1) Where an application to set apart land has been duly approved by the proper authority under the provisions of this Ordinance, the District Commissioner shall notify the natives in the area concerned that such application has been so approved.

Compensation for disturbance and other loss.

(2) Any native who, though not a private right-holder within the meaning of section 18 of this Ordinance, is likely to be prejudicially affected by the setting apart of any land under this Part of this Ordinance, shall be entitled to apply for compensation to the District Commissioner concerned in respect of disturbance or of any other loss or expense likely to be caused by such setting apart, and the District Commissioner shall forward forthwith to the Provincial Commissioner the details of every such application.

(3) The compensation payable to any such native upon the granting of any such application for compensation by the Provincial Commissioner shall include full compensation for the vacation or destruction of any hut or huts or other buildings and for any growing crops which such native is unable to reap or which are, or are likely to be, destroyed or damaged.

(4) The amount of compensation to be awarded to any native under this section shall be assessed by the Provincial Commissioner after consultation with the Local Board concerned, and shall, after such assessment, be deposited by the applicant for setting apart with the District Commissioner. The District Commissioner shall be responsible for notifying all persons concerned of the Provincial Commissioner's award,



(5) Any person aggrieved by an award of a Provincial Commissioner under this section may, within twenty-one days after the date of the making of such award, appeal in writing through the Provincial Commissioner to the Governor, whose decision shall be final. The Governor in special cases and in his absolute discretion may extend the time for lodging any such appeal.

(6) (a) Where no such appeal has been lodged, or where such appeal has been determined by the Governor and the sum of money finally assessed does not exceed the amount of compensation deposited with the District Commissioner in accordance with the provisions of this section, the District Commissioner shall, from the amount of compensation so deposited with him, and upon instructions from the Provincial Commissioner, pay the sums of money finally assessed to the persons entitled thereto.

(b) Where an appeal has been determined by the Governor and the sum of money finally assessed exceeds the sum of money deposited with the District Commissioner in accordance with the provisions of this section, the applicant for setting apart shall pay to the District Commissioner the additional sum of money so awarded as compensation, and the District Commissioner shall, upon the instructions of the Provincial Commissioner, pay the sums of money finally assessed to the persons entitled thereto.

18. (1) In any district where the Provincial Commissioner considers that a recognizable form of private right-holding exists, any native who claims to be a private right-holder in respect of any portion of the land to which an application to set apart relates shall be entitled to apply to the District Commissioner for compensation, and the District Commissioner shall forward forthwith every such application to the Provincial Commissioner.

(2) Where, after consultation with the Local Board, the Provincial Commissioner is satisfied as to the claim of any native so applying for compensation, in addition to the compensation awarded under the last preceding section, shall be awarded to such native, and shall be calculated on the basis of the full agricultural value of the land plus fifteen per centum of such value.

(3) The amount of compensation to be awarded to any native under the provisions of sub-section (2) of this section shall be assessed by the Provincial Commissioner after consultation with the natives concerned and with the Local Board,

Compensation  
for private  
right-holders.

(4) Where the Provincial Commissioner and the Local Board are unable to agree upon the sum of money which should be so awarded as compensation, or where any person desires to appeal against a sum so awarded, or against any decision of the Provincial Commissioner as to the existence or non-existence of any system of private right-holding, or against any decision as to the claim of a native to be a private right-holder, the matter shall be referred to the Governor, whose decision shall be final. Every appeal under this sub-section shall be made in writing through the Provincial Commissioner within twenty-one days after the date of the award or decision to which the appeal relates.

(5) All sums of money awarded as compensation under this section shall be deposited by the applicant for setting apart with the District Commissioner, who shall be responsible for notifying any person concerned as to the amount so awarded.

19. (1) Where any dispute arises as to the persons entitled to receive any sum of money which has been duly assessed under the provisions of this Ordinance, the Provincial Commissioner shall direct that such sum be deposited in the office of the District Commissioner by the applicant for setting apart, pending the making of a final award by the District Commissioner, but the setting apart of the land shall not be delayed by reason of any such dispute.

Deposit of  
money pending  
settlement of  
disputes.

(2) Where a sum of money has been so deposited in the office of the District Commissioner under the provisions of the last preceding sub-section, the District Commissioner, after taking the advice of the Local Board having jurisdiction in the area concerned and after hearing all interested parties and their witnesses, shall make his award.

(3) Any person aggrieved by the award of a District Commissioner under this section may, within twenty-one days after the date of the making of such award, appeal to the Provincial Commissioner, whose decision shall be final. The Provincial Commissioner in special cases and in his absolute discretion, may extend the time for lodging any such appeal.

(4) Where no such appeal has been lodged or where such appeal has been duly determined, the District Commissioner shall, from the sum of money deposited with him, pay to the persons entitled thereto the various amounts awarded by him or by the Provincial Commissioner, as the case may be.

Commuted rent  
for mining  
leases.

No. 61 of 1933.

20. (1) Except in cases of private right-holding where compensation has been awarded under the provisions of section 18 of this Ordinance, and notwithstanding anything contained in the Mining Ordinance, 1933, a lump sum of money by way of commuted rent shall be payable in every case by a mining lessee for all land set apart under this Ordinance in respect of which a mining lease is granted to him, and the payment of such lump sum shall be additional to the rent payable to the Government of the Colony for such mining lease.

(2) The commuted rent payable for the land so set apart shall be paid by the applicant to the District Commissioner on behalf of the Local Board concerned, and shall be such a sum of money as the Provincial Commissioner shall assess as representing the total sum payable by way of annual rent over the term of years for which the mining lease is to be granted, the amount of such annual rent being calculated on the full agricultural value of the land.

(3) Any person aggrieved by the amount assessed as commuted rent under this section may, within twenty-one days after the making of such assessment, appeal in writing to the Governor, whose decision shall be final.

(4) The District Commissioner, as Chairman of the Local Board, shall be responsible for making payments in proper cases, out of the sums so paid to the Board by way of commuted rent, to such natives as may be entitled thereto under the provisions of section 17 of this Ordinance.

(5) The District Commissioner, as Chairman of the Local Board, shall from time to time pay to the Local Native Council concerned any balance remaining in the hands of the Local Board from sums so paid by way of commuted rent.

(6) Where a mining lease in respect of any land set apart in the native lands is determined, from any cause whatsoever, at any time before the expiration of the term for which such lease was granted, no claim shall lie by the mining lessee or any other person for a proportionate or any other refund of any sum previously paid by way of commuted rent in respect of such mining lease. The provisions of this sub-section shall apply to all such mining leases, irrespective of whether they have been granted before or subsequent to the commencement of this Ordinance.

21. (1) Notwithstanding any provision to the contrary contained in the Mining Ordinance, 1933, the term for which lands are set apart under the provisions of this Part shall be deemed to run concurrently with the term of the mining or other lease granted in respect of such land and with the term for which any such lease is thereafter renewed. The setting apart of the land shall be deemed to have expired automatically upon the final expiry of the lease and the land shall thereupon revert to native use.

(2) Upon the first and every subsequent renewal of a mining lease, in addition to any fees and rent payable under the Mining Ordinance, 1933, there shall be paid for the renewal of the setting apart of the land in respect of which the mining lease was granted, the sum of money by way of commuted rent as provided in section 20 of this Ordinance, together with an additional sum equal to twenty per centum of the amount of such commuted rent.

(3) In every case where a lease of native lands is renewed the Provincial Commissioner shall publish in the Gazette a notice of the renewal of the setting apart of the land in respect of which the lease was granted, and such renewal shall take effect from the date of such publication, save where some other date is in such notice specified. In the case of the renewal of a mining lease, no such notice shall be published unless and until the sums provided for in the last preceding sub-section have been paid.

(4) Where any lump sum of money is, under the provisions of this Part of this Ordinance, paid to or deposited with the District Commissioner for payment to the person or persons entitled thereto, such District Commissioner may, in his absolute discretion, pay such money to such person or persons either in one single payment or in a number of payments made over such period of time as may to him seem fit and desirable.

22. (1) Where a Provincial Commissioner considers it desirable that any specific area of land in the native lands should be set apart—

- (a) for a township, trading centre, market, or for a Government school, hospital, station or camp; or
- (b) for the purpose of issuing inter-tribal occupation permits as provided in section 6 of this Ordinance; or

Term for which  
land is set apart  
to be concurrent  
with term of  
lease.  
No. 61 of 1933.

Setting apart for  
local public  
purpose.

(c) for any purpose which, in the opinion of the Provincial Commissioner, is likely to benefit the natives resident in the native land unit concerned either by reason of the use to which the land is to be put or by reason of the anticipated revenue from rents,

the Provincial Commissioner shall cause a proposal to that effect to be submitted to the natives concerned and to the authorities set out in paragraphs (b) and (c) of section 15 of this Ordinance, and the provisions of sections 12, 13 and 14 of this Ordinance, save in so far as such provisions presuppose the making of an application to the Provincial Commissioner, shall apply to every such proposal.

(2) The Provincial Commissioner shall publish in the Gazette, in accordance with the provisions of sub-section (1) of section 16 of this Ordinance, a notice of every such setting apart, but no such notice shall in any case be so published unless and until the requirements of section 23 of this Ordinance have been fulfilled.

23. Any compensation payable under the provisions of this Ordinance in respect of the setting apart of any land under the provisions of section 22 of this Ordinance shall be paid in accordance with the provisions of sections 17 and 18 of this Ordinance by the Local Native Council concerned:

Provided that, in the case of a permanent camp established for the use of the armed forces of the Crown, such compensation shall be paid from the general revenues of the Colony.

24. (1) Notwithstanding anything in this Part of this Ordinance contained, but subject always to the provisions of sections 12, 13, 14, 17 and 18 of this Ordinance, a Provincial Commissioner may set apart land in the native lands for any of the following purposes:—

- (a) public reservoirs, aqueducts, canals, watercourses or water pipe lines;
- (b) public sewerage works;
- (c) public quays, wharves or landing places;
- (d) public aerodromes and landing grounds;
- (e) the development of electric power for public purposes from any lake, river or stream;
- (f) public telegraphs or telephones;
- (g) buildings or works in connexion with any of the foregoing purposes, together with the necessary curtilage of such buildings or works;

Setting apart for general public purposes.

(h) any other purpose which the Governor may, under the powers conferred upon him by sub-section (2) of section 48 of this Ordinance, declare to be a public purpose.

(2) Before the publication in the Gazette of the setting apart of land for any of the purposes referred to in this section, the compensation, if any, payable in accordance with the provisions of sections 17 and 18 of this Ordinance shall be paid from the general revenues of the Colony.

25. (4) Notwithstanding anything in this Part of this Ordinance contained, but subject to the provisions of sections 17 and 18 of this Ordinance, 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.

Setting apart for railways, tramways and roads.

For the purposes of this sub-section, tramway or road of access means a tramway or road which gives access—

- (a) (i) from any land forming part of the native lands and which has been set apart under the provisions of this Ordinance, or
- (ii) from any land situate within the boundaries of the native lands (whether or not it forms part of the native lands), or
- (iii) from any land situate outside the boundaries of the native lands through any part of the native lands, to the nearest railway station or halt or public road, or
- (b) from any land in the native lands in respect of which a mining lease has been granted to a lessee under the Mining Ordinance, 1933, to any points on the surface of any area of land in the native lands which overlies a subterranean area in respect of which such mining lessee has been granted a mining lease; or
- (c) from any surface point to which the last preceding paragraph relates to any other such surface point.

(2) Before any land is set apart for any purpose under the provisions of this section, the Provincial Commissioner shall consult the Local Board as to the alignment of the proposed railway, tramway or road and as to the compensation to be paid in respect thereof. Where the Provincial Commissioner and the Local Board are unable to agree as to any

such matter the Provincial Commissioner shall make a report thereon to the Governor, whose decision shall be final.

(3) It shall not be obligatory on the Provincial Commissioner to consult the Trust Board as to any proposal to set apart land under this section, but the Provincial Commissioner shall forward to the Board an estimate of the area of land likely to be withdrawn from agricultural use by reason of such setting apart.

(4) Where the Trust Board is of opinion that, by reason of any setting apart under the provisions of this section or of section 24 of this Ordinance, the agricultural land available in any native land unit is likely to be insufficient for the economic needs of the natives concerned, the Board may recommend to the Governor the addition to such native land unit of an area of land equal in value to the area of land withdrawn from agricultural use. Any land so added shall be deemed to be included in the native lands for the purposes of this Ordinance.

(5) Where the Trust Board is in any way dissatisfied by reason of any setting apart of land under this section or by reason of any matter arising from such setting apart, the Board may make representations to the Governor or to the Secretary of State, but it shall not be obligatory to delay the construction of public works upon land so set apart pending the consideration of any such representations.

26. (1) All compensation payable in respect of the setting apart of land in accordance with the provisions of the last preceding section shall be settled by one outright payment.

(2) Where the setting apart is in respect of a road, the whole cost of the construction of which has not been defrayed from the general revenues of the Colony and the whole cost of the maintenance of which has not been, and at the time of such setting apart is not so defrayed, the compensation payable shall be paid by the Local Native Council concerned from its revenues.

(3) Where the setting apart is in respect of a road, the whole cost of the construction of which has been defrayed from the general revenues of the Colony and the whole cost of the maintenance of which has been and at the time of such setting apart is so defrayed, the compensation payable shall be paid from the general revenues of the Colony.

Compensation for setting apart of railways, etc.

(4) Where the maintenance of a road, the cost of the construction of which has not been defrayed from the general revenues of the Colony, becomes at any time a charge upon such revenues, it shall be the duty of the Provincial Commissioner, after consultation with the Local Board, to submit a claim for the repayment to the Local Native Council of the sum paid by such Council under the provisions of sub-section (2) of this section. Every such claim shall be considered by the Central Roads and Traffic Board, established under the Central Roads and Traffic Board Ordinance, 1929, and the decision of the Governor upon such claim shall be final. No. 18 of 1929.

Provided that any compensation payable by reason of a realignment of any such road shall be paid from the general revenues of the Colony.

(5) Where the setting apart is in respect of a railway, the compensation, if any, payable shall be paid by the High Commissioner for Transport.

(6) Nothing in this section contained relating to compensation shall be deemed to apply to any public road or railway which was in existence in the native lands before the date of commencement of this Ordinance, irrespective of whether, in the case of a public road, such road had or had not at such date been declared to be a public road under any Ordinance relating to roads.

(7) Where land has been set apart under the provisions of this section for a tramway or road of access the compensation, if any, payable shall be paid by the owner of such tramway or by the lessee of the land to and from which access is given by such road, as the case may be.

27. Every District Commissioner in the native lands shall cause a register to be kept in his office containing a description of all land which has been set apart, in accordance with the provisions of this Ordinance, from the native lands in his district, together with all particulars relating to such land. District Commissioners to keep registers.

#### PART IV

##### EXCLUSIONS

##### PERMANENT EXCLUSIONS FOR PUBLIC PURPOSES

28. (1) Subject to the provisions of sub-section (2) of this section and notwithstanding anything in Part III of this Ordinance contained, the Governor, after consulting the Local Board and with the consent of the Trust Board, may exclude from the native lands any land required for any of the purposes Exclusions for public purposes.

set out in sections 22, 24 and 52 of this Ordinance, and the land so excluded shall thereupon cease to form part of the native lands. Representatives of the location or section concerned and of the local natives concerned shall be co-opted on the Local Board in every case where such Board is consulted by the Governor for the purposes of this section.

(2) No such exclusion shall be made unless and until the Governor is satisfied that a majority of the natives concerned has expressed a desire that the land required should be so excluded in lieu of being set apart, and unless and until the Local Native Council concerned has passed a resolution to that effect.

(3) Where any land is so excluded from the native lands the Governor shall, by notice published in the Gazette, add to the native land unit from which such land has been excluded an area of suitable and, where possible, contiguous unalienated Crown land of equivalent value. Any land so added shall form part of the native lands for the purposes of this Ordinance:

Provided that, in any case where land so excluded is required solely for the actual site of a building together with the curtilage thereof, no such addition of land need be made:

And provided further that, in any case where an equivalent area of land has been added to the native lands before and in anticipation of any individual exclusion, no additional area need be added under the provisions of this sub-section.

(4) No land situate in the Highlands shall be added to the native lands under the provisions of sub-section (3) of this section, save with the consent of the Highlands Board, and if the Board does not agree to any such addition the Governor may refer the matter to the Secretary of State, whose decision shall be final.

(5) In any case where the Trust Board does not consent to the exclusion of land under this section, the Governor may refer the matter to the Secretary of State, whose decision shall be final.

#### TEMPORARY EXCLUSIONS FOR MINING PURPOSES

29. (1) Where an application has been made for the grant of a mining lease of land in the native lands, such land may be temporarily excluded from the native lands by the Governor if he is satisfied that a majority of the natives concerned has expressed a desire that this procedure be followed in lieu of setting apart the land in accordance with the

Temporary  
Exclusions for  
Mining.

provisions of Part III of this Ordinance, and that the Local Native Council has passed a resolution to that effect. Every proposal for any such temporary exclusion shall first be laid before the Provincial Commissioner, who shall report thereon to the Trust Board; and the Board shall consider the practicability or otherwise of such proposal, having regard to the provisions of sub-section (2) of this section, and shall thereafter make its recommendations to the Governor, whose decision shall be final.

(2) In every case where land is temporarily excluded from the native lands under the provisions of this section there shall be added temporarily to the native lands for the currency of the term of such exclusion an area of unalienated Crown land equal in agricultural value and, so far as may be, equal in size to the area which has been so excluded.

(3) Notwithstanding any provision to the contrary contained in the Mining Ordinance, 1933, the term for which land is temporarily excluded from the native lands under the provisions of this section shall be deemed to run concurrently with the term of the mining lease granted in respect of such land, and the term of such temporary exclusion shall be deemed to have expired automatically upon the expiry of the mining lease: Provided that if the mining lease is, under the provisions of the Mining Ordinance, 1933, renewed for any term, the exclusion of the land temporarily excluded shall be deemed also to have been renewed for a like term.

(4) Upon the final determination of a mining lease in respect of which land has been temporarily excluded, the land so excluded shall forthwith revert to and form part of the native lands, and thereupon any land temporarily added to the native lands by reason of such temporary exclusion shall cease to form part of the native lands and shall revert to the Crown:

Provided that in any case where the Trust Board is satisfied that the agricultural value of any portion of an area so temporarily excluded has been permanently impaired by reason of mining operations conducted thereon during the currency of the mining lease, the Governor may, on the recommendation of the Trust Board, make a permanent addition of land to the native lands from the land temporarily added thereto. The land so added shall be an area of land equal in agricultural value and, so far as may be, equal in size to the portion of the native lands which has been so impaired in value.

No. 61 of 1933.

No. 61 of 1933.

(5) No land situate in the Highlands shall be added to the native lands under the provisions of sub-sections (2) and (4) of this section save with the consent of the Highlands Board, and if the Board does not consent to any such addition the Governor may refer the matter to the Secretary of State, whose decision shall be final.

