

1930.

Kenya

No. 17402.

SUBJECT

C0533/417

K. U. Railway Estimates, 1932.

Previous

1722/31. (Provision
for renewals)

Subsequent

- 18125/02. (Staff Allowance)
- 5269/32. (Supp. Act.)
- 18397/32. (Ests 1932)
- 18134/32. (Rly Rates.)

They are managed on the same lines as the State forests and the owners only receive the net revenue therefrom after the deduction of all expenses overhead or otherwise. In some countries it is compulsory that all private forests shall be handed over to be managed by the State or shall be managed on lines approved by the State.

14. To sum up, the policy which it is proposed to pursue is as follows but this summary must be read in conjunction with the foregoing:-

- (a) That all forests of about 600 acres should be controlled by Government and managed by the Forest Department.
 - (b) Except that dead wood for fuel, might in exceptional circumstances be removed free and other produce might if considered advisable be charged for at 25% less than standard rates, the ordinary rules under the Forest Ordinance would apply to each forest.
 - (c) Government would finance the management of the forests, the expenditure being borne on the Department's Estimates. Any net revenue would be handed over to the Native authority concerned.
 - (d) Certain defined overhead charges of management would be borne by Government. All other expenditure would be a first charge against any revenue produced by the forests and would be deducted and paid over to Government before the net revenue was paid into the Native Funds.
-

made for years and in some cases probably the expenditure would never be fully recovered in cash but Government's outlay would be fully justified and recompensed by its retaining the control of the forest and by the indirect benefits of the forest's preservation to all concerned.

11. The financing and management of the forest would be on businesslike lines but it is not considered that Government should charge the whole of its expenditure on the forest against the revenue therefrom.

It is suggested that all strictly overhead charges should be definitely borne by Government and considered as a Government contribution towards forest conservation in the interests of the Colony as a whole. Such overhead charges should include Head Office expenditure and housing, passages, leave and pension charges in respect of the Officers engaged in the management of the fore. The expenditure to be charged against the forest revenue should include travelling costs of ~~Assessing~~ Officers, salaries of Foresters and other subordinates actually engaged in the management of the forests and all travelling and labour costs connected therewith.

12. A ledger would be kept for each Native Reserve in which would be entered the expenditure and revenue in respect of the forests in that Reserve managed by the forest Department. A statement would be submitted monthly or at such intervals as may be convenient to the Native Authority concerned together with any net revenue which had accrued. Estimates could be submitted at the beginning of the year if desired.

15. It is understood that in nearly all countries in Europe and in India many, if not most, private municipal or communal forests are managed by the State Forest Service.

They....

for protection may become self-supporting in future, Others are never likely to show a cash profit though they must be protected and maintained both for their small direct benefits and their much greater indirect benefits. In still other Reserves e.g. Machakos and Kisii, forests must be created at very considerable cost. It is certain that the greater part of this expenditure will be recovered as the forests mature but it is uncertain whether all will ever completely pay for themselves. Some tribes could raise a cess sufficient to pay for the expenditure on their forests but most could not possibly raise anything like enough and others could afford none at all.

9. In spite of this diversity of conditions, it is obviously necessary and desirable to have one uniform forest policy in all Reserves both for management and finance. It would be most satisfactory from a financial point of view to pool the forest resources of all the reserves and it may be argued that there is no particular fairness in the fact that some tribes, by mere chance, own highly profitable forests and others none at all, but this is not now practicable. The only satisfactory plan is for Government to finance the forest management, paying any profits over to the Natives concerned and, in return, to retain the control.

10. If Government is financing the forest management the recovery of the expenditure should be the first charge against any revenue which may be produced by the forests. No revenue would be paid to the tribe until the expenses of management had been recovered i.e. the owners of the forest would only be entitled to the net profit produced by the forest. No claim would be made on the tribe for the repayment of the annual expenditure; this would only be recovered by Government if and when the forest produced sufficient revenue to cover the expenditure. In some cases repayment could not be

interfere with this object. In other forests the object would be so to manage the forest as to maintain in perpetuity a sustained yield of the types of forest produce required. In all forests every endeavour would be made to improve the quality and quantity of produce yielded by the forest.

5. It would be best as a general policy to charge for all forest produce taken from or grazing allowed within the forest boundary. Only in this way is the benefit of the forest spread over the whole tribe and not merely confined to those living in the vicinity of the forest. Also what is paid for is valued more than what is obtained free and is less wastefully used. However, if it is considered necessary in order to reduce native opposition to forest reservation and protection bona fide natives of that Reserve should be allowed to remove dead wood for fuel free of charge, for their own use or for sale in the Reserve.

6. In demarcating and reserving the forests, care should be taken to exclude all grass and open land that could possibly be kept outside the boundary. Some interior glades would have to be included and it would probably be necessary for any grazing in these to be allowed only on licence. Defined rights of way would be left open to any recognised and necessary watering places or salt licks inside the forest. Honey hunting would have to be regulated but no charge would be made for permits.

7. With the exceptions mentioned above, the ordinary rules under the Forest Ordinance would apply and the forests would be managed in the same way as these on Crown Land. The local Administration would, of course, be consulted before saw mill concessions were granted or other considerable developments undertaken.

8. As regards finance, it must be borne in mind that in only a very few Reserves can the forests be self-supporting. Others will

NATIVE FOREST RESERVES

STATEMENT OF POLICY

All the important forests of the Colony on Crown Lands and in Native Reserves, whether of climatic or economic importance should be under one control and the management of these forests should be in the hands of the Forest Department which is specially fitted by its training and organization to undertake it.