(6) No mining lease shall be granted in respect of any land which is to be temporarily excluded in accordance with the provisions of this section unless and until all compensation payable by reason of such exclusion has been duly paid to the proper authority. Notice of every temporary exclusion of land and of every temporary addition to the native lands consequent thereon and of every renewal and expiration of any such exclusion and addition shall be published in the Gazette.

#### COMPENSATION

Compensation for exclusion.

30. (1) Any native who is disturbed in his occupation of land in the native lands by reason of any permanent or temporary exclusion of land under the provisions of this Part of this Ordinance may make application for compensation in accordance with the provisions of section 17 of this Ordinance, and shall, in addition to receiving such compensation, be entitled, so far as may be practicable, to reside, together with his family, during the term of such exclusion, in the area which has been added to the native lands, in consequence of such exclusion.

(2) Any native who has satisfactorily established a claim, in accordance with the provisions of section 18 of this Ordinance, to be a private right-holder in respect of any land permanently or temporarily excluded from the native lands under this Part, shall, whether or not he is entitled to compensation under the provisions of sub-section (1) of this section, be entitled, in addition to any compensation which may have been paid to him for disturbance, to receive compensation as a private right-holder under the provisions of section 18 of this Ordinance.

Provided that any such native may, at his option, and in lieu of receiving such compensation as a private right-holder, elect to reside, if practicable, with his family during the term of such exclusion in the area which has been added to the native lands by reason of such exclusion, but without prejudice to any right he may have to receive compensation under the provisions of sub-section (1) of this section.

#### PART V

##### LEASES AND LICENCES

31. Subject to the provisions of this Ordinance, and in the case of mining leases subject to the provisions of the Mining Ordinance, 1933, the Governor may grant leases of land in the native lands to any persons for such terms and subject to such conditions as the Governor may deem expedient.

Powers of Governor to grant leases in Native Lands. No. 61 of 1933.

Provided that, before any lease is granted under the provisions of this section, or under the provisions of the Mining Ordinance, 1933, the land to which such lease relates shall, subject to the provisions of section 29 of this Ordinance, be first set apart in accordance with the provisions of Part III of this Ordinance.

32. (1) The Chief Native Commissioner may, subject to any general or special directions of the Governor, execute any lease, to be granted under the provisions of this Ordinance, of land in the native lands.

Chief Native Commissioner to execute leases.

(2) Leases may be granted under the provisions of this Ordinance for any term not exceeding thirty-three years, subject to such conditions as may be prescribed:

Term of leases.

Provided that, with the consent of the Secretary of State, leases may be granted for any term exceeding thirty-three years but not exceeding ninety-nine years.

(3) Leases granted for a term of one year or less shall be in such form as may be prescribed.

Form of leases for one year or less.

(4) Leases for a term exceeding one year shall be in the form of grants under the provisions of the Registration of Titles Ordinance.

Form of leases for more than one year. Cap. 142.

(5) Leases in respect of plots in townships or trading centres shall be granted subject to the provisions of the Town Planning and Development Ordinance, 1931.

Leases for township or trading centres. No. 48 of 1931.

(6) Nothing in this section contained shall be deemed to apply to leases granted under the provisions of the Mining Ordinance, 1933.

Mining leases. No. 61 of 1933.

33. (1) On the determination of any mining or other lease granted in respect of land in the native lands which has been set apart under the provisions of this Ordinance, the property in all buildings on such land, whether erected by the lessee or by any other person, shall, in the absence of any

Buildings on leased native lands.

provision to the contrary contained in the lease, pass to and vest in the Trust Board on behalf of the native population of the native lands without payment of compensation to the lessee or to any other person in respect of such buildings:

Provided that where—

- (a) the term of the lease does not exceed thirty-three years; and
- (b) the buildings were erected by the lessee or by his predecessor in title; and

(c) the lease is not determined by forfeiture, the lessee may, within six months after the determination of the lease, remove any such buildings unless the Trust Board elects to purchase the buildings on behalf of the native population of the native lands and informs the lessee accordingly before such lessee has commenced to remove such buildings:

Provided further that nothing in this section contained shall be deemed to affect the provisions of sections 36, 56 and 58 of the Mining Ordinance, 1933, except that the Commissioner of Mines shall not allow a further period in excess of three months under the aforesaid section 36, or fix a time in excess of six months under the aforesaid section 56, save with the consent of the Trust Board.

(2) Where the Trust Board elects to purchase any such buildings in accordance with the proviso to sub-section (1) of this section, the lessee shall have no option as to the sale to the Trust Board, but if he does not agree to the price offered by the Trust Board the matter shall be referred to arbitration under the provisions of the Arbitration Ordinance.

34. Subject to the provisions of section 20 of this Ordinance, the rent payable in respect of any land in the native lands, in respect of which a lease has been granted, shall be assessed by the Provincial Commissioner in consultation with the Local Board, shall be subject to the approval of the Governor, and shall be paid to the Local Native Council concerned. Due regard shall be had in all such assessments to the fair economic value of the land and to such conditions regarding improvements as may be contained in the lease.

35. (1) Save as may otherwise be prescribed, no lessee of land in the native lands shall alienate the land, or any part thereof, comprised in his lease by sale, mortgage, transfer of possession, sub-lease, bequest or otherwise howsoever without the consent in writing of the Provincial Commissioner.

Cap. 18.

Rents.

Lessee prohibited from alienating.

(2) Before giving his consent in any case the Provincial Commissioner shall consult—

- (a) the Trust Board, in cases where the land leased exceeds fifty acres in extent;
- (b) the Local Board, in cases where the land leased does not exceed fifty acres in extent.

(3) Any such sale, mortgage, transfer of possession, sub-lease, bequest or other alienation effected without the consent in writing of the Provincial Commissioner shall be null and void and of no effect.

(4) An appeal shall lie to the Governor from any refusal of the Provincial Commissioner to give his consent in writing under the provisions of this section.

36. (1) Where a lessee of land in the native lands desires to change the user of any land comprised in the Provincial Commissioner concerned.

Change of user

(2) Upon receipt of any such application the Provincial Commissioner shall consult the Local Board and shall thereafter forward to the Governor the application of the lessee, together with the recommendations thereon of the Local Board and of the Provincial Commissioner.

(3) (a) Where the land in respect of which any such application is made does not exceed ten acres in extent, the Governor may approve the application, subject to such conditions as he may think fit, or reject the application.

(b) Where the land in respect of which any such application is made exceeds ten acres in extent, the Governor shall, before making his decision, consult the Trust Board.

37. If the rent of any part thereof reserved in a lease of lands in the native lands shall at any time be unpaid for a period of twenty-one days after the same shall have become due, or if there shall be any breach of the lessee's covenants, whether express or implied, or any change of user not authorized under the provisions of section 36 of this Ordinance, the Chief Native Commissioner, or any person authorized by him in writing, may serve a notice upon the lessee specifying the rent in arrear, or the covenant of which a breach has been committed, or the unauthorized change of user which is alleged, and, at any time after one month from the service of such notice, may commence a suit in the Supreme Court

Forfeiture of lease.

for the recovery of the land. On proof of the facts, the Court shall, subject to relief upon such terms as to it may appear just, declare the lease forfeited, and may order that possession of the land be given by the lessee to the Chief Native Commissioner, either forthwith or on or before such day as the Court thinks fit to name, and that the defendant do pay the costs.

Licences

38. (1) Notwithstanding anything in this Ordinance contained, but subject to such conditions and fees as may be prescribed, licences may be granted to any person relating to—

- (a) the grazing of live stock on native lands;
- (b) the removal of timber or other forest produce from any part of the native lands not included in an area declared under the provisions of section 3 of the Forest Ordinance to be a forest area;
- (c) the taking of sand, lime, stone, and other common minerals (excluding surface salt) from the native lands;
- (d) wayleaves in the native lands:

Provided that no licence referred to in paragraphs (a), (b) or (c) of this sub-section shall be granted for a period exceeding twelve months at any one time.

Forest produce

(2) Subject to any general or specific instructions issued by the Trust Board, the Chief Native Commissioner, or such Provincial or District Commissioner as he may appoint as licensing officers, may grant licences for the grazing of live stock in the native lands, and for the removal of timber or other forest produce from the native lands.

Common minerals

(3) Licences for the taking of sand, lime, stone and other common minerals (excluding surface salt) from the native lands may be granted by a Provincial Commissioner or by such District Commissioners as a Provincial Commissioner may appoint as licensing officers.

Wayleaves

(4) A Provincial Commissioner may grant a wayleave licence to any person empowering the holder thereof, his servants and agents to enter upon land in the native lands for the purposes of laying pipes, setting up electric power or telephone lines, cables, or aerial ropeways, and erecting such poles and pylons and making such excavations as may, in the opinion of the Provincial Commissioner, be necessary for the carrying out of any such purpose.

Before granting any such wayleave licence the Provincial Commissioner shall consult the Local Board as to any compensation which may be payable and, if he is unable to agree with the Board as to such compensation, he shall report the matter to the Governor, whose decision shall be final. In any case where the usefulness of any land for agricultural purposes is in any way impaired by reason of the grant of any such wayleave licence, compensation in respect thereof shall be payable.

(6) All fees prescribed in respect of licences issued under the provisions of this section shall be paid to the Local Native Council concerned. Licence fees

(7) Where the Trust Board objects to any licence which has been granted under the provisions of this section, such licence shall not be renewed unless and until the Board has withdrawn such objection: Renewals

Provided that where the Board refuses to approve the grant or renewal of any licence which may be granted under the provisions of this section, the applicant for such licence or renewal, as the case may be, may, within thirty days after the date of such refusal, appeal in writing to the Governor, whose decision shall be final. Appeal.

39. (1) If the fees or any part thereof payable under a licence granted under this Ordinance shall at any time be unpaid for the space of twenty-one days after the same shall have become due, or if the licensee fails to comply with or commits any breach of any of the conditions of his licence, the Chief Native Commissioner, Provincial Commissioner, or licensing officer, as the case may be, may cause an application for the forfeiture of such licence to be made to a magistrate of the first class. Forfeiture of licences.

(2) Upon receipt of such application, together with particulars in writing specifying the fees in arrear or the condition which has not been complied with or of which a breach has been committed, the magistrate shall cause to be served upon the licensee a copy of such particulars together with a notice of the date, not being less than fourteen days after the date of such notice, when the application is to be heard.

(3) If upon the date fixed for the hearing of the application, or the date to which such hearing has been adjourned, it be proved to the satisfaction of the magistrate that fees are in arrear, or that the licensee has failed to comply with, or



has committed a breach of, any of the conditions of the licence, the magistrate shall, subject to relief upon such terms as may to him appear just, declare the licence forfeited.

Debt not to be extinguished by forfeiture.

40. No forfeiture of any lease or licence under the provisions of this Ordinance, or of any rule made thereunder, shall operate to extinguish any debt due in respect of any rent or other payment to be made by a lessee or licensee under a lease or licence forfeited.

Licences and permits to be issued subject to rules.

41. The issue of licences and occupation permits in respect of land set apart under the provisions of this Ordinance shall, save where a contrary intention is in this Ordinance expressed, be governed by rules made under this Ordinance.

## PART VI

### MISCELLANEOUS POWERS

#### *The Trust Board*

Trust Board to be land-holder for purpose of Water Ordinance, 1929 No. 35 of 1929.

42. The Trust Board shall, in respect of water flowing into, through or out of the native lands, be deemed, for the purposes of the Water Ordinance, 1929, to be the land holder in relation to such native lands.

Trust Board may delegate powers under Water Ordinance, 1929.

43. The Trust Board may, by notice in the Gazette, delegate to the Chief Native Commissioner the power to exercise on behalf of the Trust Board any of the functions or powers of the Trust Board in respect of water permits which, in the opinion of the Trust Board, are of a minor character.

Trust Board may issue instructions to grant licences to remove common minerals.

44. The Trust Board at any time may cause general or specific instructions to issue in regard to the grant by Provincial Commissioners or licensing officers of licences to remove sand, lime, and any other common minerals (except surface salt), timber and other forest produce, from the native lands.

Service of process on.

45. (1) Service on the Trust 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 Trust Board.

(2) Any costs incurred by or damages awarded against the Trust Board in connexion with any legal proceedings shall be paid by the Treasurer out of the revenues of the Colony.

#### *Local Native Councils*

46. The Local Native Councils established under the provisions of the Native Authority Ordinance, 1937, shall be responsible at all times for exercising the various functions assigned to them in respect of the native lands by this Ordinance and by any rules made thereunder.

Local Native Councils. No. 2 of 1937.

#### *Miscellaneous Powers of Governor*

47. (1) The Governor may, with the consent of the Trust Board, make adjustments of the boundaries of the native land units where the Trust Board is satisfied that any such adjustment is of a minor character and in the interests of the native population.

Governor may make minor adjustments to boundaries of Native Land Units.

(2) Where any such adjustment has been made notice thereof shall be published in the Gazette, and the Second Schedule to this Ordinance shall be read and construed subject to the adjustments specified in such notice.

(3) Where in the opinion of the Governor it is necessary in the interests of the native population of the Colony to increase the area of one native land unit by diminishing the area of a neighbouring native land unit thereby involving a major adjustment of the boundaries of the native land units, the Governor shall refer the matter to the Trust Board for its advice and shall thereafter refer the matter to the Secretary of State for his decision.

Major adjustments of boundaries of native land units.

48. (1) The Governor may, by notice in the Gazette, declare that land in the native lands is required for public purposes.

Governor may declare that land is required for public purposes.

(2) The Governor may, by notice in the Gazette, declare what is a public purpose for the purposes of this Ordinance.

49. (1) Subject to the provisions of section 70 of this Ordinance, the Governor may, by writing under his hand, order any native, who at the commencement of this Ordinance is not residing in the native lands, the native reserves, the temporary native reserves, or the native leasehold areas and whose rights have, under the provisions of section 70 of this Ordinance, been extinguished, forthwith to remove himself, his family and his property (if any) from the land on which he is residing.

Governor may order native to remove into Native Land Unit.

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

(2) Any native who disobeys or fails to comply with any order made under this section shall be guilty of an offence against this Ordinance.

(3) Where any native is convicted of an offence under the provisions of this section, the Court may, in addition to any penalty which it may impose under this Ordinance, authorize any administrative officer or police officer to cause such native, together with his family and property, if any, to be removed from the land on which he is residing in contravention of an order made under the provisions of sub-section (1) of this section.

#### Powers of Entry

Powers of entry  
of Governor  
on Native Lands.

50. (1) The Governor, subject to the provisions of sub-section (2) of this section, may at any time—

(a) enter upon any land in the native lands, and take therefrom stone and other materials for the making or repairing of roads, railways, canals, water channels, or other public works whether of the like kind or not;

(b) enter upon such land and set up poles and carry electric, telegraph or telephone lines across such land, and lay sewers, water pipes, electric, telegraph or telephone lines therein;

(c) enter upon such land and there do any work which he may consider necessary for maintaining or improving the flow of water in any river or stream, and may construct dams and divert any river or stream;

(d) by writing under his hand authorize officers in the service of the Government of the Colony, of the High Commissioner for Transport, and of any local authority duly established by any Ordinance in force in the Colony, and any contractors employed by such officers, to exercise any of the powers conferred

upon the Governor by this section. Any authority granted under the provisions of this paragraph shall be deemed to include the assistants, servants or agents of the officers or contractors to whom such authority is granted.

(2) Compensation, assessed in accordance with the provisions of sections 17 and 18 of this Ordinance, shall be payable in respect of anything done under this section for loss or disturbance and for the fair value of buildings and crops destroyed or damaged, and, in any case where the usefulness of any land for agricultural purposes is impaired by anything so done, compensation in respect thereof shall be payable.

(3) The powers conferred by this section may be exercised before the compensation is paid, but not before compensation has been assessed.

(4) It shall not be competent for the Trust Board or a Local Board to make any representations in regard to the exercise of any powers under this section except in so far, in the case of a Local Board, as the Provincial Commissioner may refer to such Board any question of compensation.

51. (1) Any officer of the Government of the Colony and any person authorized by any such officer shall for any purpose relating to this Ordinance have power at all times to enter upon any land in the native lands or to enter any premises or place on such lands, and there to make such inspection, examination and inquiry and to call for such information as may be necessary for carrying into effect any of the provisions of this Ordinance or of any other law for the time being in force.

Power to enter  
land and  
premises.

(2) Any person who refuses to permit any duly authorized officer or his representative to carry out any of the powers conferred by sub-section (1) of this section, or obstructs or hinders any such officer or his representative in the execution of his duty under this Ordinance, or fails to give any required information, or furnishes false information, to such officer or to his representative, shall be guilty of an offence under this Ordinance and shall, on conviction by a magistrate of the first or second class, be liable to a fine not exceeding fifty pounds or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

Obstruction of  
officers.

28

PART VII

MISCELLANEOUS PROVISIONS

Consent of Trust Board to be necessary in case of forest areas.  
Cap. 149.

52. (1) 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 as defined by the Forest Ordinance.

Cap. 149.

(2) Any land in the native lands duly declared to be a forest area shall be proclaimed as such in accordance with the provisions of the Forest Ordinance and shall be administered and controlled in accordance with rules made under that Ordinance or any other Ordinance at any time in force in the Colony relating to forests.

(3) All net profits accruing to the Conservator of Forests from the working of forest areas in the native lands shall be paid annually to the Local Native Council concerned.

For the purposes of this section the net profit of any forest area shall be the revenues derived from such forest area after deducting from such revenues the cost to the Government of the Colony, including overhead expenses, of working and maintaining such forest area. Where, in any year, a loss is incurred, the amount of such loss shall be carried forward and added to the working and maintenance charges for the ensuing year.

Indemnity.

53. (1) No action shall lie against the Government of the Colony or against any officer thereof or against any person authorized by any such officer, for any act done under the provisions of this Ordinance in good faith and without negligence, or done for the purpose of carrying into effect any such provisions.

Compensation.

(2) No compensation shall be payable to any person for any act done under the provisions of this Ordinance in good faith and without negligence, save where express provision is made in this Ordinance for the payment of compensation.

Validation of acts previously done, and indemnity therefor.

54. All acts heretofore done by the Governor or by any officer of the Government of the Colony or by any person acting under the direction of the Governor or of any officer of such Government in regard to any matter for which lawful authority is provided in this Ordinance and for which no lawful authority existed prior to the commencement of this Ordinance are hereby made and declared to be lawful and are confirmed as on and from the time of the performance of such acts, and the Governor and every such officer or

114

29

person is hereby freed, acquitted, discharged, and indemnified, as well against the King's Most Gracious Majesty, his heirs and successors, as against any and all persons whatsoever, from all legal proceedings of any kind whatsoever whether civil or criminal, in respect of any such acts.

55. (1) All actions, suits and proceedings respecting land in the native lands or respecting any lease, licence or permit relating thereto, or respecting the breach of any covenant contained in any such lease, licence or permit, or respecting any trespass on such land, or any damages accruing by reason of such trespass, or for the recovery of any rents or fees, or relating to any damages or wrongs whatsoever in respect of such land, may be commenced, prosecuted and carried on in the name and title of the Chief Native Commissioner.

Proceedings to be brought in name of Chief Native Commissioner.

(2) In any such action, suit or proceeding the Chief Native Commissioner may be represented by any advocate or by any administrative officer duly authorized by him in writing in that behalf.

56. (1) Any application, statement, demand, instrument, notice or other document authorized or required by this Ordinance, or any rule made thereunder, may be served on the person to whom it is to be given either personally or by leaving it for him at his last known place of abode or by sending it through the post in a registered letter addressed to him there.

Service of notice, etc.

(2) Where any such document is to be served on a person by being sent through the registered post it shall be deemed to have been served not later than the seventh day succeeding the day on which it was posted, and for proof of such service it shall be sufficient to prove that the letter containing the notice was properly addressed, registered and posted.

57. (1) Any order, notice or other document required by this Ordinance, or any rule made thereunder, to be published may be published by affixing a copy in some public or conspicuous place or situation in the area concerned, and, where it is deemed necessary, by publishing it in the Gazette.

Publication of Notices, etc.

(2) Such publication or affixing shall be deemed good and sufficient publication and notice to all persons concerned.

(3) Any person tearing, defacing, altering, injuring or removing any notice so affixed shall be guilty of an offence against this Ordinance, and shall be liable on conviction by a magistrate to a fine not exceeding ten pounds.

Defacing notices, etc. Penalty.

- (ii) the term for which any particular class of lease may be granted;
  - (iii) the conditions or restrictions subject to and upon which any particular class of lease may be granted;
  - (iv) the method of collecting the rents for leases and the persons to whom such rents are to be paid;
  - (g) regulating the issue of licences in the native lands in respect of—
    - (i) native cattle-grazing rights;
    - (ii) the removal of timber, forest produce, sand, lime, stone and other common minerals (excluding surface salt); and
    - (iii) wayleaves;
  - (h) prescribing the form and term of licences and occupation permits and the conditions upon and subject to which such licences and permits may be issued.
- (2) In any rules made under this section the Governor may reserve power to apply all or any of the provisions of such rules to the native lands as a whole, or to any one native land unit, or to any specified part of any native land unit.
- (3) Any rules made under the provisions of this section shall be in addition to, and not in derogation of, the provisions of any law for the time being in force relating to the matters specified in paragraphs (a), (b), (c) and (d) of this section.

### PART VIII

#### SAVING—EXTINGUISHMENT OF RIGHTS—REPEALS

Saving of existing rights.

66. Save where a contrary intention is expressed in this Ordinance, nothing herein contained shall be deemed to affect the validity of any subsisting title to land within the native lands nor the validity of any subsisting grant of mining or other rights therein in any case where such title was acquired or such grant was made before the commencement of this Ordinance. All such titles and rights and the powers thereby conferred and the obligations thereby imposed shall continue to be governed by the Ordinance under which such titles or rights were granted as if this Ordinance had not been enacted.

Provided that all land held under any such subsisting title or grant shall be deemed to be included in the native lands from the commencement of this Ordinance.

67. Save as is expressly provided in this Ordinance, nothing herein contained shall affect prejudicially any right, power, privilege or exemption of the Crown. Crown rights.

68. In respect of the occupation, use, control, inheritance, succession and disposal of any land situate in the native lands, every native tribe, group, family and individual shall have all the rights which they enjoy or may enjoy by virtue of existing native law and custom or any subsequent modifications thereof, in so far as such rights are not repugnant to any of the provisions of this Ordinance, or to any rules made thereunder, or to the provisions of any other law for the time being in force in the Colony. Rights of natives in the native lands.

69. Notwithstanding anything in this Ordinance contained, the Governor, in cases where the offences of treason or rebellion against His Majesty have been proved to have been committed by any native tribe, group, family or individual, and in addition to any other punishment lawfully inflicted in respect of an offence so committed, may order that any land in the native lands, held or occupied by any such tribe, group, family or individual, be forfeited and revert to His Majesty. Every such order of the Governor shall be subject to the approval of the Secretary of State. Forfeiture of land for treason or rebellion.

70. (1) With effect from the commencement of this Ordinance, all existing native rights in any land in the Colony situate outside the boundaries of the native lands, the native reserves, the temporary native reserves and the native leasehold areas, irrespective of whether such rights relate to tribal, group, family or individual holdings, are hereby declared to be extinguished; and the provisions of sections 30 and 31 of the Crown Lands Ordinance, 1902, and of section 86 of the Crown Lands Ordinance shall no longer have effect in respect of land alienated under such Ordinances respectively. Extinguishment of native rights.

Provided that the rights of a private right-holder shall not be so extinguished until he shall have harvested any annual crops which may have been planted before the date of the coming into operation of this Ordinance: Cap. 140.

Provided further that, notwithstanding the provisions of section 12 of the Native Authority Ordinance, 1937, no native, whose rights in respect of the land upon which he, or his family, is, or are, residing, have been extinguished under the provisions of this section, shall be compelled to remove him- No 2 of 1937

self from such land except by order of the Governor made in accordance with the provisions of section 49 of this Ordinance:

And provided further that nothing in this section contained shall be deemed to apply to—

- (a) rights enjoyed by individual natives under any specific title granted to them;
- (b) rights of resident labourers secured by contract under the provisions of the Resident Native Labourers Ordinance, 1925, until the termination of the contract;
- (c) existing rights of grazing in any areas in respect of which forest concessions have been granted by the Government of the Colony;
- (d) native rights in the Protectorate of Kenya.

(2) Nothing in this section contained shall be construed as affecting any native tribes or communities, for whom no specific native land unit is provided by this Ordinance, in regard to any right which such tribes or communities may have to occupy the areas of unalienated Crown land in which they are resident at the date of the coming into operation of this Ordinance.

Repeal.

No. 9 of 1930.

No. 51 of 1932.

No. 36 of 1934.

71. Subject to the provisions of section 66 of this Ordinance, the Native Lands Trust Ordinance, 1930, as amended by the Native Lands Trust (Amendment) Ordinance, 1932, and by the Native Lands Trust (Amendment) Ordinance, 1934, is hereby repealed.

#### FIRST SCHEDULE

#### SECOND SCHEDULE

DRAFT HIGHLANDS ORDER IN COUNCIL

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

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

1. This Order may be cited as the Kenya (Highlands) Order in Council, 1938

2. (1) In this Order unless the context otherwise requires "Colony" means the Colony of Kenya;

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

"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, 1938.

"Gazette" means the Official Gazette of the Colony.

"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;

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

3. (1) The Highlands of Kenya shall consist of the areas of land the boundaries of which are set out in the Seventh Schedule to the Crown Lands Ordinance.

(2) Except as provided in the ~~Native Lands Trust~~ Ordinance, 1938, and the Crown Lands Ordinance, the boundaries of the Highlands shall not be altered.

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

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

- (a) the person for the time being lawfully discharging the functions of <sup>(Chief)</sup> Colonial Secretary, who shall be President of the Board;
- (b) the person for the time being lawfully discharging the functions of Commissioner for Lands and Settlement, who shall be Vice-President; and
- (c) five persons, not holding office in the public service of the Colony, four of whom shall be chosen from time to time by a majority of the European Elected Members present and voting at a meeting of the European Elected Members convened for the purpose, and one of whom shall be nominated from time to time by the Governor. The names of the <sup>persons</sup> European Elected Members so chosen from time to time shall be submitted to the Governor who shall cause notice thereof to be published in the Gazette.

The four European Elected Members, shall notwithstanding the dissolution of the Legislative Council, continue to hold office as members of the Board [during the interval between] such dissolution] and the first session of the new Legislative Council,

- (3) The Board shall not be disqualified from acting by reason of any vacancy or vacancies among the members.
- (4) Four members of the Board shall form a quorum, and the Board may regulate its proceedings as it thinks fit.

5. It shall be the function of the Board -

- (a) to protect the interests of the inhabitants of the Highlands in the land situate in the Highlands and in particular to make representations to the Governor when in the opinion of the Board anything in relation to the administration, management, development or control of the land in the Highlands is not in the best interests of the inhabitants of the Highlands;
- (b) to give or withhold its consent in all matters in which its consent is required by any Ordinance for the time being in force in the Colony;
- (c) to advise the Governor in all matters relating to the disposition of land within the Highlands, and the Governor shall consult the Board in all such matters.

6. 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 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 Settlement 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, 1938.
- 2. (1) In this Order unless the context otherwise requires -

"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 in place of the Chief Native Commissioner;

"Colony" means the Colony and Protectorate of Kenya;

"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 1938.

"Gazette" means the Official Gazette of the Colony.

"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;

"Trust Board" means the Native Lands Trust Board established in pursuance of section 9 of this Order;

(2) In this Order references to the Native Lands Trust Ordinance, 1938 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 known as the Native Lands, the Native Reserves, the Temporary Native Reserves, and the Native Leasehold Areas

4. (1) The Native Lands shall be the areas of land the boundaries of which are set out in the First Schedule to the Native Lands Trust Ordinance, 1938, and they are hereby vested in the Trust Board.

(2) The Native Lands are hereby divided into nine Native Land Units described in the Second Schedule to the Native Lands Trust Ordinance, 1938, and the Trust Board shall hold the Native Land Units in trust for the native tribes specified in the said Schedule.

(3) Except as provided in the Native Lands Trust Ordinance, 1938, the areas of land comprised within the Native Lands and the Native Land Units shall not be altered.

(4) The Native Lands shall be administered in accordance with the provisions of the Native Lands Trust Ordinance, 1938, 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, or of any other Ordinance [for the time being] in force in the Colony, whereby the property in minerals and mineral oils is vested in the Governor in trust for His Majesty, or in the Crown, nor the provisions of the Water Ordinance, 1929, whereby the property in water is vested in the Crown.

(7) 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.

(8) (1) The Native Reserves shall be the areas of land the boundaries of which are set out in the Fourth Schedule to the Crown Lands Ordinance, and, except as provided in the Crown Lands Ordinance, the areas of land comprised within the Native Reserves shall not be altered.

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

(9)

(1) The Temporary Native Reserves shall be the areas of land the boundaries of which are set out in the Fifth Schedule to the Crown Lands Ordinance, and, except as provided

in the Crown Lands Ordinance, the areas of land comprised within the Temporary Native Reserves shall not be altered.

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

(3)  
~~2~~ (1) The Native Leasehold Areas shall be the areas of land the boundaries of which are set out in the Sixth Schedule to the Crown Lands Ordinance, and, except as provided in the Crown Lands Ordinance, the areas of land comprised within the Native Leasehold Areas 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.

6  
4. (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 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) One of the European Elected Members of the

Legislative Council of the Colony who shall be chosen from time to time by a majority of the European Elected Members present and voting at a meeting of the European Elected Members convened for the purpose. The name of the European Elected Members so chosen from time to time shall be submitted to the Governor who shall cause notice thereof to be published in the Gazette.

(d) A person from time to time nominated by the Governor.

(3) The persons referred to in sub-paragraphs (b)

and (c) of sub-section (2) of this section shall, notwithstanding the dissolution of the Legislative Council, continue to hold office as members of the Board during the interval between such dissolution and the first session of a new Legislative Council.

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

(5) 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.

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

7-10. (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, 1938, 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, 1938, or the Crown Lands Ordinance so provides delegate its powers and duties to the Chief Native Commissioner.

8 11. Except as provided by the Native Lands Trust Ordinance, 1938 and by sections 5 and 6 of the Crown Lands 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) situated outside the areas of land mentioned in section 3 are hereby extinguished.

- 9 12. 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 (1) hereof, the provisions of the Kenya Colony Order in Council, 1922.

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

A MEMORANDUM ON THE LEGISLATION ARISING  
OUT OF THE REPORT OF THE CARTER COMMISSION

5  
In paragraph 13 of the Secretary of State's despatch Kenya Confidential (2) of the 18th March, 1938 he asked that the revised draft Native Lands Trust Bill and the Crown Lands (Amendment) Bill should be submitted to him for consideration before they were published.

A BILL TO MAKE PROVISION FOR NATIVE  
LANDS IN THE COLONY

The Native Lands Trust Bill.

2. With regard to the Native Lands Trust Bill a printed and annotated copy is attached. Two prints of the Bill are shown. The copy on the left hand side is the Bill as originally drafted but embodies the amendments proposed by the Secretary of State in the Memorandum enclosed with his despatch Confidential No. (6) of the 28th October, 1937. The copy printed on the right hand side is a revised draft and includes those amendments suggested by the Secretary of State in his above-mentioned despatch, which have been accepted, and certain amendments subsequently agreed to by him in his despatch Confidential (1) of the 18th March, 1938.

14  
38005/6/57

3. On the left hand side of the Bill the numbering in blue-black ink refers to the clauses in the original draft Bill submitted to the Secretary of State under cover of Kenya Confidential despatch No. 72 of the 21st May, 1935. Where words have been underlined in red ink on the right hand side, they are intended to show where the wording

38005/6/35



differs from the draft on the left hand side. Where the alterations are not self-explanatory, a marginal note has been inserted indicating the reasons therefor. There are one or two alterations in blue-black ink on the right hand side but these are merely proof-reading corrections. Twelve copies of the reprinted Bill itself are also attached.

4. In view of the details contained in the copy of the Bill and the fact that the majority of the amendments, some of which were already approved by the Secretary of State, are purely verbal, it is not proposed to call for further comments on the Bill.

THE CROWN LANDS (AMENDMENT) BILL.

5. The revised Crown Lands (Amendment) Bill calls for no further comment.

6. The original draft Crown Lands Amendment Bill, as amended, in accordance with the memorandum enclosed to the Secretary of State's respective confidential letter of the 25th October, 1927, dealt with the title and native reserves (B2 Land) and the native tenement reserves (C Land). It made provision for the grant of permits to native tribes to occupy areas of Crown Land which were adjacent to the Native Land Units.

7. So far as the Temporary Native Reserves were concerned the Bill provided -

- (a) for the reservation of the Temporary Native Reserves;
- (b) that the external boundaries should not be

The Crown  
Lands  
Amendment.

14 on 38005/4/37

altered without the consent of the Board, subject to an appeal to the Secretary of State if the Trust Board refused its consent;

(c) for the grant by the Governor, on the advice of the Trust Board, of permits to native tribes to occupy the temporary native reserves upon such terms and conditions as were considered expedient or as were prescribed by rules, and for the revocation, with the approval of the Secretary of State, of such permits;

(d) that the Governor, with the approval of the Legislative Council, could set aside other areas of Crown Land as temporary native reserves for the purpose of satisfying the temporary economic needs of any of the native tribes of the Colony.

8. With regard to the Native Leasehold Areas the Bill provided -

(a) that no Crown land in the areas could be alienated save in accordance with the provisions of the Ordinance;

(b) for the grant of leases of land in the areas to groups, or families, of natives, or to individual natives;

(c) for the transfer of leases from native lessees to non-natives;

(d) for the grant of leases to non-natives for terms not exceeding ten years;

(e) that the Governor, with the consent of the Trust Board, could resume possession of any

land in the Native Leasehold Areas and give in exchange therefor an addition of Crown Land.

9. The Bill also provided that the Governor could grant to any native tribe a permit to occupy areas of Crown land which were adjacent to the native land units; and contained a general provision for the exclusion, both from the temporary native reserves and from the native leasehold areas, of any land required for certain public purposes, without the payment of compensation, other than compensation for buildings and crops destroyed or damaged or for disturbance or other loss or expense. In addition, there were clauses governing rule-making powers, and providing penalties for offences.

in on  
35005/6/37

10. The decision to reverse the previous recommendation that B1 lands should be merged with the A lands, and the Secretary of State's request (contained in paragraph 6 of his despatch Confidential (6) of 28th October, 1937) that provision should be made for the Northern Frontier District and the Turkana District, has, however, necessitated a review of the Crown Lands Bill and a complete redraft has, therefore, been prepared.

11. Now in the draft Bill, apart from provision for exclusions and the clauses permitting the transfer of leases and the grant of 10 year leases in the leasehold areas, there was no specific provision made for alienating land in either of these areas for other purposes.

12. It may, of course, be suggested that, as both these classes of land were to remain Crown land, no further provision was necessary; and that the Crown could, subject to the express provisions of Part VI of the Ordinance, dispose of land in these areas under the provisions of the Ordinance as freely as if no reservation had been made.

13. It is submitted, however, that this is not the case and that, by expressly providing for the withdrawal of land for certain specific purposes only and by similarly expressly providing for leases of limited duration only in the leasehold areas, these specific provisions would override the power contained in other parts of the Ordinance to dispose of the land otherwise than in accordance with the explicit terms of Part VI.

If this view is correct then the position, unless altered, would be that, whereas machinery would exist under the Native Lands Trust Ordinance for obtaining areas of "A" land, there would be no means of obtaining B1 or B2 lands except for the purposes, and by the means, referred to supra.

14. Moreover, with regard to mining, under the existing law the natives reserves (which are, incidentally, Crown land) are treated for the purposes of the Mining Ordinance, 1935, as private land, and no prospecting is permitted in these reserves except with the prior consent of the existing Trust Board, which may delegate its powers in this respect to a Provincial Commissioner; but the draft Crown Lands

(Amendment) Bill was silent as to its relationship to the Mining Ordinance, and the position with regard to prospecting and mining in these areas was not, therefore, covered.

15. The difficulty facing any draftsman attempting to deal adequately with the different classes of land proposed is that, notwithstanding the merits of the Report and its great wealth of detail, it is not easy to gather from any specific recommendation exactly what class of land is being referred to. For example in section 1436 it was stated that "for the purposes of this report, it will be best if as a general rule we keep to the designations A, B1, <sup>B2</sup> and C and refer to them as native reserves." Yet, at various stages of the report the term clearly excludes the C lands (with regard to which the whole of Chapter VIII is devoted as being land outside the native reserves) and in other cases may, or may not, include either the B1 or B2 or both. For this reason it is extraordinarily difficult in some cases to distinguish between the A, B1 and B2 lands.

16. The following distinctions are, however, perfectly clear -

- (a) the B lands are not to be regarded as reserved on the ground of historic right but on the ground of economic need, the need for the B1 lands being more permanent than the need for the B2; (sections 1452<sup>1453</sup> and 1456);
- (b) the legal estate in the land is to remain vested in the Crown. (sections 1455 and 2125);

(c) a rental is to be paid to the Crown for B2 land, and for both B1 and B2 in respect of any land added as B1 or B2. (section 1457);

(d) there is to be provision for the taking away of the B land on the ground that it is no longer required, whether this be due to a diminution in the numbers of the tribes occupying these areas or otherwise. (section 1455);

(e) the need for the B2 lands is to be regarded as of a less permanent nature than the B1, (section 1456); and this difference in the permanency of the need appears to constitute the sole line of demarcation between B1 and B2 land, except -

(a) that a rental is to be paid for the present B2 land; and

(b) that, whereas the B1 land should not be taken away except with the consent of the Trust Board subject to an appeal to the Secretary of State, leases of B2 land are to be terminable by the Governor with the approval of the Secretary of State. (sections 1459 and 1460).