2. In the Native Reserves, all forests that are to be permanently reserved should be nominally under the control of the Forest Department but small forests of, say, not more than 600 acres, which have no climatic importance, are not big enough to warrant saw-milling operations and are only of importance for the supply of fuel and building poles to the local inhabitants, might be managed by the District Commissioner and the Local Native Council.

3. For reasons of economy, some of the larger outlying forests, after demarcation by the Forest Department, should be supervised by the Administration on behalf of the Department. Their management would consist merely of protection from damage until circumstances warranted further development.

4. The forests would be managed by the Forest Department on behalf of the Native community concerned and any net profits would belong to that community. The Forest Officer would be sole judge of what could be cut in the forest. In climate and water conservation forests, the main object of management would be to maintain a permanent forest cover on the ground which would be of assistance as would not interfere

that is to say all overhead charges should be included.

10. I, however, am in agreement with the majority of the Board in considering that these charges as explained in the statement may justly be regarded as a reasonable Government contribution to forest conservation in the interests of the State, and a charge on general revenue to which all communities contribute by taxation.

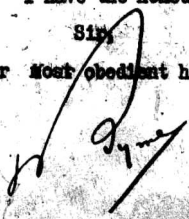
7. ...

11. I regret that I cannot hope that the policy when established will prove generally popular among the native tribes concerned. They have come to regard their forests as their own exclusive property and are inclined to resent what they regard as interference by Government. It is, however, in the main consistent with existing practice and is I am convinced not only necessary for the preservation and development of the forests in the interests of both Government and the native tribes, but is distinctly generous to the latter, whose forests will be managed for them free of cost until they become remunerative and who then will receive such profits as may be realised together with a free present of overhead charges.

I have the honour to be,

Sir,

Your Most obedient humble servant,



BRIGADIER GENERAL
GOVERNOR

6. The Native Lands Trust Ordinance

clearly accepts the principle of the right of an individual tribe to profits from land reserved for its benefit and would require very drastic amendment to allow for such a departure from principle as a general pool. Section 8(3) of the Ordinance reads:

"All rents, stand premia, grazing fees for other profits whatsoever accruing from land in a Native Reserve, or from timber for other forest produce, or from sand, lime, stone or other materials removed or taken from a Native Reserve shall be paid to the Local Native Fund.....".

7. It is fallacious to regard the natives of Kenya as comprising a homogeneous body the interests of whose members are identical. Nothing could be further from the truth. An Elgeyo would no more relish the idea that some of the profits from his forests were to be diverted to the Akamba than an Englishman would appreciate the expenditure of his country's revenues in the interests of some Government in Southern Europe.

8. I have therefore decided with the advice and consent of the majority of the Board to adhere to the principles already established by the Native Lands Trust Ordinance and to refund profits to individual native tribes through their Local Native Councils.

9. Another objection raised in debate to the proposed policy was that the full cost of management including all overhead charges should be recovered by Government before refunding profits

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that.....!

3. The arrangement recommended in the statement is briefly that Government should finance the forests and should refund to the tribes concerned through their Local Native Councils nett revenue after deducting management expenses, which should not include overhead charges, these being regarded as a Government contribution towards forest conservation in the interests of the Colony as a whole.

4. It was argued by one member of the Board that as some tribes are so fortunate as to have forests within their boundaries while others have none, it would be more equitable to pool all the nett revenue for the benefit of all tribes indiscriminately.

5. The majority of the Board however felt that such a scheme even if on other grounds desirable would be impracticable, and that the policy to be adopted must accept the fact that resources of the various tribes differ very materially and must be framed accordingly. Some tribes are rich in grazing, others in arable land, while others have forests. If those who have forests are forbidden to destroy them in order to convert them into grazing or cultivated land it is reasonable that they should be allowed to retain such profits as may accrue from them. It was felt that there was no more apparent reason for pooling revenue from forests than for pooling land rents or other sources of revenue.

Copy

23

KENYA

No. 654



GOVERNMENT HOUSE,
NAIROBI,
KENYA.

RECEIVED
12 DEC 1931
OFFICE

18th November, 1931.

2
17328/31

Sir,

I have the honour to refer to paragraph 3 of my despatch No. 475 of the 21st August, 1931, in which I informed Lord Passfield that I proposed to report to him the decision arrived at by the Central Lands Trust Board on the policy to be adopted with reference to Forests in Native Reserves.

2. The approved policy is that outlined in the attached statement of policy which it is proposed to adopt as a general guide although it is realised that departure from that policy may on occasions be necessitated by special circumstances. It is based primarily on the acceptance of the principle that Forests situated in Native Reserves are not solely the property of the native occupants of the Reserves to manage or mismanage as they may feel inclined but are also national assets of importance and as such must be the concern and responsibility of the Conservator of Forests. This principle has met with general acceptance but the debates at the Meetings of the Central Lands Trust Board revealed differences of opinion as to the consequential financial arrangements to be adopted.

Conserved 228 23 Nov 1932

3.....

THE RIGHT HONOURABLE
MAJOR SIR PHILIP CUNLIFFE-LESTER, P.C., G.B.E., M.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET
LONDON S.W. 1.

local Government on the discussions which have been proceeding locally. It does not involve any very great departure from the policy which has obtained since 1920. Briefly, it is that all forests over say, 600 acres, should be administered by the Forest Department. All profits, after working expenses have been deducted (no overhead charges of any sort being included in the calculation of working expenses) are to be paid to the Local Native Council.

The Governor points out that this policy cannot be expected to be popular with the natives. They would not be satisfied with less than complete control of their forests, and this cannot be conceded. Under the circumstances the arrangement now set out seems fair and generous.