17. Now in section 1452, the Commission state "Our reason for recommending that areas added to native reserves on the grounds of economic needs should be under Class B is a desire to keep the country's assets in land as fluid as possible and to ensure that the land is properly and efficiently

utilized."

In section 21.3 of the Commission's plan refer to land a part of tribal territory, and that if it would be absurd that B lands should be held for ever, and state that, for that reason, a different degree of security is necessary for each class.

It is submitted, therefore, that the intention underlying the recommendations of the Commission was that the B lands should, in general, be regarded as native reserves (in the sense that A lands are natives reserves) subject, however, to certain very important exceptions which will be dealt with in detail hereinafter, and that, so long as the B1 and B2 lands remain as part of the native areas and are not taken away, then, subject to those exceptions, they should be governed by the provisions of the Native Lands Trust Ordinance.

18. The revised Crown Lands (Amendment) Bill has been drafted on this assumption and I will now deal separately with the clauses.

Clause 1 and 2. No comment.

Clause 3. These definitions are the same as those contained in the Native Lands Trust Bill. The definition has been inserted of the Native Reserves, the Temporary Native Reserves or the Native Leasehold Areas as they are later defined in the Clauses reserving them as such.

Clause 4. Proposed section 5.

It might be suggested that it is not necessary to be so explicit as to the creation of a reservation, but it is submitted that it is a

desirable that, in order to avoid any misunderstanding and to maintain a distinction between A lands and B1 lands, the grounds on which the land has been reserved should be specifically stated.

Proposed section 55.

Here again it is desirable to distinguish between the classes of land and to state that the lands are temporarily reserved.

Proposed section 56(1).

This section attempts to give effect to the recommendations contained in sections 1453, 1459 and 2125 of the Report. It is true that no specific recommendation was made with regard to the B2 lands, except that permits of land to natives therein should be capable of being revoked (section 1460), but if the B1 land, the need for which is likely to be permanent (section 1456) can be taken away, then, a fortiori, provision should be made for the B2 boundaries to be varied for the purpose of taking away land not required. The protection of the Trust land, as recommended in sections 1459 and 1704 of the Report, is covered by section 56(2).

Proposed section 57.

This is a redraft of the original draft section 54(6) of the Bill which has been expanded to cover additions of B1 land. It is desirable that some formality and publicity should be given to such additions and this will be achieved by the publication of a proclamation. The relevant sections of the Report are sections 1457, 1473, 1741 and 1704.

Proposed section 57A.

This is a redraft of the original draft



sections 54(4) and 54(5). The relevant sections of the Report are sections 1406, 1400 and 174.  
Proposed Section 58A.

This section is designed to give effect to the views expressed above that, as long as B1 and B2 lands form part of the native areas they should, so far as setting apart, leasing, the payment of compensation etc., are concerned be subject to the provisions of the Native Lands Trust Ordinance.

With regard to paragraph (a) of the section, although the Native Lands Order in Council states that the Native reserves and the temporary native reserves are to remain Crown land, it is submitted that, in order to "complete the picture" as to the status of these lands, it should be clearly stated that they should not vest in the Trust Board.

Paragraph (b).

Powers are given by section 22 of the Bill to exclude land for certain public purposes but it is considered that, in so far as houses, training centres and projects in the field are concerned, these should be subject to the procedure prescribed in section 22 of the Native Lands Trust Ordinance. It seems only right and proper that the rentals for plots in such circumstances should be paid to the Local Native Councils concerned in accordance with the provisions of section 34 of the Native Lands Trust Ordinance, because such purposes cannot properly be said to be public purposes in the sense contemplated in the proposed section 58A of the Crown Lands (Amendment) Bill.

Paragraph (c).

The provisions of the Native Lands Trust Ordinance excluded by this paragraph will now be dealt with serially -

Section 6.

This section clearly relates only to the specific land units into which the "A" lands are sub-divided.

Sections 7(4) and 7(5).

Section 7 deals with exchanges of land of mutual lease but, as the land in the B1 and B2 areas is Crown land, section 7(4), which states in effect that land exchanged with Crown land shall be deemed to have become Crown land, is obviously inapplicable. Section 7(5), which declares that land exchanged in the native lands (for the purposes of this Bill read "native reserves") shall vest in the Trust Board, is also, having regard to the provisions of section 58(a) of the Crown Lands (Amendment) Bill, inapplicable.

Sections 8(1) to 30 inclusive.

These sections of the Native Lands Trust Bill relate to the setting aside of land for public purposes, permanent exclusions for the same object, and temporary exclusions for similar purposes.

In the case of exclusions for public purposes it is intended that these should be governed by section 8B of the Crown Lands (Amendment) Bill. In section 8B(1) of the

original draft Crown Lands (Amendment) Bill this was the procedure to be applied to the B2 and the B3 lands and it is suggested that, except in regard to townships etc., to which reference has already been made, the procedure should apply to all three classes of land.

The land is all Crown land and, as the public and other purposes for which land may be excluded are either essential for the benefit of the Colony as a whole or of direct benefit to the natives themselves, and, as compensation for damage, loss or disturbance is to be paid, no objection should be raised to the procedure proposed. Moreover, if the land becomes insufficient owing to exclusions for public purposes, which is unlikely, machinery exists for the addition of areas to the B lands when such a course is considered desirable.

For these reasons it is considered that sections 24 to 30 (inclusive) of the Native Lands Trust Bill should not apply to the B lands. Section 47.

Specific provision has been made in section 56 of the Crown Lands (Amendment) Bill for the alteration of the boundaries of the B lands. Section 48.

This is covered by the proposed section 58 of the Crown Lands (Amendment) Bill. Section 49.

As this section only applies to areas outside the A, B and C lands it is excluded for obvious reasons.

Section 60.

Similar provision exists in the proposed section 58B of the Crown-Lands (Amendment) Bill.

Section 63.

This section was inserted in the Native Lands Trust Bill in order to give effect to the recommendation contained in section 1796 of the Report. This recommendation referred expressly to A lands, and, as the B lands will remain Crown land, it appears to be unnecessary to apply it to them.

Proposed section 53B.

As in the case of B1 and B2 lands, it would appear preferable to define the C lands in the Clause which provides for their reservation. Clauses (2) and (3) of the original draft have been omitted as they are covered by the draft Native Lands Order in Council.

Proposed section 56C.

Sub-section (1) merely follows section 55(4) of the original draft Bill.

Sub-section (2) is new. See section 1461 of the Report.

Sub-section (3) follows section 55(5) of the original draft Bill.

Proposed section 58D.

In section 56(9) of the original Bill the Governor's powers of leasing land in the 100 years to non-natives was limited to leases for 10 years. On closer analysis this does not appear to have been the intention of the Commission (vide sections 130-132 of the Report) and for that reason provision has been made -

- (a) for short term leases for 10 years; and  
(b) with the consent of the Trust Board for leases not exceeding 99 years in the case of unalienated areas of the Leasehold Areas.

Proposed Section 58E.

This section follows Clause 55(8)(a) and (b) of the original draft.

Proposed section 58F.

This is new and gives effect to the recommendation contained in section 1921 of the Report.

Proposed section 58G.

This follows Clause 57 of the original draft and gives effect to sections 1490 to 1494 of the Report.

Proposed section 58H.

This follows section 58 of the original draft Bill, but now includes B1 land.

Exclusions for townships, trading centres and markets has, however been limited to the Leasehold Areas. The subject of setting apart land for these purposes in the B lands has been dealt with supra.

Proposed section 58I.

In the original draft the rule-making powers were specifically set out, but the Secretary of State in his despatch Confidential (6) of the 28th October, 1937, suggested that the power should be conferred in general words.

Proposed section 58J.

A section on these lines was approved by the Secretary of State in his despatch Confidential (2) of the 18th March, 1938. Sub-section (4) has been added as it is considered desirable to state

14 on

38005/6/37

in what circumstances compensation will be paid.

Sub-section (5) is in deference to a suggestion of the Secretary of State contained in paragraph 13 of the last-mentioned despatch.

Proposed section 58K.

It is clearly necessary to safeguard the position so far as mining is concerned. With regard to the B lands these should, it is submitted, be placed on the same footing as the A lands for the purposes of the Mining Ordinance, 1936. In this connection it may be noted that, under that Ordinance, prospecting in native reserves (now A lands) is only permissible with the consent of the Trust Board, whose powers may be delegated to a Provincial Commissioner, and the reserves are declared to be private land for the purposes of the Ordinance.

Proposed section 58L.

This follows section 58A of the original draft.

Proposed section 58M.

This brings the penalty clause in line with that contained in the Native Land Trust Act.

Proposed section 58N, clauses (a) and (b).

These follow similar provisions in the original draft.

THE DRAFT NATIVE LANDS ORDER 1937.

19. A revised draft of this order in 1937 is attached, and the only changes from the draft submitted by the Secretary of State under cover of the despatch Kenya Confidential (5) of the 28th October, 1937, which call for comment, are as follows:-

(Unless otherwise stated, references are to the Articles of the Secretary of State's draft Order.)

ARTICLE 2.

The definitions have been rearranged in alphabetical order.

ARTICLE 3.

"The Native reserves" have been included in consequence of the decision not to merge the B1 lands with the A lands.

ARTICLE 4(1).

The description of the Native Lands is now by reference to the boundaries set out in the First Schedule to the Native Lands Trust Ordinance, which proposal was approved by the Secretary of State in his despatch Confidential (2) of the 18th March, 1936. Anxious amendments have been made to Articles 5 and 7. The proviso to Article 4(3) has been deleted in view of the provisions of clause 47 of the Native Lands Trust Bill.

ARTICLE 6 - THE REVISED DRAFT.

The insertion of this Article was suggested in the B1 lands.

ARTICLES 6(2), 7(2) and 8(2) OF THE REVISED DRAFT.

These merely follow the form used in Articles 6(2) and 7(2) of the Secretary of State's draft Order.

ARTICLE 6(1) (Now 7(1) OF THE REVISED DRAFT)

This has been altered in view of the fact that the purpose for which the reservation is made is now stated in the proposed new section of the Crown Lands (Amendment) Bill.

ARTICLE 8 (Now 9 OF THE REVISED DRAFT)

This Article has now been amended in order to give effect to the views expressed in paragraph 4 of Kenya Confidential despatch No. 30 of the 8th February, 1938, which were accepted by the Secretary of State in paragraphs 4 and 5 of his despatch Kenya Confidential (2) of the 18th March, 1938. It will be observed that, in order to give effect to the wishes of the Secretary of State in paragraph 4(b) of that despatch, it has been provided that the European Elected Member is to be chosen by a majority of the European Elected Members present and voting at a meeting of the Members convened for the purpose, and that the name of the Member so chosen shall be submitted to the Governor who shall cause notice thereof to be published in the Gazette. It is hoped that this provision will ensure that the Members of the Board are properly and formally chosen and that the publication in the Gazette will <sup>be</sup> sufficiently conclusive evidence of the fact.

ARTICLE 10 (Now 11 OF THE REVISED DRAFT)

This Article has been amended by inserting the words "and by section 58J of the Crown Lands Ordinance". This is necessary in order to protect the rights of the tribes residing in the Northern Frontier and the Turkana Districts.

ARTICLE 11(c)

This has been deleted in accordance with the wish expressed by the Secretary of State in paragraph 14 of his despatch Kenya Confidential (2) of the 18th March, 1938.



THE DRAFT HIGHLANDS ORDER IN COUNCIL.

21. A revised Draft Order is attached.

(Unless otherwise stated references to the Articles of the draft submitted by the Secretary of State under cover of his despatch Confidential (4) of the 28th October, 1937).

17 on  
38005/6/37

ARTICLE 2(1).

The definitions have been rearranged in alphabetical order.

ARTICLE 3(1).

The Highlands are described by reference to the Seventh Schedule to the Crown Lands Ordinance.

ARTICLE 3(2) OF THE REVISED DRAFT.

The insertion of this provision was approved by the Secretary of State in paragraph 15(c) of his despatch Confidential (2) of the 18th March, 1938.

5

ARTICLE 4(c).

This has been amended in accordance with the terms of paragraphs 4 and 5 of the Secretary of State's despatch Confidential (2) of the 16th March, 1938.

5

The matter has been more fully dealt with supra in connection with the Highlands Order in Council.

4. On the remarks made in paragraph 3 of your memorandum I am to assure you, with special reference to sub-para. c, that, as in the case of Native Lands, it has always been the intention that no alteration should be made in the boundaries of the Highlands except by Order in Council, apart from minor alterations such as would be involved by exchanges made in accordance with the provisions of the Native Lands Trust Bill, or by the setting aside of areas for the purpose of making additions to the Native Leasehold areas as provided in the Crown Lands (Amendment) Bill.

It is, therefore, proposed to add a subsection to the relative Article of the Order in Council to the following effect:-

- "(2) Except as provided in the Crown Lands Ordinance and the Native Lands Trust Ordinance, 1958, the boundaries of the Highlands as described in (the said Schedule) shall not be altered".

The purpose you have in view would thus be achieved and the boundaries of the Highlands would be given the same measure of security as will be accorded to the boundaries of the Native Lands.

It will, of course, be appreciated that areas of land excluded from the Highlands under the provisions in the Native Lands Trust Ordinance and the Crown Lands Ordinance for exchanges and for additions to Native Leasehold areas will no longer be governed by the Highlands Order in Council.

The Government memorandum already published sets forth the proposals as now revised.

The Secretary of State adds that it would not be practicable for him to go further than this towards  
meeting ...

meeting the views expressed in the paragraph under reference. It is perhaps hardly necessary to remind you that the Secretary of State has stated in Parliament on more than one occasion that there is no intention of changing the administrative practice which has now been followed for over thirty years in regard to the disposal of land in the Highlands.

I have the honour to be,

Sir,

Your obedient servant,

(Sgd) A. de V. Wadde

COLONIAL SECRETARY.

15th April, 1938.

CONFIDENTIAL.

Sir,

MR. NATIVE LANDS AND TRUSTS MEMBERS IN COUNCIL.

I am directed to inform you that the secretary of State has carefully considered your memorandum on this subject, dated the 25th January, 1938, and observes that, as you yourself recognise, there will be no legal obstacle to the appointment of an Indian member of the Native Lands Trust Board if the Governor should at any time consider such an appointment to be desirable.

With reference to the "Highlands", while there is no intention of changing the administrative practice that has been followed for 30 years the secretary of State points out that it has been decided not to include in the Highlands Order in Council any provision involving statutory discrimination, on a racial basis, in regard to the acquisition of land in the Highlands.

I have the honour to be,

Sir,

Your obedient servant,

Sd/- H. G. V. N. S.

COLONIAL OFFICE.

MR. HON. J. B. PANDYA,  
P.O. BOX 185,  
MUMBAI.

COLONY AND PROTECTORATE OF KENYA



Memorandum on Proposed Legislation  
to Give Effect to the Kenya Land  
Commission Report

150

**MEMORANDUM ON PROPOSED LEGISLATION TO  
GIVE EFFECT TO THE KENYA LAND  
COMMISSION REPORT**

The local legislation required to bring into effect the recommendations of the Kenya Land Commission will be contained in two Bills, viz., a Native Lands Trust Bill and a Crown Lands (Amendment) Bill. The latter Bill will provide for the reservation of Native Reserves (Class B1), Temporary Native Reserves (Class B2), and Native Leasehold Areas (Class C). That Bill will also contain provisions for the administration of these lands and the regulation of their use by natives. They will remain Crown lands.

The former Bill will establish Local Land Boards and assign functions both to them and to the Local Native Councils; it will provide machinery for exchanges and inter-tribal occupation permits, for the setting apart of land of which leases may be granted to non-natives for any approved object, and for public purposes; and where necessary for exclusions of a permanent or temporary character. The Bill will also contain detailed provisions in regard to the administration of the Native Lands, to which the provisions of the Crown Lands Ordinance will no longer apply, and in regard to the extinguishment of native rights in land outside the Native Lands, the Native Reserves, the Temporary Native Reserves and the Native Leasehold Areas.

2. At an early date a Government Notice will be published describing in detail the areas of land which are proposed as Native Lands, Native Reserves, Temporary Native Reserves and Native Leasehold Areas.

The description of the Native Lands will follow the recommendations of the Commission save for such modifications as have since been approved by the Secretary of State on representations made by this Government.

3. In order to achieve finality in regard to Kenya land questions and, so far as might be feasible, to preserve against material alteration the settlement which they recommended, the Land Commission advised that Orders in Council should be enacted to safeguard the Native Lands and also the High-lands; and to preserve intact the machinery which they proposed for the control and administration of those lands. These Orders in Council have been drafted, but it will be necessary

for the local legislation to be enacted before they are brought into operation. The succeeding paragraphs set out the effect of the provisions which it is proposed the Orders in Council should contain.

4. The Native Lands Order in Council will, it is proposed, provide for four classes of land, namely, the Native Lands (Class A), to which the definition of "Crown lands" in the local laws will no longer apply, Native Reserves (Class B1), Temporary Native Reserves (Class B2), and Native Leasehold Areas (Class C), the boundaries of which will be described in a Government Notice to be published shortly.

The Native Lands will be divided into the nine Native Land Units recommended by the Land Commission, and provision will be made that they shall be held by a Trust Board in trust for the native tribes, and that, except as expressly provided by the Native Lands Trust Ordinance and apart from minor adjustments which the Governor, with the consent of the Trust Board, will be empowered, under the Native Lands Trust Ordinance, to make to the boundaries of the Native Land Units, these areas of land shall not be altered.

The Crown's rights in minerals, mineral oils and water will be safeguarded by a special clause in the Order.

5. The Trust Board, which will be a body corporate, will, it is proposed, be constituted as follows:—

- (a) the Chief Native Commissioner, who shall be President of the Board;
- (b) the two nominated Unofficial Members of the Legislative Council appointed from time to time to represent the interests of the African community on the Council;
- (c) one of the European Elected Members of the Legislative Council who shall be chosen from time to time by the European Elected Members of the Legislative Council;
- (d) a person from time to time nominated by the Governor.

The members referred to in sub-paragraphs (b) and (c) would, notwithstanding the dissolution of Legislative Council, continue to hold office during the interval between such dissolution and the first session of the new Council.

6. The proposed functions of the Trust Board will be to protect the interests of the natives of the Colony in the areas of land set apart for their occupation and in particular to

make representations to the Governor when, in the opinion of the Board, anything in relation to the administration, management, development or control of the land in those areas is not in the best interests of the natives. The Board will also be required to advise the Governor upon any matter relating to these areas of land which he may refer to it, and it will, of course, exercise any power or perform any duty which may be conferred or imposed on it by the Native Lands Trust Ordinance, the Crown Lands Ordinance or any other law for the time being in force in the Colony.