It would seem desirable, however, that it should be subject to minor variation to suit local circumstances, and that no attempt should be made to apply it too rigidly at once.

J. J. [Signature]
16.12.24

account before any payment is made to Native Councils.

What is the financial situation in Nairobi?

We have not heard much of the subject here, but it has been debated at considerable length in Kenya.

It may be conceded that in view of the climatic importance of forestry in Kenya (and also of the importance of ensuring conservation of the fuel resources of the Colony) there is need for State control over the management of all forests, whether inside or outside Native Reserves. On the other hand the natives are very jealous of any interference by Government with land within the Reserves. For instance, it was many years before the Forest Department and Administration could persuade the Akamba to allow any afforestation on their badly eroded hill-sides. In South Kavirondo the Department during 1930 tried to carry out a similar scheme to that in the Ukamba, but were unable to do so owing to the unreasoning and absolute opposition of the natives. In both these cases the schemes were for the immediate benefit of the natives concerned, but it was not possible to convince them of this. A fortiori, it would be impossible to convince them that their forests should be managed in the interests of the country as a whole. Provision was included in the Native Lands Trust Ordinance that all rents or profits accruing from timber or other forest produce in the Native Reserves should be paid to the local native Council concerned.

Now a decision has been reached by the local

local

According to the recent Report on the future of forestry in Kenya, by Mr. Nicholson, late Forestry Adviser to Kenya and Uganda, the earliest forest policy appears to have been to constitute the larger areas into Crown forest reserves, free from servitudes of any kind. In ~~1911~~¹⁹¹³, however, the Governor decided that forests inside or adjoining native reserves should be managed by the natives with the help of the Administration, and that the Forest Department should have no executive powers over such forests. As a result the Native Reserves were demarcated to include such forests in the Native Reserves.

In 1920 it was decided in the case of the ~~important~~ Marakwet and Elgeyo forests that management should be in the hands of the Forest Department and that the revenue from that, after deducting working expenses (but not overhead charges) should be paid into the Native Trust Fund. I gather that a similar arrangement has subsequently been applied in other cases.

Mr. Nicholson criticised this policy on the ground that the separate administration of Crown Forests and Native Reserves Forests is uneconomic and not in the best interests of the country as a whole. Moreover, I understand that there has been a lot of discussion in Kenya between the Forestry Department and other Departments as to whether overhead expenses should be included in the calculation of the working costs which are taken into account

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account

that it is the intention that
the gross receipts from rents
~~and other sources~~ will be shown
annually as revenue in the Estimates
of the Local Native Council concerned;
that provision will be made in the Estimates
of such Council for expenditure charge-
able to the Council up to but not exceed-
ing the amount of the revenue of the
year payable to the Council; and that the
final accounts of the Local Native Council
will of course show the amounts actually
expended within the estimate.

I have,

etc.

(Sgd) P. CUNLIFFE-LISTER

17400/31/Kenya.

C. O.

Mr. Priestman. 19/3

Mr. Allen 19/3
Mr.

Mr. Parkinson.

Mr. Tomlinson.

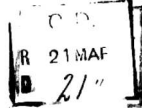
Sir C. Bottomley.

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.



DOWNING STREET,

23 March 1932.

Sir, *SA*

I have the honour to

refer to your despatch No. 654

(1) of the 18th of November 1931,

forwarding the views of the

Central Lands Trust Board on the

policy to be adopted with reference

to forests in Native Reserves,

together with your comments thereon.

2. I agree with the adoption

of the statement of policy, which

formed the enclosure to your

despatch under reply, as a general

guide, subject to such variations as

may be necessitated from time to

time by special circumstances.

3. As regards the proposed

financial arrangements, I assume

DRAFT.

KENYA

NO. 228

~~GOVERNOR~~

Ans 3

- 2 -

to the tribe concerned through its Local Native Council. An account showing receipts and expenditure and how the profit is arrived at will be submitted at the same time.

4. As the Local Native Council is not responsible for the expenditure, it is not intended that the latter should be shown on their estimates. An estimate of receipts and expenditure and net profit would be submitted by the Forest Department and the estimated net profit would then be shown on the Local Native Council's Estimates.

I have the honour to be,

Sir,

Your most obedient humble servant,



BRIGADIER-GENERAL.
GOVERNOR.

KENYA.
No. 266



GOVERNMENT HOUSE,
NAIROBI,
KENYA.

RECEIVED
27 JUN 1932
COL. OFFICE

8th JUNE, 1932.

Sir,

102

I have the honour to refer to your despatch no. 228 of 23rd march 1932 conveying your agreement to the general policy proposed for the management of forests in native reserves.

*Amund (S) Moore
Pam. " S.O. to Moore 1/12*

2. With reference to para. 3. of your despatch I think there is some understanding as to the financial arrangements proposed.

~~in~~ in the case of forests there are rarely any fixed receipts such as rents; the only receipts of any consequence are those from occasional sales of forest produce. The possibility of such sales depends on the forest being so managed as to produce an annual surplus of material and in a market being found for such surplus and this is dependent on the way the forest is managed. The only revenue is the profit arising from the working of the forest as a result of its proper scientific management.

3. It is intended that expenditure and receipts shall be borne on the Forest Department accounts and that the net profit if any shall be paid periodically to

THE RIGHT HONOURABLE
MAJOR SIR PHILIP CONLIFFE-LISTER, F.C., G.B.E., M.C., M.F.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON, S.W.1.