7. It is proposed to provide in the Native Lands Order in Council for the extinguishment of all existing native rights in any land in the Colony (excluding the Protectorate) situate outside the Native Lands, the Native Reserves, the Temporary Native Reserves and the Native Leasehold Areas, subject to the exceptions specified in the Native Lands Trust Ordinance and the Crown Lands (Amendment) Ordinance. These exceptions will preserve—

- (a) rights enjoyed by individual natives under any specific title granted to them;
- (b) rights of resident labourers secured by contract under the provisions of the Resident Native Labourers Ordinance, 1925, until the termination of the contract;
- (c) existing rights of grazing in any areas in respect of which forest concessions have been granted by the Government of the Colony;
- (d) native rights in the Protectorate of Kenya,

and also any occupation rights possessed by semi-nomadic tribes such as the Galla and the tribes residing in the Turkana and Northern Frontier Districts.

In the new Native Lands Trust Ordinance the Governor will be empowered to order any native whose rights have been thus extinguished, and who is not resident in the Native Land Unit provided for the tribe to which he belongs, to remove himself, his family and his property from the land on which he is residing, provided the Governor is satisfied that sufficient suitable land for his accommodation is available and that provision has been made for compensation for disturbance. No native shall be compelled to remove himself except by such an order. The right of any native so removed to harvest annual crops which he may have planted on the land from which he is to be removed will be safeguarded in the Ordinance.

8. As regards the Highlands, a Notice giving a detailed definition of the boundaries of the Highlands will be published shortly. This will subsequently appear in a Schedule to the Crown Lands (Amendment) Ordinance, and in due course the Highlands Order in Council will define the Highlands by reference to that Schedule; except as provided in the Crown Lands Ordinance, and the new Native Lands Trust Ordinance, the boundaries so defined will be unalterable.

9. This Order will provide for the establishment of a Highlands Board consisting of the following persons:—

- (a) the person for the time being lawfully discharging the functions of the Colonial Secretary, who shall be the President of the Board;
- (b) the person for the time being lawfully discharging the functions of the Commissioner for Lands and Settlement, who shall be Vice-President; and
- (c) five persons, not holding office in the public service of the Colony, four of whom shall be chosen from time to time by the European Elected Members of the Legislative Council and one of whom shall be nominated from time to time by the Governor.

10. The proposed functions of the Board will be to protect the interests of the inhabitants of the Highlands in the land situated in the Highlands and in particular to make representations to the Governor when, in the opinion of the Board, anything in relation to the administration, management, development or control of these lands is not in the best interests of the inhabitants of the Highlands. The Board will also be required to give or withhold its consent in all matters in which its consent is required by any Ordinance for the time being in force in the Colony; and provision will be made requiring the Governor to consult the Board on all matters relating to the disposition of land within the Highlands.

11. The two Bills, viz. the Native Lands Trust Bill and the Crown Lands (Amendment) Bill, will be published for information in the Gazette as soon as possible, but, whilst it is the Government's intention to proceed with the introduction of the Bills into Legislative Council without undue delay, it is considered that a somewhat longer period than the customary fourteen days' notice is required for the consideration of measures of such far-reaching importance.





155 19  
THE SECRETARIAT,  
NAIROBI,  
KENYA.

WHEN REPLYING  
PLEASE QUOTE  
NO. S.D./Leg. Co. 26/3/8/72  
AND DATE

22nd April, 1938  
L

The Colonial Secretary of the  
Colony and Protectorate of Kenya  
presents his compliments to the  
Under Secretary of State for  
the Colonies, and has the honour  
to forward twelve copies each  
of the undermentioned publications:

Memorandum on Proposed Legislation  
to give effect to the Kenya Land  
Commission Report

Colonial Loans: Statement  
submitted to Legislative Council  
in April, 1938

Vehicles Licensing Regulations,  
1938, under the Transport  
Licensing Ordinance, 1937

- See end  
67

G. O.

18.

Mr. Paskin. 11/3

Mr. Dale. 11.

Mr. Dawe. 14.3

Sir H. Moore.

Sir G. Tomlinson.

X Sir C. Bottomley. 15.3

Sir J. Shuckburgh.

Q Perm. U.S. of S. 16.3.38

Parly. U.S. of S.

X Secretary of State. 17.3.38

Downing Street,

18 March, 1938.

Sir,

I have the honour to acknowledge

the receipt of your confidential despatch No.30 of the 8th of February on the subject of the proposed Orders in Council and other draft legislation to give effect to the recommendations of the Kenya Land Commission, and to inform you that I have given careful consideration to the observations and recommendations in your despatch and in the documents transmitted therewith. It will perhaps be convenient if I deal seriatim with the points raised in your despatch.

2. Paragraph 3.

Having regard to the unanimous recommendation of your Executive Council, in which I note that you concur, and to the comments in your despatch, I am prepared to approve the reversion to

**DRAFT.**

KENYA

CONFIDENTIAL (2)

GOVERNOR.

FURTHER ACTION.

to the recommendation of the Land Commission that B1 lands should be differentiated from A lands in this legislation.

3. Articles 6 (1) and 7 (1) of the Kenya (Native Lands) Order in Council.

My proposal that the various classes of land should be defined by reference to descriptions of boundaries previously published in the Gazette was prompted solely by the consideration that the contemplated descriptions of the boundaries are unsuitable for inclusion as Schedules to the Orders-in-Council. I agree that the procedure that you now propose is preferable to that which I suggested.

4. Articles 8 (2) (b) & (c) of the Kenya (Native Lands) Order-in-Council and Article 4 (2) of the Kenya (Highlands) Order-in-Council.

(a) I agree that it should be provided that, on a dissolution of the Legislative Council,

the

*(para 4(a) of Schedule)*

*(para 4(b) of Schedule)*

C. O.

Mr.

Mr.

Mr.

Sir H. Moore.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

DRAFT.

**FURTHER ACTION.**

155

the Members of the two Boards representing native interests and the European Elected Members should hold office until the new Council has been constituted.

(b) The provisions whereby certain members of the Boards were to be chosen by the European Elected Members at a meeting of the Legislative Council were intended to ensure that these members of the Boards were properly and formally chosen, and that there would be conclusive evidence of the fact. While therefore, I accept your view that the words underlined are perhaps apt for their purpose, I do not consider that it will be sufficient merely to delete them. I accordingly request that you will consider what the most appropriate method of choosing these members will be, and what amendment will be necessary in the Orders in Council.

5. Article 8(2) (d) of the Kenya

(Native Lands) Order in Council.

I accept your view that the stipulation that the 5th member of the Board should not be a person holding office in the public service of the Colony nor a member of the Executive or Legislative Councils, is unduly restrictive and I agree to the deletion of the restrictive words.

6. Native Lands Trust Bill - Clause 33(1).

It is appreciated that this clause does not deal with the method of payment, but with the source of compensation: but the amendment you refer to was suggested because it was feared that the express words of the clause as drafted, namely "settled by one outright payment" might be held to override the discretion given by Clause 29 (as amended) to order payment to the natives ~~in~~ District Commissioner in instalments. This is a matter of drafting which I am content to leave to you. As to the source of compensation, I agree that, in cases where the compensation is to be

paid

C. O.

Mr.

Mr.

Mr.

Sir H. Moore.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Perm. U.S. of S.

Party U.S. of S.

Secretary of State.

DRAFT.

FURTHER ACTION.

156

paid from the general revenues of the Colony, or from the funds of the Transport Administration, it would be appropriate for the compensation to be settled by an outright payment. On the other hand, in cases where the compensation would be payable from the revenues of a Local Native Council, it seems to be doubtful whether it is reasonable to assume that the Council would have sufficient funds available to enable it to make a single outright payment. It may be, however, that you are satisfied either that it is unnecessary to contemplate this contingency, or that there are suitable means of dealing with it, if it should arise. I should then have no objection from this aspect to Clause 33(1) remaining as originally drafted. I should, however, be glad to receive your observations on this point.

point.

7. Native Lands Trust Bill - Clause 38.

I note that in your view the Proviso to sub-section (2) of this clause should be retained, in order to cover the case of a private right-holder who is not living on the land. I am prepared to accept your view on this point, though it appears that such a right-holder, who would be already living elsewhere, would be unlikely to wish to elect for residence in the substituted area. A question arises however as to the effect of this Proviso on the rights of a native who is both a private right-holder and living in the area to be excluded. He should, I suggest, clearly be given the right to receive compensation under both clause 24 and clause 25 of the Bill, and to reside in the substituted area. It therefore seems to me desirable to make it clear that a native who

G. O.

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

DRAFT.

**FURTHER ACTION.**

who moves into the substituted area in exercise of his right under sub-section (1) of clause 38, should not thereby be held to have exercised his option under the Proviso to sub-section (2), and be debarred from receiving compensation under sub-section (2).

8. Kenya (Native Lands) Order in Council - Article 16 (2).

I note that you consider that provision should be made in the Native Lands Trust Bill for the payment of costs awarded against the Trust Board.

9. Native Lands Trust Bill - Clauses 49 and 69.

I agree that the special provisions of Clauses 49 and 69, governing the removal of natives to their reserves, are only intended to apply in the case of native right-holders whose rights have been extinguished. But the converse proposition is also true, viz that the wide powers conferred on Provincial Commissioners

Commissioners by Section 12 of the Native

Authority Ordinance are not to be exercised

in such cases. If however a native who has  
*removed by an*  
been ~~ordered~~ *of* the Governor, under Clause 49

of the Native Land Trust Bill, ~~to remove himself~~

from the land on which his rights have been

extinguished, subsequently returns to that

land, it would clearly not be appropriate for

his case again to be dealt with under that provision,  
*but under Sec. 12 of the Native Authority Ordinance.*

In this connection I observe that under

Section 12 of the Native Authority Ordinance, the

Provincial Commissioner can only order

the native to remove "on to land reserved

for the tribe or community to which such native

belongs." Your proposal to delete any reference

to the Native Land Unit from the proviso to

Section 12 (b) is however based on the

assumption that, in some cases, it may not

be possible or desirable to require a native

to remove himself to the Native Land Unit allotted

to his tribe. In such a case the powers of

the Provincial Commissioner under Section 12

of

C. O.

Mr.

Mr.

Mr.

Sir H. Moore.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Parry. U.S. of S.

Parry. U.S. of S.

Secretary of State.

DRAFT.

(25) in  
38223/37 Kenya

Not sent m.

FURTHER ACTION.

158  
of the Native Authority Ordinance either  
could not be exercised at all, or only

with undue hardship to the native

concerned. The position is further

complicated by the fact that there appears

to be some overlapping between the powers

of removal under the Native Authority

Ordinance and those contained in the

Resident Labourers Ordinance, on which I

have addressed you in my confidential

despatch of the 14<sup>th</sup> March.

It would therefore appear to be desirable

to undertake a comprehensive review

of the provisions governing the removal

of natives which are contained in all

three Ordinances.

10. Subject to what has been said

in the preceding paragraph, I agree with

your view that, for the reasons explained

in paragraph 6 of your despatch, the

Governors

Governors discretion in regard to the removal of a native, whose rights have been extinguished, should not be fettered by a statutory reference to any specific Land Unit. On the other hand, I observe that, in support of your view, you have advanced the consideration that the native himself might not wish to be accommodated in the Native Land Unit allotted to his tribe.

*desire to emphasize the fact*  
~~that, in these~~  
cases where natives are to be removed from land in which they have certain rights, I attach considerable

importance to their wishes, being met as far as may be practicable, & every effort made to cause to be agreed settlements

*in regard to the place to which they are to be removed,*

11. I note with satisfaction the assurance in paragraph 7 of your despatch that it is proposed to make provision for the payment of compensation for disturbance on a generous scale.

12. As regards the question raised in the first sub-paragraph of paragraph 8 of your despatch, I should perhaps explain that paragraph 6 of my confidential despatch No. (6) of the 24th of October 1937, was intended to ensure that consideration was

*(No. 14 on 38005/6/37 - copy h.w.)*

C. O.

- Mr.
- Mr.
- Mr.
- Sir H. Moore.
- Sir G. Tomkinson.
- Sir C. Bottomley.
- Sir J. Shuckburgh.
- Perms. U.S. of S.
- Presy. U.S. of S.
- Secretary of State.

DRAFT.

was given locally to the question whether all native rights which it is desired to preserve are safeguarded. What I had particularly in mind was the question whether, e.g. in the Coast Province, there might be some forms of native tenure which should be excluded from the general extinguishment of native rights, on grounds similar to those on which native rights in the Protectorate are being excluded.

I naturally accept your assurance that all native rights which it is desired to preserve are safeguarded.

13. As regards the Clause which it is proposed to insert in the Crown Lands (Amendment) Bill to deal with the Northern Frontier District and the Turkana District, I am in some doubt as to the meaning of sub-section (4), and particularly of the opening phrase. Presumably it should be provided that, notwithstanding the priority of the tribes.

FURTHER ACTION.

tribes in the areas mentioned, the Crown shall be entitled to ~~reserve~~ <sup>resume</sup> any part of the land for the purposes mentioned in clause 58 of the Crown Lands Bill, which clause does not (as drafted) apply in terms to these areas.

14. As regards the question dealt with in paragraph 9 of your despatch, I am disposed to the view that the proposed new clause 58 is a little wide, and that a preferable wording would be "Save in regard to matters wherein express provision" etc., ending with the word "Colony", since the last 12 words do not seem necessary. It seems to me also, on further consideration, that there is no point in repeating this clause in the order in Council, and I think the proposed paragraph (c) or ~~clause~~ <sup>Article</sup> 11 of the latter can be omitted altogether. ~~Clause~~ <sup>Article</sup> 4(4) of the Order ensures that the effect of the Order will depend on the provisions of the Ordinance.

15.

C. O.

Mr.

Mr.

Mr.

Sir H. Moore.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

DRAFT.

FURTHER ACTION.

15. I turn now to the minority Report submitted by the representatives <sup>on the Sub-Committee of the Executive Council</sup> of the European Elected Members, and

I have the following observations to offer on the numbered sections of this Report:-

(a) Section (1).

It does not appear to be necessary to prescribe any special procedure for setting in motion a proposal to add to the area of one Native Land Unit by diminishing another such Unit. If such a necessity were to arise, a proposal would no doubt be submitted by the Provincial Administration, and after due consideration by all the parties concerned, including the Native Lands Trust Board, would form the subject of an ad hoc recommendation by the Governor <sup>to the</sup> ~~and the Secretary of State.~~

(b) Section (2).

I have dealt with the matters raised in this Section in paragraph 9 above.



ove.

Section (3). In the first paragraph  
consideration to the remarks made by  
this section the representatives of  
in this section.

~~the European Elected Members state that they  
appreciate the difficulties of my position  
in respect of the House of Commons, the  
Government of India and certain international  
arrangements. These difficulties have been  
fully explained orally to the representatives  
of the European Elected Members in confidence,  
and it is unnecessary for me to repeat that  
explanation here. I am afraid that I must  
ask them to accept my assurance that these  
difficulties are of such a character that,  
so far as the broad questions involved are  
concerned, it is quite impossible for me  
to go further towards meeting their wishes  
than is being done under the terms of  
the proposed Highlands Order-in-Council, coupled  
with the statement, which I have made on  
more than one occasion in Parliament, that  
there is no intention of changing the  
administrative~~

*I have given careful  
consideration to the remarks made by  
this section the representatives of  
in this section.*

C. O.

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

**DRAFT.**

**FURTHER ACTION.**

~~administrative practice which has been  
followed for the past 30 years in regard  
to the disposal of land in the Highlands.~~

← As regards however the particular  
point raised in paragraph (C) on page 4  
of <sup>the</sup> ~~the~~ <sup>Minority</sup> report, the European  
**Elected** Members may be assured that,

as in the case of the Native Lands, it has  
always been the intention that, apart  
from minor alterations such as would be  
involved by exchanges made in accordance  
with the provisions of Part II of the  
Native Lands Trust Bill, or by the setting  
aside of areas for the purpose of making  
additions to the Native Leasehold areas  
as provided in Clause 55 of the Crown  
Lands (Amendment) Bill, **no alteration**  
should be made in the boundaries of the  
Highlands except by Order-in-Council, in  
accordance with this intention, I am  
inclined to the view that a sub-section  
should be added to ~~clause~~ <sup>Article</sup> 5 of the  
Highlands Order/ somewhat as follows:-

follows:-

"(2) Except as provided in the Native Lands Trust Ordinance 1938 and the Crown Lands Ordinance the boundaries of the Highlands as described in (the said Schedule) shall not be altered".

A provision on these lines would achieve the purpose, to which the European Elected Members attach importance, of according to the boundaries of the Highlands the same measure of security as will be accorded to the boundaries of the Native Lands.

It will be observed that neither in the provision suggested above, nor in the corresponding provision in the draft Native Lands Order-in-Council is it specifically provided that the boundaries shall not be altered except by an Order-in-Council, as it is not considered necessary to include the words underlined.

Incidentally, it will of course be appreciated that the effect of adding

C. O.

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

**DRAFT.**

a provision on the lines suggested above will be that areas of land excluded from the Highlands under the provisions of the Native Lands Trust Ordinance or the Crown Lands Ordinance will no longer be governed by the Highlands Order-in-Council.

16. *I have also considered carefully the memorandum and*

submitted by Mr. Pandya I would observe with regard to it:-

(a) that as indicated in paragraph 9 of my Confidential despatch No. (5) of the 28th of October, and as Mr. Pandya

himself recognises, there is no legal obstacle to the appointment of an Indian member of the Native Land Trust Board if the Governor should at any time consider such an appointment to be desirable; and

(b) that, as regards the Highlands, it is largely in deference to the views of the Government of India that it has been

(No. 13 or 32005/6/37)

Copy

I fear that it would not be practicable for me to go further towards meeting the views of the European Elected Members as expressed in this section than is represented by the above addition to the draft Order-in-Council. This hardly necessary to remind them

**FURTHER ACTION**

that, as I have stated on more than one occasion in Parliament, there is no intention of changing the administrative practice which has now been followed for over thirty years in regard to the disposal of lands in the

been decided not to include in the proposed Highlands Order-in-Council any provision involving statutory discrimination, on a racial basis, in regard to the acquisition of land in the Highlands.

17. I turn now to the draft (as amended by the Sub-Committee of the Executive Council) of the Memorandum which it is proposed to lay on the table of the Legislative Council, on which I have the following observations to offer:

- (a) Paragraph 1. *but one,*  
(a) *(in the last line but one of*

paragraph 1, the words "the Native Lands" should be inserted before "the Native Reserves".

(b) Paragraph 3. I suggest that the last sentence but one should be deleted and that the constitutional practice in this matter should be explained orally if the question is raised.

- (c) Paragraph 4. line 2.

I suggest that for the word "establish"

C. O.

Mr.

Mr.

Mr.