16
COMMENTS.

*Omit in
Chief*
*See
10/1/21*
[(a) I cannot trace (Rule 3) any rule in the Native Authority Ordinance about submission of estimates, but I gather from Mr. Allen's note that these are estimates and I expect they go, as is usual in such cases, to the Governor in Council.]

(b) 5 and 6 of the above Rules allow for elasticity in treating the yearly surplus or deficit. They cover cases in which a Forest might not be showing either a regular yearly profit or a regular deficit and, consequently, it might be desired to average the profits and losses over a series of years and not for the Native Council to take the whole profits one year and the Government to bear the whole loss the next.

(to)
[(c) Rule 4 provides for the financing of the Native Council in cases where it is known that there will be a deficit on the Forest Suspense Account for the year: this would avoid the Native Council getting short of cash by the accumulation of a heavy deficit on the Forest Suspense Account.]

*Omit in
Chief*
[(d) The Rules give the Governor in Council as the controlling authority. I do not know what control the Secretary of State wishes to apply but the Rules can be amended in this respect without in any way affecting the scheme of accounting.]

Omit
T
[Signature]
7.9.21

Accounting for Receipts and Payments of Forest in
Native Reserves.

~~Receipt~~
~~RUBBER~~

by (as altered) to Gov. (8)

1. All receipts to be brought to account in the Local Native Fund Cash Books and allocated to a "Forest Suspense Account".
2. All payments to be brought to account in the Local Native Fund Cash Books and allocated to a "Forest Suspense Account".
3. An estimate of the receipts and payments of the Forest Suspense Account for each year to be drawn up in an Appendix to the Local Native Fund Estimates and approved by the Governor in Council.
4. The payments from the Forest Suspense Account to be made in accordance with the approved (Appendix) Estimates for the year, any variations and excesses to be similarly approved by the Governor in Council.
5. If there is a surplus in the Forest Suspense Account at the end of the year such portion of it (if any) as may be approved by the Governor in Council to be paid over to the Native Council.
6. If there is a deficit in the Forest Suspense Account at the end of the year such portion (if any) of the deficit as may be approved by the Governor in Council shall be met by a grant from the Government which shall be paid into the Forest Suspense Account.
7. If necessary, the Government may give grants during the year which shall be paid into the Forest Suspense Account.
8. At the close of each year a statement of the whole of the receipts and payments in the Forest Suspense Account during the year shall be submitted to the Governor in Council.

Accounting for Receipts and Payments of Forest in
Native Reserves.

Income
RULES

4 (as altered) to Govt (8)

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Accounting for Receipts and Payments of Forest in
Native Reserves.

~~Receipts~~
~~Receipts~~

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7. If necessary, the Government may give grants during the year which shall be paid into the Forest Suspense Account.
8. At the close of each year a statement of the whole of the receipts and payments in the Forest Suspense Account during the year shall be submitted to the Governor in Council.

Cap.149).

It seems necessary, therefore, to amend the Forests Ordinance in order to permit receipts to be paid to a native fund, and possibly also to provide for the issue of special licences and Native Council receipts.

It appears that the Forest Officer will not be responsible to ~~the~~ Local Native Council but to the Central Government, and that employees in the first instance will be Government servants, but that expenditure under other charges in respect of the latter, e.g. upkeep of uniforms, will presumably be borne on the Native Council Vote. This may present some difficulty in practice.

6 8

As regards the D.D.C.A.'s comments attached to the suggested rules:-

(a) The submission of estimates by a Local Native Council is governed by Rule 7 of the Rules under Cap.129 made on the 28th April 1925, which reads as follows:

"Annual estimates of revenue and expenditure relating to each Local Native Fund shall be prepared by the District Commissioner and considered by the Local Native Council not later than the second week in October. The estimates as finally approved by the Local Native Council shall be forwarded by the District Commissioner without delay to the Senior Commissioner The Senior Commissioner shall transmit all the documents with his recommendations to the Chief Native Commissioner for submission to the Governor-in-Council."

(b) The Governor-in-Council should presumably be the controlling authority in virtue of Sections 20, 29, 30 and 32 of the Ordinance.

As regards Mr. Fisher's assumption that the Forest receipts do not include any items which under law and other authority are required to be brought into the Colonial revenue, all licences are issued under the Rules under Cap.149 by or on behalf of the Conservator of Forests. It is not specifically stated that all fees and royalties must be paid to Government, but it would probably be held to be implicit in the Ordinance that the licences are issued in respect of Crown lands (which includes native reserves, vide Section

Page 1183
Vol II Kenya Regs

But if a Native
Council is
not set up
then the
Native is
not
Eric Col
1/11/25
the page
1/11/25
Vol II Kenya Regs

taken up the time.

As I understand it the only really
legal difficulty^{point} is that the forest
receipts must be dealt with in compliance
with subsection 8 (3) of the Native Lands
Trust Ordinance and it seems to me that the
procedure proposed secures that. However
I am only a layman and I feel that MacGregor
knows me quite well enough to treat my
opinion on any legal matter with the
contempt it deserves!

Yours sincerely,

(Signed) H. T. ALLEN

will consider these suggestions;
out if you concur in them / you
will, no doubt, before effect
is given to them satisfy yourself
in consultation with your legal
advisers that they comply with
the requirements of sub-section
8 (3) of the Native Lands Trust
Ordinance in so far as the
provisions of that sub-section
are applicable.

your
I also if financial advisers
find it necessary to suggest modifi-
cations of the procedure proposed in
order to suit local circumstances I
am content to leave the decision on
such points to your discretion subject
of course to the requisite considera-
tion that the provisions of sub-section
8 (3) of the Native Lands Trust Ordinance
are complied with.

Shaw

(Sd/-) G. L. LISTER

C. O.

Mr. H. T. Allen 9/18

Mr.

Mr.

Mr. Parkinson.

Mr. Tomlinson.

Sir C. Boddamley.

Sir J. Shuckburgh.

Perms. U.S. of S.

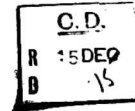
Parly. U.S. of S.

Secretary of State.

2 DRAFTS

H. M. M. MOORE ESQ. C.M.G.

124000/31 Kenya.



15 DEC 1932

A reply goes by this mail to
the Governor's despatch No. 266 of the
8th June regarding forest finance in
the native reserves.

You may wonder why it has been so
long in hatching. The point concerns
as you will see the requirements of
subsection 8 (3) of the Native Lands
Trust Ordinance. Treatment by way of
Appendix Estimates of the Local Native
Council seemed to offer a way out and, for
clarity, the memo. enclosed in the
despatch sets out in detail suggestions
for proceeding on this basis. It is this
detailed consideration, coupled with
pressure in other directions, that has

17400/31.

8 R

C. O.

Mr. Allen.

9/12
14/12
fo

Mr.

Mr.

Mr. Tomlinson.

Mr. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Perm. U.S. of S.

Parly. U.S. of S.

Secretary of State.

DOWNING STREET,

15 December, 1932.

Sir,



I have, etc., to refer to your despatch No.266 of the 8th June regarding the general policy proposed for the management of forests and native reserves.

2. I note that there has been some misunderstanding as to the financial arrangements, but it would appear that those contemplated in your despatch under reference are open to objection on the ground that they do not comply with the requirements of sub-section 8(3) of the Native Lands Trust Ordinance 1930, as regards the disposal of forest receipts. Alternative suggestions have accordingly been drawn up and have been embodied in the accompanying memorandum. It shall be glad if you will

DRAFT.

KENYA

NO. 907

Gov.

2 dts

note
(No. 5 for letters)

will

to approve & the Local Native Council,
St. Paul's to discuss
agrees with (a) & (b) of the Standard's
minute of the 11th Oct. I am
quite happy about the expansion
& accounting aspects of the matter
& the way that the proposals to the
Governor.

H. Allen
6/12/32

I am not clear that any of this "juggling",
as Mr. Preston calls it, with a suspense account
can be said to comply with the provisions of
the Native Lands Trust Ordinance 1930.
on consideration of the above questions,
In my opinion, the proper way of dealing
with the matter is to amend the Ordinance.

7/12/32.

H. Duncan.

1. When using the word "juggling" Mr. Preston
was referring, not without some justification, to the
proposals in the Governor's despatch of the 8th
(3) June, No. 266.

2. But it would, in my opinion, be an abuse
of language to describe as juggling the alternative
arrangements now suggested which are in accordance
with Government accounting procedure and have the
concurrence of the Director of Colonial Audit.

3. The amendment of the Ordinance is not
in my view practical politics.

4. The real object of the proposals is to
secure compliance with the Native Lands Trust

Ordinance and to ensure Local Native funds are not
charged with losses on the working of the forests.

The Department is now left with no option
but to accept responsibility for dealing with the
matter in the light of the views which the Director
of Colonial Audit and the Legal Advisers have expressed.
I have drafted to the Governor accordingly, carefully
refraining however from suggesting that the alternative
proposals are based on any legal advice tendered to
the Secretary of State.

H. Allen
9/12
stare (I don't think the consen
mentions as the beginning of
part of the 3rd paragraph
to be a bare assertion)

7 To Moore — S/o — 15 DEC 1932

8 To Gov. Kanga 907 (w/c & altered) 15 DEC 1932
3 amended

Recalls to
see
J. J. J.

C. J. also must
accounting aspects in
respect of Forests
in Native Reserves

Native Funds. The authority for such expenditure is as stated by Mr. Fisher's minutes (No. 6) and Mr. Duncan's point was met by A in Mr. Fisher's minutes of 7/9/32.

The argument is:-

- (a) Ordinance 9/1930 requires all receipts to be paid into the Local Native Fund (or to any member or members of the tribe entitled thereto).
- (b) The proposed rules secure this.
- (c) Control of expenditure/out of the Native Fund is by estimates.
- (d) The proposed rules provide for Forest expenditure to be made under authority of an Appendix to these estimates - on Government accounting precedent.

A. J. Harding

Director of Colonial Audit.

11-11-32

I should be glad to know whether this satisfies Mr. Duncan

J. N. P. Allen

17/11/32

I am afraid that I am not satisfied, and I do not agree that my point was met by A in Mr. Fisher's minutes of 7/9/32.

I appreciate what Mr. Harding says in (a) (b) (c) & (d) of his minutes of 11/11/32, but I still fail to see what authority there is for charging the forest expenses in question against the receipts mentioned in Section 8 (3) of the Ordinance, which is what the proposed rules in effect do.

It is to be observed that Mr. Macgregor told Mr. Roberts-Wray that the proposal was that the Local Native Council should agree to meet the expenses in question (see Mr. Roberts-Wray's minutes of 9/3/32).

29/11/32 H. Duncan.

Fortunately the point at "A" is not ambiguous & the provisions of the N.L.F. Ordinance which are concerned with receipts meet with expenditure.

The authority for expenditure is & I think in the case of the Local Native Council should be the Local Native Council.

the Colonial Regulation distinction between Revenue and Below - the - line receipts, but if it is thought that the accounts are, or ought to be, governed by Colonial Regulation, in this ~~sub~~ ^{Yukon} ~~case~~ I suggest that Col. Reg. 289 might be applied to this case, as it is at times to cases in Colony accounting where it is decided to operate through a Suspense Account.