*Sir H. Moore.*

*Sir G. Tomkinson.*

*Sir C. Bottomley.*

*Sir J. Shuckburgh.*

*Parlt. U.S. of S.*

*Parly. U.S. of S.*

*Secretary of State.*

**DRAFT.**

there should be substituted the words "provide for four classes of land, namely"

- (d) Paragraph 4, p.3, top line.

Before "apart from....." insert "Except as expressly provided by the Native Lands Trust Ordinance and"

- (e) paragraph 4. p.3. lines 5 & 6.

Delete "except by an Order-in-Council" for the reason indicated in paragraph 15 above.

- (f) Paragraph 7. line 2.

The word "any" seems too wide.

In this connection see my observations in paragraph 9 above.

- (g) Paragraph 7. lines 4 & 5.

The references to a "Land Unit" will have to be revised in accordance with the recommendation in paragraph 6 of your despatch, which I have accepted.

(h)

FURTHER ACTION.

(h) Paragraph 7. lines 13-15.

I suggest that words should be added to indicate that there is no intention of extinguishing any rights enjoyed under any specific title.

(i) Paragraph 8.

I suggest that this paragraph might be deleted. If however it is thought desirable to include it, I suggest that it should be amended to read as follows:-  
"Nothing in the Order will affect the existing....."

18. I assume that I shall have an opportunity of again considering the draft Bills in their final form before they are published. <sup>Hydruis</sup> I have not thought it necessary to ~~attempt~~ a redraft of those provisions of the ~~Native Lands~~ Order-in-Council which will need amendment as the result of ~~the~~ this correspondence. proposals in your despatch, as I gather that your advisers

G. O.

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

advisers are preparing ~~an~~ amended draft. I shall be glad if you will forward the amended draft Orders with the draft Bills.

(Signed) W. GRMSBY GORE.

DRAFT.

FURTHER ACTION.

38005/38

Coded as Serial 165  
5. open 18/3/38  
OK

G. O.

Mr. P. ~~...~~ 18/3

Mr. at mee.

Mr.

Sir H. Moore.

Sir G. Tomlinson.

Sir C. Battersley.

**C. D.**  
18 MAR 1938  
19 3 PM '38

J. Shackburgh

U.S. of S.

of S.

Secretary of State.

No. 28. Confidential

Your tel. No 18 Conf.

Desp. goes by today's  
mail suggesting various  
alterations in draft  
memorandum @

Your desp of 4<sup>th</sup> March No 121  
proposed exchanges approved.

19/3

DRAFT. Tel.

Gov.

Nairobi

**FURTHER ACTION.**

Copy to be placed  
on 38005/19/38

*[Signature]*  
19/3

Telegram from the Governor's Deputy, Kenya to the Secretary of State for the Colonies.

Dated 17th March, 1938. Received 9.2.a.m. 17th March.

No. 18. Confidential.

My despatch of the 8th February No. 30 confidential. It is most important that I should be in a position to lay before the Legislative Council when it meets on the 8th April memorandum of draft proposal(s) and should therefore be grateful if I might receive before then your approval for publication of the memorandum enclosed in my despatch of the 8th February amended in paragraph 7 as proposed in paragraph 6 of the despatch.

Final preparation of boundary description should now be undertaken and I should appreciate early reply to my despatch of the 4th March No. 121 regarding Massai exchange.

6  
2 167

Extract from a letter from Sir Robert Brooke-Poplar  
to the Secretary of State for the Colonies.

Dated 19th February, 1938.

14. I recently sent a despatch in connection with the Orders-in-Council about the Highlands, and in it two memoranda one from Francis Scott and Cavendish-Bentinck, the other from Panaya. They were both quite mild and as regards the former, Cavendish-Bentinck said to me privately that he knows some of the requests cannot be agreed to, but that he thought it was his duty to put in the memorandum because it did represent the views of a large number of the settlers.

KENYA

No. 30

GOVERNMENT HOUSE  
NAIROBI  
KENYA

8th Nov, 1967



(1) No. 38005  
13 Nov 1967

I have the honor to refer to the letter of the 1st, 2nd, 3rd and 7th Nov 1967, on the subject of the draft bill and other draft legislation and the recommendations of the Council.

2. In order to carry out paragraph 3 of your Confidential Memorandum was prepared within the period of 48 hours in Council and with a view to being presented to Council.

The Council, where as a number of amendments were filed, the Council will report upon the whole of the bill and the amendments which have been filed.

Chief Justice, Nairobi  
Local Government, Nairobi

Scott, Major General  
Principal of the Kenya School of Administration

by the Bill of the Government of Kenya

information

*Amended (2)*

Chief Justice, Nairobi  
Local Government, Nairobi

Scott, Major General  
Principal of the Kenya School of Administration

by the Bill of the Government of Kenya

information

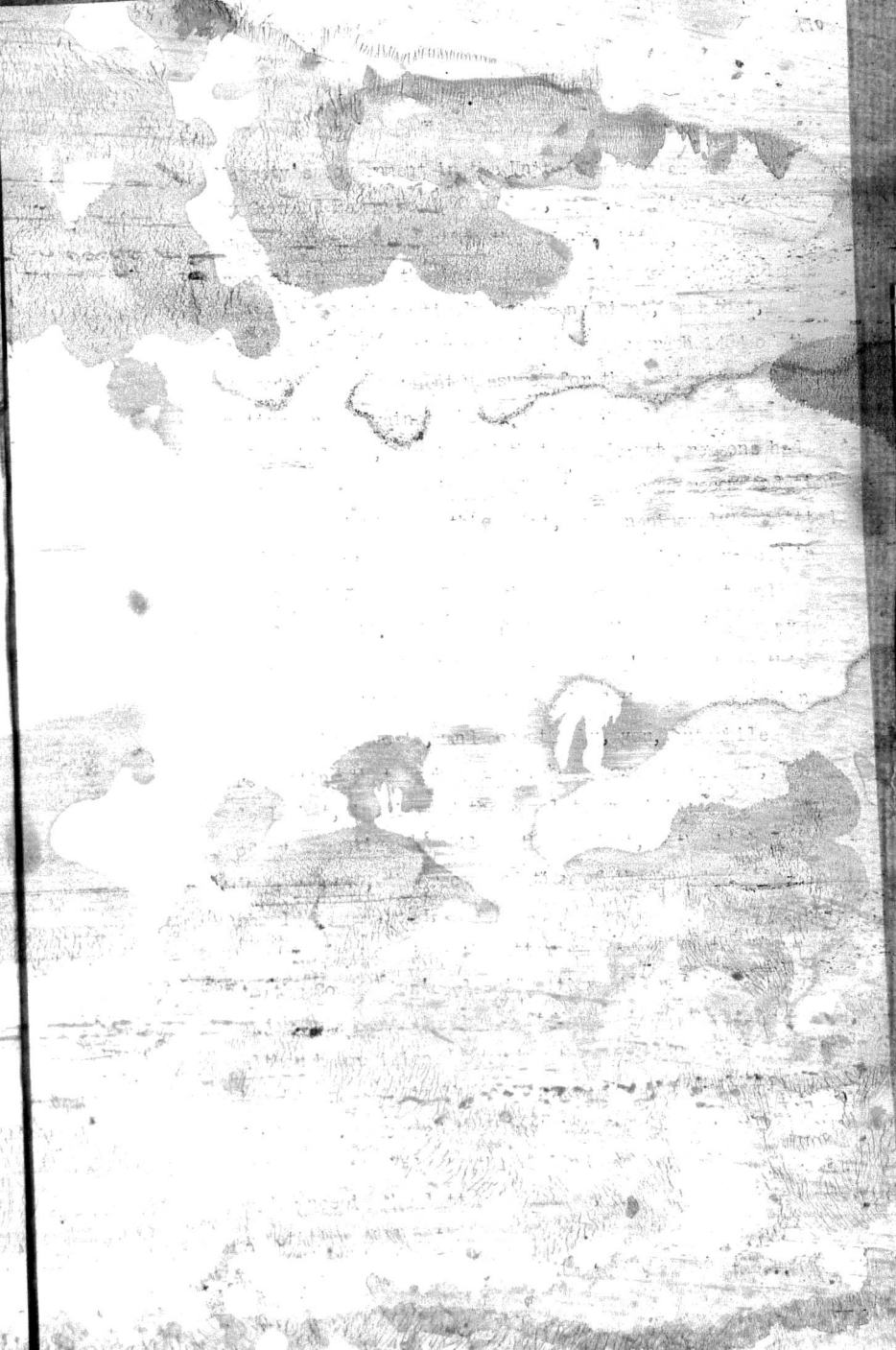
Chief Justice, Nairobi  
Local Government, Nairobi

Scott, Major General  
Principal of the Kenya School of Administration

by the Bill of the Government of Kenya









The words contained in Article 4 (a) of the Constitution shall be interpreted in the manner in which they are interpreted in the Constitution of the State of New York.

(b) Article 4 (b) (1) (c) of the Constitution shall be interpreted in the manner in which they are interpreted in the Constitution of the State of New York.

No provision has been made in the draft Constitution for the interim period between the dissolution of the Legislative Council and the date of the election of a new Legislative Council. It is therefore recommended that the members of the Council elected at the general election should hold office until the new Council has been constituted.

If this recommendation is approved, all members of the Council elected at the general election will be required to hold office until the new Council has been constituted. It is also recommended that the words "the members of the Council" in Article 4 (c) of the Constitution shall be interpreted in the manner in which they are interpreted in the Constitution of the State of New York.

The words "the members of the Council" in Article 4 (c) of the Constitution shall be interpreted in the manner in which they are interpreted in the Constitution of the State of New York. The procedure laid down in the draft Constitution is not practicable.

(c) Article 4 (c) of the Constitution shall be interpreted in the manner in which they are interpreted in the Constitution of the State of New York.

(d) Article 4 (d) of the Constitution shall be interpreted in the manner in which they are interpreted in the Constitution of the State of New York.

(e) Article 4 (e) of the Constitution shall be interpreted in the manner in which they are interpreted in the Constitution of the State of New York.

(f) Article 4 (f) of the Constitution shall be interpreted in the manner in which they are interpreted in the Constitution of the State of New York.

the proposals contained in this paragraph are accepted, appropriate alterations will be required in the Orders in Council and in the draft Bills.

(b) Articles 8(2)(b) (c) of the Kenya (Native Lands) Order in Council and Article 4(2) of the Kenya (Highlands) Order in Council.

No provision has been made in the draft Orders for the situation that will arise in the interval between the dissolution of Legislative Council and the date of the election of a new Legislative Council. It is therefore recommended that the Members representing Native Interests and the European Elected Members should hold office until the new Council has been constituted. If this recommendation is approved, appropriate amendments will be required to both Orders in Council. It is also recommended that the words "at a meeting" in Article 8(2)(c) of the Kenya (Native Lands) Order and the words "at a meeting of the Legislative Council of the Colony" in Article 4(2)(c) of the Kenya (Highlands) Order should be deleted as the procedure laid down in the draft Orders would be impracticable.

(c) Article 8 (2)(d) of the Kenya (Native Lands) Order in Council.

My Executive Council considers, and I agree, that the proposed limitation on the Governor's power of selection of the additional member of the Board will seriously fetter the Governor's discretion. It is considered desirable that the field of choice should be as wide as possible, as it may well be that the most suitable person is to be found...

found either in Executive Council, Legislative Council or the public service. The deletion of the restrictive words is therefore recommended.

5. I will now deal with the comments contained in the memorandum which formed an enclosure to your Confidential despatch No.(6) of the 28th October, 1937. The suggestions are, in general, acceptable, but the following points are submitted for your consideration -

The Native Lands Trust Bill - Clause 35 (1)

It was suggested in the memorandum that the words "payable in accordance with the provisions of this section" should be substituted for the words "settled by one outright payment", but it will be observed that this particular Clause does not deal with the method of payment but with the source of compensation, and the proposed amendment does not therefore appear to be suitable. In any case it is recommended that this Clause should stand as drafted, in order to give effect to the specific recommendations of the Commission, contained in paragraph 1613 of the Report, that, in this class of case, at least, the cumbersome provision for annual compensation should not be followed.

Clause 38. The object of this clause appears to have been misunderstood. Provision is required for two classes of claimants: (1) the native tenant who possesses no land rights and (2) the right holder who might or might not be in actual occupation of the land himself. As sub-clause (1) refers only to the former class, it is recommended that the proviso should stand in order to provide for the second class.

Article 18(2) of the Kenya (Native Lands) Order in Council.

As the Trust Board will have no funds, it is considered advisable to make definite provision for the payment of costs. It is recommended therefore that the Clause, amended as suggested in the memorandum, should remain in the Bill.

6. I have reserved for more lengthy comment the provisions of Clauses 49 and 69 of the draft Native Lands Trust Ordinance. The Sub-Committee in its report recommended that the operation of these Clauses should be confined to those natives whose rights will, under the provisions of Clause 69, be extinguished and that it should be made clear in the Bill that the provisions of these Clauses in no way override or limit the powers contained in section 12 of the Native Authority Ordinance, 1937. This recommendation has been accepted by Executive Council and it is hoped that you will agree to the proposals.

*[Handwritten notes in left margin]*

As regards the suggested proviso to Clause 49(2), my advisers and I are in full agreement with you that no native should be ordered to remove under the provisions of these sections unless the Governor is satisfied that sufficient land for the accommodation of the native is available and that provision for compensation for disturbance has been made. It is expected, however, that difficulties will arise if the Governor's powers are to be limited to cases where he is satisfied that sufficient land is available in the land unit provided for the tribe to which the native belongs. This would exclude from consideration the B1 and B2 lands, and might...

might lead to endless discussion as to the sufficiency of the land even within the unit itself. Take, for example, a Kiambu Kikuyu with a recognised claim of right over a portion of a European owned farm in the Kiambu Area. The Kikuyu land unit will embrace the Meru, Embu, Fort Hall and North Nyeri Native Reserves in addition to the Kiambu Reserve. In practice it would be impossible to say that sufficient land did not exist in this very large area (much of which is at present sparsely populated); but the native concerned may not wish to go to one of the more remote reserves where land is available but where climatic and other conditions are different from those to which he has been accustomed. There may, however, be land available in one of the B1 or B2 areas reserved for the Kikuyu Tribe, or in an area obtained on lease, or in some other way, from the Masai Reserve for the specific purpose of providing accommodation for such natives - land which would prove especially attractive to a Kikuyu.

It is, therefore, considered essential that, in the proviso to Clause 49, the Governor's discretion should not be fettered by reference to any specific land unit, provided he "is satisfied that sufficient suitable land is available", and it is hoped that you will agree.

7. With special reference to the final clause of paragraph 5 of your Confidential Despatch No.(6) of the 28th October, 1937, it is, of course, recognised that the sum of £2000 recommended by the Commission as compensation for disturbance will prove to be inadequate for the much larger number of claimants than was originally envisaged. When the claims are being dealt with, it is proposed to make additional provision available in order

to ...

(44) on 38045/4/37



to permit of the payment of compensation on a generous scale.

(4) on 38005/6/37  
 8. Mention should now be made of the points raised in paragraphs 6 and 7 of your Confidential Despatch No.(6) of the 28th October, 1937. It is not clear to what particular class of Native you refer in paragraph 6 since, apart from the semi-nomadic tribes referred to in paragraph 7 and resident labourers, for both of which classes special provision is made in the Bill, all native rights which it is desired to preserve are safeguarded.

For the protection of the semi-nomadic tribes referred to, my advisers consider that a Clause on the following lines in the Crown Lands (Amendment) Bill will adequately meet the intentions of the Commission.

"58.(1) The areas of land described in the Eighth Schedule to this Ordinance as the Northern Frontier District and the Turkana District respectively shall be areas in which the interests of the native tribes at present residing therein shall have priority over all other interests.

(2) Where the Provincial Commissioner considers it desirable that any specific area of land within these districts should be used for a township, trading centre, market, school or hospital, or for any other purpose which in his opinion is likely to benefit the natives resident in these areas, he may, by notice in the Gazette, set aside such area for such purpose:

Provided that in the case of land required for residential sites or townships the Provincial Commissioner shall not set aside such land save with the consent of the Governor.

(5) Where any land has been set aside

under the provisions of sub-section (2) of this section, the Governor may grant a lease of such land for such term and upon such conditions as he may deem expedient:

Provided that, where any land has been set aside for a purpose other than a township, trading centre, market, school or hospital, the Governor shall not grant a lease of such land except with the consent of the Trust Board, and, if the Trust Board does not give its consent to the lease, the Governor may refer the matter to the Secretary of State whose decision shall be final.

(4) Subject to the provisions of sub-section (2) of this section in so far as townships, trading centres and markets are concerned, nothing in this section contained shall be deemed to preclude the Crown from utilizing any land in the said districts for any of the purposes set out in section 57 of this Ordinance to the same extent as if this section had not been enacted. "

(N.B. Section 57 to which reference is made is Clause 56 of the Crown Lands (Amendment) Bill).

9. With reference to paragraph 13 of your Confidential Despatch No. (5) of the 28th October, 1937, the Attorney General suggests that a Clause on the following lines may meet the case -

"Save where express provision is made in this Ordinance, the native lands shall be subject in all respects to the general law from time to time in force in the Colony to the same extent as if this Ordinance had not been enacted."

If you approve, Article 11(c) of the draft Kenya

(Native ...

STANDARD

(B) in 38005/6/37

Richard 58.

Small

CR 100

11.

(Native Lands) Order in Council will require to be similarly amended.

10. As the report of the Sub-Committee was only an interim one and was in the main confined to the draft Memorandum which it is proposed to publish, it must be understood that the actual details of the Bills have not yet been considered and that it may prove necessary to submit at a later date further amendments as a result of such detailed consideration. The Attorney General has re-drafted the two Bills, incorporating the accepted amendments suggested in your memorandum referred to supra, and has taken the opportunity of re-arranging the Clauses and of inserting certain verbal drafting amendments. This was done before the Sub-Committee reported, and it will be appreciated that, in view of the amendments proposed by that Committee, which are dealt with herein, final drafts of the Bills cannot be prepared until I have received your reply to this despatch. I should therefore be glad to know as soon as possible if you are prepared to agree to the proposals now submitted, since not only is the preparation of the Bills and revised draft Orders in Council in abeyance, but the decision will also affect the terms of the Memorandum which it is desired to publish locally.

11. While it is regretted that the final settlement of this land question may be still further delayed by the consideration of the points now raised, my advisers feel that it is of the greatest importance that any objections, which it may be possible to overcome now, should be considered at this stage before any public announcement is made.

12. Turning now to the Highlands Order in Council, the difficulties to which you refer are recognised by

this ...

this Government but it was hardly to be expected that the European Elected Members would be satisfied with the proposed draft. On this subject Lord Francis Scott and Major Cavendish Bentinck have submitted a memorandum of which I enclose a copy without comment.

Mr. Pandya, on behalf of the Indian Community, has also prepared the statement of which a copy is enclosed.