I have assumed that the Forest receipts do not include any items which under law and other authority are required to be brought into the Colonial Revenue.

J.P. Fisher
7.9.32. D.D.C.A.

I attach a note to
Mr. Jones's letter
15/9/32

We shared letters of Mr. Roberto Wray's
obvious in his proposals from the
legal point of view.

As regards the treatment of
the note from the line are any
items of the Native referred to under
the Native Lands Trust Ordinance, in
so far as it deals with the disposal
of such items, decide anything
in the Native Lands Trust Ordinance or Rules?

J.P. Allen
15/9/32

9

Generally speaking, the rules drawn up by the D.D.C.A. would appear to provide a satisfactory system of accounting for the receipts and payments of forest in native reserves; but, if I understand them rightly, they are so framed as to allow the forest expenses in question to be deducted from, or met out of, or a charge on, the receipts. If so, I do not see how they can be ~~enforced~~ said to comply with the provisions of the Native Lands Trust Ordinance.

6/10/32 M. Duncan.

Perhaps the D.C.A. intended
Comment on Mr. Duncan's letter

J.P. Allen

15/9/32

No. 3579/3

Mr. Allen,

There is nothing in Ordinance 2/1920 to provide for any expenditure out of the Local

Native

"in substantial agreement" with the Committee's conclusions on this point. True, Lord Moyne did not include Forestry, along with Education, Public Health, and Agriculture among the services for which responsibility should be probably transferred to the local Native Councils (para. 21), but the ~~possibility~~ possibilities can hardly be pressed.

I think, but the Governor that the financial procedure suggested appears inconsistent with the provisions of Section 8 (3) of the Native Lands Trust Ordinance, continues on the lines of a above and suggest that, with a view to leading open the way for a gradual increase in native responsibility with regard to forest management, we should reconsider the possibility of adopting a procedure based on that suggested in ~~the~~ the file.

R. M. Austin
19/7.

[I was unable to deal with this before lunch on Monday on July 25, & only returned on August 22 - hence the delay.]

Agree with the action proposed by Mr. Finston.

1/9/32.

1/9. Duncan

8

I agree generally, but before proceeding as suggested at A in Mr. ~~Finston's~~ ^{Freston's} minute I think it would be well to consult the P.C.M. as to the possibility of devising an accounting arrangement which would achieve the object we have in view and yet comply with the provisions of the Native Lands Trust Ordinance. 4

I attach a note of some points which have occurred to me.

J. W. Allen

2/9/32

3579/3

Mr. ~~Allen~~, Allen,

What is required appears to be a system of accounting which will, (I) comply with Sec. 8 (3) of Ordce. 9/1930 in that all Forest receipts are paid to the Local Native Fund, (II) secure, that, although the Native Council get the money, the Forest expenses will be controlled by the Government and will be a first charge on the receipts; also, that the Government will keep control over any available balances, and (III) be easily worked.

These requirements can, I think, best be met by accounting for the whole of the Forest receipts and payments in a Suspense Account. - as suggested in your note and I put up herewith a draft set of rules with a few comments thereon.

No 5

A

This system complies with Sec. 8 (3) of Ordce. 9/1930 as the Forest receipts are paid in full to the Local Native Fund account, and the Ordce. says nothing about the Native Council Revenue. In fact I very much doubt whether in the Native Council accounts there is

3 fr. Kenya — 266 — F.G.S.
Acks. receipt of No. 2, & feels that there is some misunderstanding as to the financial arrangements proposed in para 3. Explain the procedure intended.

Please see the minutes on 1.

It is clear from Mr Roberts-Wray's minute of 29/3/32 that the gross receipts must be shown in the local native Council's accounts and that there will have to be a budget when there is a loss to show as a subsidy from the amount equal to the net loss. I assume however that the difficulty can be overcome by the L.N. Councils opening suspense accounts and crediting to normal any net profit. The point seems one relating to accountability.

? see why he asked to advise and if he agrees as regards a suspense acct. Mr Roberts-Wray's opinion is why he conveyed to the Finance with the suggested method of employing with it.

H.S. Potts M.A.
30/4/32

The Governor has not seized the point. The financial procedure outlined in this despatch is in flat repugnancy to the provisions of the Native Lands Trust Ordinance, Section 8(3); juggling with suspense accounts will not solve the difficulty, and either the procedure or the Ordinance will have to be altered.

We know that certain other minor amendments to the Lands Trust Ordinance are in contemplation, and the simplest way out of the difficulty ~~is~~ ^{would} be to suggest that, if and when an amending bill is introduced, Section 8(3) should be so redrafted as to ensure that only net profits, (as regards lands which have been declared forest reserve), shall accrue to the Local Native Councils.

On the other hand, it may be pointed out that

(a) there is no certainty that an opportunity for such amendment of the Ordinance ~~will~~ ^{will} occur in the near future;

(b) if the amendment were made, it would be liable to attack both from the usual critics at home and from any intelligent and articulate section of natives in Kenya who might think that their rights were being curtailed;

(c) the Joint Committee (paras 78-80 and 103 of their Report) laid much emphasis on the importance of extending rather than curtailing the development and activities of Local Native Councils. In his despatch of July 13th the S. of S. found himself

Since dictating the above opinion I have had the advantage of a discussion with Mr. MacGregor. He agrees with the view I have expressed, but tells me that the actual proposal is, put very shortly, to credit the Native Fund with gross receipts, and for the Local Native Council to agree to meet the expenses with which it is proposed to charge them. It may be that, for convenience, the cash would never actually be handed to the local Native Council, but this would only be a matter of accounting. If that procedure is adhered to, I see no objection, though I must observe that the despatch and enclosures are somewhat misleading.