13. Since it is now too late to place a memorandum before the existing Legislative Council, which will be prorogued at an early date, it is proposed to defer the publication of the memorandum until the new Council meets in April. In the meantime, as stated in paragraph 4(a), I propose to have published in the Official Gazette definitions of the respective areas as an indication of Government's intentions. These definitions would then be repeated as Schedules to the relative Ordinances.

I have the honour to be,

Sir,

Your most obedient, humble servant,

*R. Brooke-Popham*

AIR CHIEF MAGISTRAL,  
GOVERNOR.

FOR CIRCULATION TO MEMBERS OF EXECUTIVE COUNCIL.

DRAFT MEMORANDUM WHICH IT IS PROPOSED TO LAY ON THE  
TABLE OF LEGISLATIVE COUNCIL.LEGISLATION TO GIVE EFFECT TO THE KENYA LAND  
COMMISSION REPORT - DRAFT PROPOSALS.

The local legislation required to bring into effect the recommendations of the Kenya Land Commission will be contained in two Bills, viz. a Native Lands Trust Bill and a Crown Lands Amendment Bill. The latter Bill will revive Part VI of the Crown Lands Ordinance (which was repealed by the present Native Lands Trust Ordinance of 1930) in order to provide for the reservation of Temporary Native Reserves (Class "B2") and Native Leasehold Areas (Class "C"). That Bill will also contain provisions for the administration of these lands and the regulation of their use by natives. They will remain Crown Lands.

The former Bill will establish Local Land Boards and assign functions both to them and to the Local Native Councils: it will provide machinery for additions, exchanges and inter-tribal occupation permits, for the setting apart of land of which leases may be granted to non-natives for any approved object and for public purposes: and where necessary for exclusions of a permanent or temporary character. The Bill will also contain detailed provisions in regard to the administration of the Native Lands, to which the provisions of the Crown Lands Ordinance will no longer apply, and in regard to the extinguishment of native rights in lands other than those dealt with under either of the two Bills.

2. At an early date a Government Notice will be published describing in detail the areas of land which are proposed as Native Lands, Temporary Native Reserves and Native Leasehold Areas.

The description of the Native Lands will follow the recommendations of the Commission save for such modifications  
as

as have since been approved by the Secretary of State on representations made by this Government. One important change has, however, been made in that the Classes "A" and "B1" as detailed by the Commission have been combined into one classification of Native Lands. It will be remembered that Class "B1" Lands were envisaged by the Commission as lands which were likely to be permanently required for the economic needs of the natives: but, as no claims of historical right to these lands were accepted and in order to ensure that the native use and occupation should be properly controlled, the Commission differentiated between those lands and the Class "A" Land which they regarded as Native Lands by virtue of historical right.

The Government is in full agreement with the Commission's views that any lands provided to meet the needs of the natives should be subject to the strictest control in regard generally to their utilization. The "B1" Lands represent, however, but a fraction of the total area of the lands to be dedicated to native use and it is of paramount importance that all lands occupied by natives should be subject to the same measures of protection against such evils as overstocking and soil erosion and also be subject to the same administrative control. There appears, therefore, insufficient reason for preserving the distinction recommended by the Commission but cogent grounds for amalgamating the two Classes of land as Native Lands.

4. Only two of the three areas recommended by the Commission for development as Native Leasehold Areas will be included in the notice referred to above. The reason for the omission of the third area, viz. the Kiserian area, is that this is part of the Masai Lands and will require to be set apart at a later date under the machinery of the Ordinance before it can be administered as a Native Leasehold Area.

4. In order to achieve finality in regard to Kenya land questions and, so far as might be feasible, to preserve against material alteration the settlement which they recommended the Land Commission advised that Orders in Council should be enacted to safeguard the Native Lands and also the Highlands; and to preserve intact the machinery which they proposed for the control and administration of those lands. These Orders in Council have been drafted but it will be necessary for the local legislation to be enacted before they are brought into operation. As the Secretary of State has explained in the House of Commons it would be contrary to constitutional practice that an Order in Council to be made by virtue of the power inherent in His Majesty the King should be published in draft form. The succeeding paragraphs set out the effect of the provisions which it is proposed the Orders in Council should contain.

5. The Native Lands Order in Council will, it is proposed, establish Native Lands (Classes "A" and "B1"), to which the definition of "Crown Lands" in the Kenya Colony Order in Council, 1921, shall no longer apply; Temporary Native Reserves (Class "B2") and Native Leasehold Areas (Class "C") as described in a Government Notice to be published shortly.

The Native Lands will be divided into the nine Native Land units recommended by the Land Commission and provision will be made that they shall be held by a Trust Board in trust for the native tribes, and that, apart from minor adjustments, these areas of land shall not be altered, except in accordance with the provisions of the Native Lands Trust Ordinance,

The Crown's rights in minerals, mineral oils and water will be safeguarded by a special clause in the Order.

6. The Trust Board, which will be a body corporate, will, it is proposed, be constituted as follows:-

- (a) the Chief Native Commissioner, who shall be President of the Board;
- (b) the two nominated Unofficial Members of the Legislative Council appointed from time to time to represent the interests of the African Community on the Council;
- (c) one of the European Elected Members of the Legislative Council 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.

7. The proposed functions of the Trust Board will be to protect the interests of the natives of the Colony in the areas of land set apart for their occupation and in particular to make representations to the Governor when, in the opinion of the Board, anything in relation to the administration, management, development or control of the land in those areas is not in the best interests of the natives. The Board will also be required to advise the Governor upon any matter relating to these areas of land which he may refer to it and it will, of course, exercise any power or perform any duty which may be conferred or imposed on it by the Native Lands Trust Ordinance, the Crown Lands Ordinance or any other law for the time being in force in the Colony.

8. In the new Native Lands Trust Ordinance the Governor will be empowered to order any native who is not resident in the Native Land Unit provided for the tribe to which he belongs to remove himself into that Land Unit provided that the Governor is satisfied that sufficient land for his accommodation is available in the Land Unit and that



he has been compensated adequately for disturbance. No native shall be compelled to remove himself except by such an order. It will be appreciated that the Native Land Units do not include land in the Turkana and Northern Frontier Districts or certain lands near the Coast which are occupied by semi-nomadic tribes such as the Galla. Subject to these provisions and provisions regarding reaping of crops, resident labourers' rights or certain existing grazing rights, it is proposed to provide in the Order in Council for the extinguishment of all existing native rights in any land in the Colony (excluding the Protectorate) situate outside the areas of land expressly set apart for native occupation.

9. The Order will expressly preserve the existing sovereign rights of His Majesty the King as defined in the Kenya (Annexation) Order in Council, 1920, and the Kenya Colony Order in Council, 1921.

10. As regards the Highlands a Notice giving a detailed definition of the boundaries of the Highlands will be published shortly and in due course the Highlands Order in Council will define the Highlands by reference to this Notice.

11. This Order will provide for the establishment of a Highlands Board consisting of the following persons:-

- (a) the person for the time being lawfully discharging the functions of the Colonial Secretary, who shall be the President of the Board;
- (b) the person for the time being lawfully discharging the functions of the Commissioner for Lands and Settlement, who shall be Vice President and
- (c) five persons not holding office in the public service of the Colony, four of whom shall be chosen from time to time at a meeting of the Legislative Council of the Colony by the European Elected Members of the Legislative Council and one of whom shall be nominated from time to time by the Governor.

12. The proposed functions of the Board will be to protect the interests of the inhabitants of the Highlands in the land situated in the Highlands and in particular to  
make

make representations to the Governor when, in the opinion of the Board, anything in relation to the administration, management, development or control of these lands is not in the best interests of the inhabitants of the Highlands. The Board will also be required to give or withhold its consent in all matters in which its consent is required by any Ordinance for the time being in force in the Colony; and provision will be made requiring the Governor to consult the Board on all matters relating to the disposition of land within the Highlands.

13. The two Bills, viz. the Native Lands Trust Bill and the Crown Lands Amendment Bill, will be published for information in the Gazette as soon as possible but, whilst it is the Government's intention to proceed with the introduction of the Bills into Legislative Council without undue delay, it is considered that a longer period than the customary fourteen days' notice is required for the consideration of measures of such far-reaching importance.

---

FOR CIRCULATION TO MEMBERS OF EXECUTIVE COUNCIL

DRAFT MEMORANDUM WHICH IT IS PROPOSED TO LAY ON THE  
 TABLE OF LEGISLATIVE COUNCIL  
 LEGISLATION TO GIVE EFFECT TO THE KENYA LAND  
 COMMISSION REPORT - DRAFT PROPOSALS

The local legislation required to bring into effect the recommendations of the Kenya Land Commission will be contained in two Bills; viz, a Native Lands Trust Bill and a Crown Lands (Amendment) Bill. The latter Bill will revive Part VI of the Crown Lands Ordinance (which was repealed by the present Native Lands Trust Ordinance of 1930) in order to provide for the reservation of Native Reserves (Class B1) Temporary Native Reserves (Class B2) and Native Leasehold Areas (Class C). That Bill will also contain provisions for the administration of these lands and the regulation of their use by natives. They will remain Crown Lands.

The former Bill will establish Local Land Boards and assign functions both to them and to the Local Native Councils: it will provide machinery for exchanges and inter-tribal occupation permits, for the setting apart of land of which leases may be granted to non-natives for any approved object and for other purposes; and where necessary for exclusions of a permanent or temporary character. The Bill will also contain detailed provisions in regard to the administration of the Native Lands, to which the provisions of the Crown Lands Ordinance will no longer apply, and in regard to the extinguishment of native rights in land outside the Native Reserves, the Temporary Native Reserves and the Native Leasehold Areas.

2. At an early date a Government Notice will be published describing in detail the areas of land which are proposed

as Native Lands, Native Reserves, Temporary Native Reserves and Native Leasehold Areas.

The description of the Native Lands will follow the recommendations of the Commission save for such modifications as have since been approved by the Secretary of State on representations made by this Government.

3. In order to achieve finality in regard to Kenya land questions and, so far as might be feasible, to preserve against material alteration the settlement which they recommended, the Land Commission advised that Orders in Council should be enacted to safeguard the Native Lands and also the Highlands; and to preserve intact the machinery which they proposed for the control and administration of those lands. These Orders in Council have been drafted but it will be necessary for the local legislation to be enacted before they are brought into operation. (As the Secretary of State has explained in the House of Commons it would be contrary to constitutional practice that an Order in Council to be made by virtue of the power inherent in His Majesty the King should be published in draft form.) The succeeding paragraphs set out the effect of the provisions which it is proposed the Orders in Council should contain.

4. The Native Lands Order in Council will, it is proposed, establish the Native Lands (Class A), to which the definition of "Crown Lands" in the local laws will no longer apply, Native Reserves (Class B1), Temporary Native Reserves (Class B2) and Native Leasehold Areas (Class C), the boundaries of which will be described in a Government Notice to be published shortly.

The Native Lands will be divided into the nine Native Land Units recommended by the Land Commission, and provision will be made that they shall be held by a Trust Board in

trust for the native tribes, and that, apart from minor adjustments which the Governor, with the consent of the Trust Board, will be empowered, under the Native Lands Trust Ordinance, to make to the boundaries of the Native Land Units, these areas of land shall not be altered except by an Order in Council.

The Crown's rights in minerals, mineral oils and water will be safeguarded by a special clause in the Order.

5. The Trust Board, which will be a body corporate, will, it is proposed, be constituted as follows -

- (a) the Chief Native Commissioner, who shall be President of the Board;
- (b) the two nominated Unofficial Members of the Legislative Council appointed from time to time to represent the interests of the African Community on the Council;
- (c) one of the European Elected Members of the Legislative Council who shall be chosen from time to time by the European Elected Members of the Legislative Council;
- (d) a person from time to time nominated by the Governor.

The members referred to in sub-paragraphs (b) and (c) would, notwithstanding the dissolution of Legislative Council, continue to hold office during the interval between such dissolution and the first session of the new Council.

6. The proposed functions of the Trust Board will be to protect the interests of the natives of the Colony in the areas of land set apart for their occupation and in particular to make representations to the Governor when, in the opinion of the Board, anything in relation to the administration, management, development or control of the land in those areas is not in the best interests of the natives. The Board will also be required to advise the Governor upon any matter relating to these areas of land which he may refer to it and it will, of course, exercise any power or perform any duty which may be conferred or imposed on it by the Native Lands Trust Ordinance, the Crown

Lands Ordinance or any other law for the time being in force in the Colony.

7. In the new Native Lands Trust Ordinance the Governor will be empowered to order any native, who is not resident in the Native Land Unit provided for the tribe to which he belongs, to remove himself into that Land Unit provided the Governor is satisfied that sufficient land for his accommodation is available (in the Land Unit) and that he has been compensated adequately for disturbance. No native shall be compelled to remove himself except by such an order. It will be appreciated that the Native Land Units do not include land in the Turkana and Northern Frontier Districts or certain lands near the Coast which are occupied by semi-nomadic tribes such as the Galla. Special provision will be made for the protection of such rights as these tribes may have. Subject to these provisions and provisions regarding the harvesting of annual crops, resident labourers' rights secured by contract under the Resident Native Labourers' Ordinance, or certain existing grazing rights, it is proposed to provide in the Order in Council for the extinguishment of all existing native rights in any land in the Colony (excluding the Protectorate) situate outside the Native Lands, the Native Reserves, the Temporary Native Reserves and the Native Leasehold Areas.

8. The Order will expressly preserve the existing sovereign rights of His Majesty the King as defined in the Kenya (Annexation) Order in Council, 1920, and the Kenya Colony Order in Council, 1921.

9. As regards the Highlands, a Notice giving a detailed definition of the boundaries of the Highlands will be published shortly. This will subsequently appear in a Schedule to the Crown Lands (Amendment) Ordinance and in due course the Highlands Order in Council will define the Highlands by reference to that Schedule.

10. This Order will provide for the establishment of a Highlands Board consisting of the following persons:-

- (a) the person for the time being lawfully discharging the functions of the Colonial Secretary, who shall be the President of the Board;
- (b) the person for the time being lawfully discharging the functions of the Commissioner for Lands and Settlement, who shall be Vice President; and
- (c) five persons, not holding office in the public service of the Colony, four of whom shall be chosen from time to time by the European Elected Members of the Legislative Council and one of whom shall be nominated from time to time by the Governor.

11. The proposed functions of the Board will be to protect the interests of the inhabitants of the Highlands in the land situated in the Highlands and in particular to make representations to the Governor when, in the opinion of the Board, anything in relation to the administration, management, development or control of these lands is not in the best interests of the inhabitants of the Highlands. The Board will also be required to give or withhold its consent in all matters in which its consent is required by any Ordinance for the time being in force in the Colony; and provision will be made requiring the Governor to consult the Board on all matters relating to the disposition of land within the Highlands.

12. The two Bills, viz, the Native Lands Trust Bill and the Crown Lands (Amendment) Bill, will be published for information in the Gazette as soon as possible but, whilst it is the Government's intention to proceed with the introduction of the Bills into Legislative Council without undue delay, it is considered that a longer period than the customary fourteen days' notice is required for the consideration of measures of such far-reaching importance.

INTERIM  
R E P O R T  
O F

THE SUB COMMITTEE OF EXECUTIVE COUNCIL APPOINTED  
TO EXAMINE AND REPORT UPON THE CONTEMPLATED  
LEGISLATION TO GIVE EFFECT TO THE KENYA LAND  
COMMISSION REPORT TOGETHER WITH THE DRAFT  
MEMORANDUM RELATING THERETO

Your Excellency,

On the 24th day of December, 1937, we were appointed a Sub-Committee of Executive Council to examine and report upon the contemplated legislation to give effect to the Kenya Land Commission Report together with the draft Memorandum relating thereto.

2. We met at the Attorney General's Office at 10 a.m. on the 3rd of January, 1938, and during the whole of that day were occupied in discussing the terms of the Memorandum. This Report is therefore in the nature of an Interim Report. A further meeting was held on the morning of the 14th January to consider our Report.

3. The first point which was raised was the policy of including the Class B1 lands in the Class A Native Lands. We had before us a confidential despatch to the Secretary of State numbered Kenya No.72 and dated the 21st May, 1935, in which it was recommended for various reasons that this amalgamation should take place. There was, however, in that despatch a misstatement of fact inasmuch as it was stated that the withdrawal of Class B1 land for a breach of conditions would necessitate an Order in Council. A perusal of paragraph 1450 of the Carter Commission Report shows clearly that this was not the intention.

Further arguments submitted were that the Commission in paragraph 1540 of their Report regarded Class B1 land as being virtually in the same category as Class A land



and that a great number of Clauses in the Native Lands Trust Bill would have to be repeated in respect of B1 land in the Crown Lands (Amendment) Bill. We submit that this is a very loose interpretation of paragraph 1540, which simply says that similar or identical Clauses would be required to govern the acquisition of land for public purposes in B areas. Moreover, it is submitted that any of the provisions of the Native Lands Trust Bill which it is desired to apply to the B1 lands could be effected by reference in the Crown Lands (Amendment) Ordinance to such provisions, and that there is no necessity to repeat them in the latter Ordinance as was suggested in the despatch. The Carter Commission Report was accepted by Government after a lengthy debate in Legislative Council, and we are of the opinion that no adequate reasons have been advanced for going outside the express recommendation of the Commission to the effect that Class B1 lands, although in the nature of native reserves, should remain Crown Land. This recommendation was also definitely and specifically accepted by His Majesty's Government in the White Paper published in May 1934. Although we recognise that the inclusion of B1 lands in the A lands would be administratively more convenient, and that, in spite of the suggestion in paragraph 1454 of the Report, any Government measures for the protection of the native areas against misuse can be applied equally to all such lands, we consider that the arguments against such inclusion advanced in paragraphs 1452 and 1453 of the Report are cogent and should prevail. We fully appreciate that our recommendation, if accepted by your Excellency, will involve a withdrawal of Government's previous recommendation to the Secretary of State which has been accepted, but we feel that this cannot be avoided. Our recommendation, if accepted, would not involve any major amendments to the Draft Native Lands Trust Bill but provisions governing the B1 lands would have to be made in the Crown Lands (Amendment) Ordinance, and the Native Lands Order in Council

would also require amendment. The details of the draft amendments have not yet been worked out but they will form the subject of recommendations in our subsequent Report dealing with the two draft Ordinances and the Orders in Council.

4. In the second half of the first paragraph of the draft Memorandum it is stated, inter alia, that the Bill will provide machinery for additions. It appears however, that such provision is made in the Crown Lands (Amendment) Bill and not in the Native Lands Trust Ordinance, and we therefore recommend that the word "additions" be deleted. We also recommend that the last sentence of paragraph 1 be so amended as to make it clear that the Bill will provide for the extinguishment of native rights in land outside the Native Lands, the Native Reserves, the Temporary Native Reserves and the Native Leasehold Areas.

5. Paragraph 3. The draft Memorandum refers to two areas for development as Native Leasehold Areas but there is, in fact, (apart from the Kiserian area which is not quite in the same category) only one remaining. In any case we do not consider that the points dealt with in this paragraph are of sufficient importance to warrant specific mention in the memorandum and we therefore recommend that it be deleted.

6. Paragraph 5. This paragraph states that the definition of "Crown Lands" in the Kenya Colony Order in Council, 1921, shall no longer apply to the Native Lands. While this is true, the statement is too limited, inasmuch as the various definitions of "Crown Land" contained in several laws in force in the Colony will not apply. We recommend that a suitable amendment be made.

7. Paragraph 6. This paragraph repeats practically verbatim the provisions of the draft Native Lands Order in Council but we recommend three amendments. Under sub-paragraph (b) provision is made for the two nominated unofficial members of

Legislative Council, representing African interests, to be members of the Trust Board. No provision has, however, been made for the position which will arise in the interval between the dissolution of Legislative Council and the date of the election of a new Legislative Council. We recommend that a suitable amendment be made. This also applies to the member referred to in sub-paragraph (c). That paragraph states that the European elected member shall be chosen by the European elected members at a meeting of the Legislative Council. Apart from the fact that the words "at a meeting" are not the correct terminology for a session of the Legislative Council, it is obvious that such a course would be impracticable. We recommend, therefore, that these words be deleted.

Sub-paragraph (d) states that the member who is to be nominated by the Governor shall not be a person in the public service nor a member of the Executive or Legislative Councils of the Colony. We consider that these limitations on the power of selection will seriously fetter your Excellency's discretion. It is very desirable that your Excellency's field of choice should be as wide as possible and it may well be that the most suitable person is to be found either in Executive Council, Legislative Council or the public service. For these reasons we recommend the deletion of these restrictive words. It will be appreciated that our recommendation on this paragraph, if accepted, will necessitate similar amendments to the Draft Native Lands Order in Council.

8. Paragraph 8. This paragraph, which refers to the powers conferred by Clauses 49 and 70 of the Draft Native Lands Trust Bill, gave rise to considerable discussion, as to what the position would be if -

- (a) the Governor were not satisfied that sufficient land was available; and

(b) if, although land were available, the native refused to go and reside on such land.

Assurances were, however, given by the Chief Native Commissioner that sufficient land would be available to meet all requirements, that in fact schedules had already been drawn up allocating certain specific areas to those natives whose rights were to be extinguished, and that, if a native did not wish to take up the area of land allotted to him in a land unit, it would be perfectly possible by administrative action to find him suitable land in, for example, the Native Leasehold Areas. It was also pointed out that wide powers of ordering natives to move into a reserve are conferred on Provincial Commissioners by section 12 of the Native Authority Ordinance, 1937, but it was suggested that these powers might be construed as being in conflict with the provisions of Clauses 49 and 70(2) of the Native Lands Trust Ordinance. It will prove necessary, therefore, when we submit our recommendations on that Bill, to suggest an amendment making it clear that the provisions of Clauses 49 and 70(2) of the Draft Native Lands Trust Ordinance relate solely to natives whose rights have been extinguished, and that these sections in no way override or limit the wide powers of ordering natives to move into the reserves which are conferred on Provincial Commissioners by section 12 of the Native Authority Ordinance, 1937. We recommend that, subject to the following two amendments, paragraph 8 be left as drafted. These amendments are -

- (1) that the words "secured by contract under the Resident Native Labourers' Ordinance" be inserted between the word "rights" and "or" which appear in the fourteenth line of the paragraph; and
- (2) that the words "the harvesting of annual" be substituted for the words "reaping of" which appear in the thirteenth line thereof.



*Very Confidential*

22nd January.

8.

**His Excellency the Governor,  
Government House,  
KAIHIA.**

Your Excellency,

We would refer to the Interim Report of a Sub-Committee of Executive Council appointed to consider and report upon contemplated legislation to give effect to the Kaima Land Commission Report, together with a draft Memorandum relating thereto, which it was proposed should be laid on the table of Legislative Council.

As a result of a careful study of the preliminary draft Interim Report, we submitted a number of comments and criticisms relating both to the Report and to the draft Memorandum.

Many of these have been accepted by the Sub-Committee, and have now been incorporated in the Interim Report. A few, however, are still outstanding, and we therefore have the honour to submit these in the form of a Minority Report as follows:

1. Paragraph 4 of the Interim Report refers to the second half of the first paragraph of the original draft Memorandum, and suggests that as provision is made in the Crown Lands (Amendment) Bill and not in the Native Lands Trust Ordinance for "additions" to native lands, that the word "additions" which appears in the third line be deleted.

In this connection we would draw attention to paragraph 144B of the Kaima Land Commission Report, in which the possibility is envisaged that Government might under certain circumstances deem it necessary in the future to add to the territory of one native land unit by diminishing the territory of another unit, and recommends that in such a case the Lands Trust Board should first be consulted, and that thereafter the Secretary of State, in the event of his finding himself in agreement with Government, should seek an Order in Council effecting the alteration. This eventuality in no way represents an "exchange", and we therefore consider that the procedure should be defined which would have to be followed locally leading up to any request to the Secretary of State for the making of such an Order in Council.

2. We would next allude to paragraph 8 of the Interim Report (which incidentally refers to paragraph 8 of the draft Memorandum), dealing with the powers conferred by Clauses 45 and 70 of the draft Native Lands Trust Bill.

During the deliberations of the Sub-Committee, the question was raised as to what the position would be should it become obviously necessary to order any native or natives who is or are not resident in the land unit to which he or they belong, to remove himself or themselves into the native land unit provided for their tribe, if (a) the Governor were not satisfied that sufficient land was available, or (b) if, although land were available, the native or natives in question refused to go and reside on such land.

We are aware that an assurance has been given by the present Acting Chief Native Commissioner, that he would today be in a position to state that sufficient land of sorts would be available in any native land unit to meet all requirements, and that if the native or natives did not wish to take up the area of land allotted to him or them in a land unit, he considers that it would be feasible by administrative action to find suitable land elsewhere.

We are not satisfied by this statement, in that it necessitates too much reliance being placed on the goodwill of the at any time officiating Chief Native Commissioner if and when such a position should arise.

We appreciate that these provisions are only intended to apply to "right holders" whose "rights" are to be extinguished by the proposed Native Lands Order in Council, but our experience has proved that alleged "right holders" have the tendency to multiply, and it is not the least use extinguishing "rights" if a position could remain whereby, even after the extinguishment of such "rights", alleged "right holders" could not be moved on to other land.

We all knew that an equitable solution would be found by Your Excellency and the present Acting Chief Native Commissioner, but experience in the past has taught us that in matters of such fundamental importance, it is impossible to rely merely on a pious expectation of encountering common-sense, goodwill and accommodating personalities. Indeed, a future Chief Native Commissioner might feel it incumbent on him in duty bound to invariably adopt a purely partisan attitude. Or with some other party in power in England, he might not be his own master. The object of the contemplated legislation and of the Orders in Council is to secure a final settlement of all these problems, and we therefore feel that it is essential that a precise and definite procedure be laid down without any conditional qualifications of the Governor's powers. Otherwise we can see no finality to the complications which have so rapidly increased during the last few years, owing to ambiguity and the consequent inability of the officers of Government to take any definite line of action.

We therefore consider that in the new Native Lands Trust Ordinance, the Governor (who after all would not have been made Governor had he not been specially entrusted with the exercise of certain executive powers by His Majesty the King), or if it is preferred, the Council, must be empowered to order any native not residing in the native land unit provided for to which he belongs, to remove himself and his to such sufficient and suitable land as the Governor, subject to the provisions of the Ordinance, may direct.

proved that he has any claim thereto, he has been adequately compensated for disturbance.

2. Turning now to paragraph 10 of the Interim Report, and to paragraphs 11 and 12 of the original draft Memorandum, we fear that publication of the suggested Memorandum is bound to lead to considerable and justifiable adverse criticism of the proposed Highlands Order in Council. Acceptance of the Carter Commission Report as a whole by the European Elected Representatives was specifically contingent on the acceptance by the Secretary of State of the recommendation contained in paragraph 1979 of the Report, to the effect that the European community should be given the same measure of security in regard to land as was recommended for the natives. That most definitely has not been given under the proposals outlined in the draft Memorandum. We appreciate the difficulties of the Secretary of State, and his anxiety to give the European settlers such security as he can without committing himself to anything too definite on paper. We equally appreciate the difficulties of his position both in respect of the House of Commons, the Government of India, and certain international arrangements and understandings. However, the present position has been allowed to arise, promises have been made and accepted in good faith, and resultant inter-racial complications must be faced, in view of responsibilities which the Secretary of State has, from time to time, shouldered vis-a-vis the White Colonists in these Territories.

In this connection also, we are prepared to admit that so long as the present Secretary of State, Sir D. Maxwell-Fyfe and the present Senior Officials in Kenya hold office and collaborate with the existing representatives of the Unofficial community, the proposed Order in Council might go some way towards clearing the position. Unfortunately, changes occur only too frequently, and in a few years' time an entirely different group of persons will be dealing with these matters, when the ambiguity of the phraseology proposed will permit of arguments being raised as to the precise meaning and intention of the Order in Council.

In order to illustrate this contention, we need only quote four examples of ambiguity:

- (A) In referring to the areas in question, it has always hitherto been customary to refer to such areas as "the White Highlands" or "the European Highlands" or "the areas in which a European privilege obtains". Indeed, the Kenya Land Commission consistently refers throughout their Report to "the European Highlands". This definition also appears in paragraph 9 of the White Paper, i.e. the Report of the Commission reached by His Majesty's Government, published in 1952. In the Memorandum presented to Parliament by the Duke of Devonshire on the 22nd of July, 1952, "reservation of the Highlands to the Europeans" is referred to.

We note, however, from the Memorandum, that the Order in Council is merely going to be a "Highlands Order in Council" in which reference is made to "the Highlands", the "Highlands Board" to the "inhabitants of the Highlands", etc.



"European" or "White" being carefully omitted throughout, and even being omitted from the title.

We consider that in view of all circumstances and the history of the past 17 years, European Colonists are entitled to some more specific definition than this, clearly intimating that the areas in which it is intended that a definite European privilege obtains, and that the Order in Council should be termed "The European Highlands Order in Council".

- (B) The constitution of the "Highlands Board" is laid down in paragraph 10 of the draft Memorandum, and in 10 (e) it is provided that in addition to the Colonial Secretary and the Commissioner for Lands, five persons not holding office in the Public Service of the Colony shall be nominated, four of whom shall be chosen by the European Elected Members, and one of whom shall be nominated by the Governor. Under such a provision it would be permissible for the Governor to nominate a person of any race. We consider that it should be made perfectly clear that the Governor can only nominate a person of pure European extraction.
- (C) In the Native Lands Order in Council, it is specifically provided that the areas of Native Lands as described in the Government Notice to be published shortly shall not be altered except by an Order in Council. ~~This specific safeguard does not appear to be provided in the Highlands Order in Council.~~
- (D) As further example, we would draw attention to the fact that it is apparently going to be laid down that the functions of the Board will be "to protect the interests of the inhabitants of the Highlands". Here again we feel that the Europeans are entitled to a more precise definition of what is meant. Otherwise it might in the future be contended that there are more natives than Europeans in the Highlands, or even, under certain circumstances, more Asiatics, should in the future any different procedure be adopted as regards declaration of townships. We consider that it should be clearly stated that the interests which it is the duty of the Highlands Board to protect are primarily those of the European Colonists.

We admit that provision is made requiring the Governor to consult the Board on all matters relating to the disposition of land within the Highlands, but would point out that some of the Members of the Highlands Board, or a future Governor, might regard the proposed wording of the Order in Council as an instruction to deal with any matter which may arise from the point of view of the interests of the greater numbers. Indeed, some future Government in England might even issue instructions to that effect, and yet be acting within the terminology of this vague wording. It must always be remembered that the proposed Highlands Board is not to be constituted as we understood it would be, but is merely to be advisory, and is to have no power of veto. There is also the further complication, in that at the moment townships and municipalities are comparatively few, and their exclusion from

201

the Highlands can be viewed with equanimity, but looking ahead, the problem of the establishment of large numbers of small villages or grouped settlements must be envisaged.

We would stress that the whole object of having a Highlands Order in Council is to secure the Highlands for European Settlement. The policy of the reservation of the Highlands for Europeans was definitely laid down by the Earl of Higin when Secretary of State for the Colonies in 1920, and acceptance of this policy has been constantly reaffirmed by the Imperial Government since that date in various official documents such as the Duke of Devonshire's Memorandum which was presented to Parliament in July 1923, in the Joint Select Committee's Report in 1931, and in the Summary of Conclusions Reached by His Majesty's Government with reference to the Kenya Land Commission Report, published in May, 1934.

We cannot therefore understand why in this most important document Government should avoid making their intention clear.

We have the honour to be,

Your Excellency's obedient servant,

*p.p. F. Scott*

*F. Cassel de Bantini*

PCR/PL

ON

THE PROPOSED ORDERS IN COUNCIL ON  
NATIVE LANDS & HIGHLANDS.

---

Native Lands.

In regard to Native lands a Trust Board is proposed to be constituted and provision is made for the appointment of one of the European Elected Members of the Legislative Council. The object of granting such special representation to the European Elected Members is not quite clear. Such reservation of a seat for European interests appears hardly fair or desirable in view of conflicting land interests between Europeans and Africans, the feelings of the latter on this question, and the possibility of indirect influence and control of African lands by unofficial European community.

In the first place, therefore, I am opposed to a seat being reserved for European Elected Members on the Native Land Trust Board. If, however, such an appointment is proposed for safeguarding in Native Reserves their interests in other spheres, or is in conformity with the desire of the Secretary of State to associate immigrant communities in the trusteeship of Natives, I submit that Indians should also be given representation on that Board in the same way as European Elected Members.

I may state in support of this request that Indians have very large interests in Native Reserves. They are interested in the setting apart of training centres, native produce markets, water mills, etc, all of which have to be dealt with by the Native Lands Trust Board. It is, therefore, of vital importance to the interests of the

Indian .

Indian community that there should be one Indian representative on that Board. The justification of this claim of the Indian community rests on similar grounds to the claim of the European community for the protection of European interests.

But if the appointment is to be made with a view to implementing the promise or wishes of the Secretary of State to associate the Immigrant communities in trusteeship of Natives, I submit that, that promise was not to associate the European community alone, but, "the immigrant communities" including Indians. Therefore, on that ground also, the Indians have equal claim to be identified with the obligation of Native trusteeship in this manner.

There is also another reason why Indians should have representation on the Board. Indians have no axe to grind as regards land, and the African mind does not associate them with land transactions which deprived them of their lands in the past. Being disinterested the Indian member would prove more helpful from the point of view of looking after the Native interests.

It therefore merits that the Indian viewpoint on this question should be sympathetically considered, and that provision should be made in the proposed order in Council for the appointment of an Indian elected Member to be chosen from time to time by the Indian elected Members of the Legislative Council.

#### Highlands.

In regard to Highlands, the Secretary of State for the Colonies is no doubt aware of the strong feelings and views of the Indian community regarding the reservation of Highlands for European settlement. I do not wish to quote or repeat here lengthy arguments, advanced many times by the Indian side in earlier representations on the question, but there is one point, not only of

local but of great Imperial importance, which in my opinion, should once again be brought to the attention of the Secretary of State, now that the question has again come up for consideration.

This is the disability under the plea of "Administrative convenience" imposed on His Majesty's British Indian subjects regarding the occupation of lands in the Highlands. This most unjustified racial bar is resented not only by local Indians, but by the Indian Nation as a whole in India and elsewhere. It is an insult to the whole race and when applied to a Colony under the direct control of the Colonial Office, it definitely assigns an inferior status to Indians in East Africa. But when, as in this instance, it goes further and preference is given to European subjects of foreign nations over His Majesty's British Indian subjects, it is but natural such a differentiation should be most galling to the sense of self respect of the Indians.

Today any Italian, German, Greek, Hungarian of whatever class, a fisherman or a labourer, can acquire land in the Highlands but in regard to Indians, not only an ordinary middle class or rich Indian but also Indian princes such as His Exalted Highness the Nizam, His Highness the Gaikwar of Baroda, and even His Highness the Aga Khan, who is at present President of the League of Nations, could not acquire an inch of land in the white Highlands of Kenya. There could be nothing more galling, nothing more insulting, and nothing more humiliating for the Indian race than this wholly unjustified and unfair differentiation in this matter of land acquisition in the Highlands. I need not, therefore, go further in this issue than to observe that

the ...

the subject having been again brought to the forefront, the Indian feelings have experienced an intense shock as a result of what is implied in the proposed measures.

It may be argued that the proposed Order-in-Council does not go beyond the present administrative practice and that it does not offer any legal disqualification to Indians. While I agree that some effort is made in this direction I do not think it makes any difference in actual practice. In my opinion the proposed Order-in-Council is a step forward and it would not be correct to say that it maintains status quo.

The proposal to appoint a Highlands Board, with powers somewhat similar to the Native Lands Trust Board, is a step which strengthens the unofficial European control over the Highlands still further. The present power of the Governor in Council to veto land transactions between Europeans and Indians will then be exercised under the advice of the Highlands Board, which will thus have a more or less statutory power of veto.

From my experience in this country I can say without fear of contradiction that whatever may be the legal meaning of Advisory Councils and Boards, in so far as the practical effects are concerned their advice in most cases is accepted, especially when they happen to be composed of Europeans. And in this case when they are supposed to safeguard European interests in the Highlands there is hardly any doubt whatsoever that the power would be exercised with greater stringency than hitherto by the Governor in Council.

As regards the composition of the Board provision is made for representation of Europeans only. In view of large Indian interests in the commercial and Industrial development of the Highlands, I wish to submit very strongly ...

strongly that provision should also be made for the appointment of one Indian Member of that Board.

There is a provision for one person to be nominated from time to time by the Governor, both on the Highlands Board and the Native Lands Trust Board, and it may be argued that there is nothing to prevent an Indian being nominated by the Governor on both or any of these Boards. From the trend of discussions, however, I think I am right in presuming that there is no intention on the part of the Government in Kenya to do so. Nor is there any indication from the Secretary of State for the Colonies that an Indian will be appointed under this provision.

From past experience in this country I can safely say that an Indian is not likely to be appointed on seats reserved under general description of this nature. The reservation of seats in this country is on racial basis and unless a seat is specifically reserved for Indians they are not likely to get it. I, therefore, submit that general seats mentioned above should either be reserved for Indians or new seats should be provided to secure representation of Indians on these Boards.

In my opinion there is no need for the present to go further than to gazette the boundary of the Highlands. But the appointment of the proposed Board contravenes the terms of the White paper of 1923 which wished to maintain the present position of administrative convenience. The appointment of the proposed Highlands Board would mean a change in the status quo, in that it would amount to transferring the control of lands in the Highlands to the unofficial European community in practice, if not in theory, and would adversely affect the Indian interests.