J. G. MacGregor
9/3/32

There are two aspects of this matter.

- (a) The policy of management of the forests in the native reserves by the Forest Department on behalf of the native community concerned and
- (b) The consequent financial arrangements.

It would appear that the native objections referred to really relate to any policy of conservation which interferes with their liberty to destroy the forest if they wish, but in such a matter it is obviously necessary to protect them against themselves. The proposals agreed by the Central Lands Trust Board seem ~~entirely~~ reasonable.

As regards the financial arrangements.

I agree that the despatch is not happily worded, but given that the intentions are as stated by Mr. MacGregor, practice and law are apparently being squared. It is true that Section 8 (3) of the Native Lands ^{Trust} Ordinance also makes provision for payments in respect of rents in areas in which there are no local Native Councils, but I understand that in fact the Local Native Council areas cover all native forests, i.e., there are no forests in native areas in which the Local Native Councils have not yet been formed.

Although the Governor does not ask for approval? re that the Secretary of State agrees with the adoption of the statement of policy as a general guide subject to such variations as may be necessitated from time to time by special circumstances. And as regards the financial arrangements, say that the Secretary of State assumes that it is the intention that the gross receipts from rents, etc., will be shown annually as revenue in the Estimates of the Local Native Council concerned, and that provision will be made in the Estimates of the Council for ^{any} ~~any~~ ^{other} expense chargeable to the Council up to but not exceeding the amount of the ~~estimated~~ revenue of the year payable to the Council. (Mr. MacGregor tells me that this phraseology correctly indicates what is actually the intention.)

(See beginning of para 2 of his draft)

J. G. MacGregor

9/3/32

I think this is not the case, as the estimate of the final accounts of the Council are from the...

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J. P. [Signature]
9/3/32

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I

(See beginning of para 2, the Staff)

Null
at [unclear]

J. P. [Signature]

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Although the Governor does not ask for approval? reply that the Secretary of State agrees with the adoption of the statement of policy as a general guide subject to such variations as may be necessitated from time to time by special circumstances. And as regards the financial arrangements, say that the Secretary of State assumes that it is the intention that the gross receipts from rents, etc., will be shown annually as revenue in the Estimates of the Local Native Council concerned, and that provision will be made in the Estimates of the Council for ~~any~~ ^{where} expenses chargeable to the Council up to but not exceeding the amount of the ~~estimated~~ revenue of the year payable to the Council. (Mr. MacGregor tells me that this phraseology correctly indicates what is actually the intention.)

J. P. [Signature]

11/3/32

I think this is not the case, with the addition that the final accounts of the L.N.C. Council will provide for the amount actually paid to the L.N.C. Council.

6/11/32

officers have to face in reconciling forest policy with native customs etc.,

Mutual knowledge, and consequently intelligent cooperation, between the Administrative and Forest Services is, I suspect, the only real key to the problem.)

R.D. Funn

25/2/32

First we should have legal advice as to whether the financial arrangements proposed are in any sense contrary to S(3) of the Native Land Trust Ordinance. Assuming the principle of management of the forest is in behalf of the natives the arrangements proposed seem reasonable & part of the best provided for the native authority concerned being kept fully & practically informed.

J.V. Allen

27/2/32

Apparently the receipts from which it is proposed that the expenses should be deducted include rents and grazing fees. This seems to me quite indefensible. Section 8(b) of the Ordinance provides that all rents, stamp premia and grazing fees shall be paid to the local native authority, which, in my opinion, means that they are to be paid without deduction.

So far as the proceeds of sale of timber, and any other receipts to which Section 8(3),

refers ~~as~~ "profits" are concerned, I feel some doubt. It may be argued that if net "receipts" were to be paid to the native fund, the Section would have used that word instead of "profits". On the other hand it is to be observed that the Section speaks of "other profits", thereby implying that rents, stand premia and grazing fees are profits, and if they are to be paid without deduction, it seems to me that ^{there is no reason why} "other profits" ^{should} ~~must~~ be treated ^{differently} ~~similarly~~.

Section 4 of the Ordinance declares that all matters relating to native reserves are under the management and control of the Central Board, and ~~the Ordinance makes no~~ the Ordinance makes no provision for the defraying of any expenses incurred in administration. I very much doubt, however, whether the Board could justifiably act upon the assumption that they have an implied power to charge their expenses ^{against} ~~from~~ the receipts mentioned in Section 8(3), and if they cannot, then equally they cannot agree to such a course being taken by the Forest Department administering the forests on their behalf.

Finally, the expenses will presumably be in part related to rents and grazing fees, and even if the word "profits" meant net profits, there ^{would} ~~will~~ apparently be some difficulty in dividing the expenses into water-tight compartments so as to ensure that only those incurred in realising "other profits" should be deducted. Clearly, in assessing the net profits accruing from timber or other forest produce taken from a native reserve, you cannot deduct e.g. the total salary of an officer whose duties are in part related to other ~~management~~

that a certain elasticity should be retained in applying the acreage criterion, but this is evidently contemplated by the local Government.

It should be noted that the financial proposals summarised in paras. 8 - 12 of the enclosure to the despatch can be reconciled with Section 8 (3) of the Native Lands Trust Ordinance only if the phrase "all profits whatsoever accruing from timber or other Forest produce taken from the Native Reserve" is interpreted as equivalent to "all net profits accruing, etc." This is no doubt legitimate, but may afford ground for complaint to any native who is intelligent enough to read the Ordinance for himself.

It would possibly minimise native opposition, without upsetting the general financial framework, if the proceeds of all sales of forest produce in a Reserve to natives of that Reserve were paid immediately and intact ^{into the} ~~into the~~ general ^{fund left} revenue and possibly used as an offset against previous years' expenditure, (e.g., on re-forestation) (see in this connection para. 10 of the enclosure). This might ^{be} put to the Governor as a suggestion; and he should also be impressed with the importance of explaining to the natives concerned the new arrangements whereby privileges and revenues which they have in some cases no doubt regarded as their own are to be temporarily diverted to remoter uses.

W. Freeston
30/12

I have read this with much interest. As they have succeeded in arriving at an agreed policy on the spot, which is reasonably close to the views of the visiting experts and yet has some chance of being accepted and worked in practice, and I would welcome the proposals warmly and with as little criticism or suggestion as possible; - and I agree generally with Mr. Eastwood's proposed reply.

I do not feel quite sure, though, that I have understood Mr. Freeston's last paragraph. If the Native revenue is to get only nett profits, how is it practicable to pay all proceeds of sale to it immediately and intact?

It may be of interest to note here, that after consulting Mr. Gardner personally when on leave (and with consent of Governor by telegram) Mr. Leakey, brother of the archaeologist, was selected and allocated as a probationer for the Kenya Forest Department last autumn, because Mr. Gardner felt that his knowledge of the ~~language~~ and their language would help the work of the Forest Department in Native Reserves.

(It is my hope too, that the instruction given to Administrative probationers on the T.A.S. course about the problems and methods of Tropical Forestry, may in the long run help to overcome the difficulties of applying a sound Forest Policy in native areas. Someday, if the right lecturer were available in Oxford, I should like to give the Forest Probationers a corresponding education as to the difficulties which Administrative officers

into the Royal Native Council revenue, instead of being credited to

This does not seem necessary in the light of the actual intention
1/1/12

recommended a definite policy in regard to the management of forest areas in Native Reserves. It may be convenient to summarise the proposals of Professor Troup, who reported in 1921, and of Mr. J. W. Nicholson, whose report will be found in 17529.

(a) Professor Troup.

Forest areas (actual and prospective) to be divided into

(i) Major forests, of which the use and management are of general importance to the Colony:

(ii) Minor forests, of mainly local benefit. Both major and minor forests to be gazetted as Native Forest Areas, and to be managed by the Forest Department in close co-operation with the Administration. Local population to pay at normal rates for all forest produce.

Finance

(i) Major forests. Revenue and expenditure to be kept in a separate Head (Native Reserve Forests) in the Forest Department Estimates and Accounts, each Reserve being separately costed. Balance of revenue to be credited to Native Land Fund.

(ii) Minor forests. Revenue and expenditure to be kept in a separate Head (Native Reserve Forests) in the Forest Department Estimates and Accounts, each Reserve being separately costed. Balance of revenue to be credited to Native Land Fund.

(iii) Minor forests. Revenue and expenditure to be kept in a separate Head (Native Reserve Forests) in the Forest Department Estimates and Accounts, each Reserve being separately costed. Balance of revenue to be credited to Native Land Fund.

Forest areas to be classified as

- (a) of major climatic importance.
- (b) of minor, i.e., local, climatic importance.
- (c) of no climatic importance.

These groups to be sub-divided according to whether the economic value of the forest is

- (a) local;
- (b) definitely commercial;
- (c) indefinite (i.e. unknown).

C (a) areas to be left entirely to tribal control and management; B (a) to be under Forest Department control and tribal management; all other areas to be under Forest Department control and management.

Finance

Two alternatives are suggested in regard to the forest areas except those classified as B (a) and C (a) :-

(i) areas should be leased from the Local Native Councils by the Forest Department, who would undertake all financial liabilities:

(ii) the Local Native Council should undertake all financial liabilities and be credited by the Forest Department with any net profits.

Mr. Nicholson recognises, however, that his first proposal is politically impracticable. It is indeed difficult to see how a general system of leases could be harmonised (in view of the inevitable native objection) with Section 7 of the Native Lands Trust Ordinance.

The proposals in the present despatch do not differ substantially in principle from Professor Troup's and Mr. Nicholson's. They possess the added merit of substituting a practical and readily intelligible criterion, viz., that of acreage, for the more academic and ambiguous dividing lines proposed by Troup and Nicholson. It is important

This a statement of the approved policy to be adopted with reference to forests in Native Reserves.

The question of the policy to be followed in regard to forests in native reserves is not an easy one. I attach ^x a short note.

1A

I think the proposals set out in this despatch and its enclosure may be regarded as satisfactory. The Governor does not ask for approval of them, so, subject to any observations which Major Furse may have, I would suggest:

An acknowledgment saying that the S. of S. has read the despatch with interest and notes the policy which has now been laid down that he considers that this will afford a suitable basis for future working, provided that it is not attempted to apply ^{as policy} it too rigidly, and that minor variations are allowed to suit local circumstances; that he assumes that steps will now be taken to make ^{the policy} ~~an~~ general ~~announcement~~, whether by Government notice in the Official Gazette, or by Secretariat circular; and that he would wish that in any such announcement it should be made clear that the policy is one ~~for~~ for general guidance and does not preclude minor variations to suit local circumstances.

* This is the intention
to be made
2. This is the
18/11/31

Furse
15.11.31.

Major Furse
Mr. Allen

It is satisfactory to note that after 20 years of hesitation, the Kenya Government has at last